IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

POST UNIVERSITY, INC., Plaintiff, v. LEARNEO, INC., Defendant.	Case No. 3:21-cv-01242-VDO May 6, 2026

LEARNEO, INC.'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER FED. R. CIV. P. 50(A) OR A NEW TRIAL UNDER RULE 59(A)

ORAL ARGUMENT REQUESTED

For the reasons set forth more specifically in Defendant Learneo, Inc.'s ("Learneo") Memorandum of Law being filed contemporaneously with this motion, Learneo respectfully moves under Federal Rule of Civil Procedure 50(a) and 59(a) for judgment as a matter of law or in the alternative a new trial on Plaintiff Post University, Inc.'s ("Post") claims brought under 17 U.S.C. § 1202 (the Digital Millennium Copyright Act ("DMCA")) and on Post's copyright claims, and for other and further relief as the Court deems just and proper. Learneo's grounds for judgment as a matter of law and/or a new trial are set forth below:

- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's DMCA claims because there is no legally sufficient basis to find that Learneo possessed the requisite scienter under 17 U.S.C. § 1202(a) or (b).
- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's DMCA claims brought under 17 U.S.C. § 1202(a) claims because there is no legally sufficient basis to find that the Course Hero website markings and watermarks are false.
- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's DMCA claims brought under 17 U.S.C. § 1202(a) claims because there is no legally sufficient basis to find that the Course Hero website markings and watermarks are copyright management information.
- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's DMCA claims because there is no legally sufficient basis to find that Learneo committed more than a single volitional act.
- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's DMCA claims for lack of statutory standing.

- Learneo is entitled to judgment as a matter of law on Post's DMCA claims brought under 17 U.S.C. § 1202(b) for lack of Article III standing.
- Learneo is entitled to a new trial on Post's DMCA claims because the jury's violation counts were against the great weight of the evidence.
- Learneo is entitled to judgment as a matter of law (or in the alternative a new trial) on Post's copyright claims because Learneo is entitled to the safe harbor under 17 U.S.C. § 512.

This motion is made pursuant to Federal Rule of Civil Procedure 50 and 59 and is based on the evidence submitted at trial, all records and proceedings herein, all supporting documents filed with this motion, and the arguments of counsel.

Dated: May 6, 2026

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POST UNIVERSITY, INC., Plaintiff, v. LEARNEO, INC., Defendant.	Case No. 3:21-cv-01242-VDO May 6, 2026

LEARNEO, INC.'S MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER FED R. CIV. P. 50(B), OR A NEW TRIAL UNDER RULE 59(A)

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01		Trial Transcript Vol. V, February 24, 2026
02	PTX982	Amended Complaint Exhibit 2
03	PTX986	Amended Complaint Exhibit 6
04	PTX993	Amended Complaint Exhibit 13
05	PTX658	Jan. 6, 2021 letter: T. Johnson to dmca@coursehero.com
06		Trial Transcript Vol. VI, February 25, 2026
07	DTX10020	Zendesk Ticket #1874611 Take Down of Post University Copyrighted Materials
08	PTX659	Feb. 24, 2021 letter: T. Johnson to dmca@coursehero.com
09	DTX10021	Zendesk Ticket #1971624 Take Down of Post University Copyrighted Materials
10	DTX10467	Document entitled "Audit Audio Lecture Notes Chapter 17" (downloaded from CourseHero.com)
11		Trial Transcript Vol. VII, February 26, 2026
12	DTX10001	Course Hero Terms of Use (last updated Feb. 16, 2022)
13		Trial Transcript Vol. III, February 19, 2026
14		Trial Transcript Vol. VIII, February 27, 2026
15		Trial Transcript Vol. IV, February 20, 2026
16	PTX1018	Amended Complaint Exhibit 38
17		Trial Transcript Vol. II, February 18, 2026
18	DTX10030	Course Hero flyer, How to protect your content and identify academic integrity violations on Course Hero, attachment to CH0480953
19	PTX501	Copyright Registration
20	DTX11352	WIS 585
21	PTX115	ENG 110 - College Writing - Post U Course Syllabus (Original J. Bauer Deposition Transcript Ex. 22)
22	PTX606	ACC111 Copyright Registration
23	DTX11967	WIS 1192

Exhibit No.	Trial Exhibit	Description
24	PTX117	ACC 111 - Financial Accounting Post U Course Syllabus (Original J. Bauer Deposition Transcript Ex. 24)
25	DTX10900	WIS 159
26	PTX1239	WIS 159
27	DTX12977	WIS 600
28	PTX1734	WIS 600
29	PTX4144	Summary Chart for WIS
30	DTX11012	WIS 262
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33	DTX10053	Course Hero website, "Upload your document to start studying" page, https://www.coursehero.com/educators/
34	DTX10785	WIS 51
35	PTX1071	WIS 9
36	DDX13.3	WIS 330
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50	DTX11630	WIS 860
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INTRODUCTION

Defendant Learneo, Inc. renews its motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b)—or, in the alternative, seeks a new trial under Rule 59(a).

The jury was asked to determine whether, and how many times, Learneo violated 17 U.S.C. § § 1202(a) and 1202(b) with respect to documents in which Post University owns a copyright. The jury found 1,458 violations of § 1202(a) and 1,557 violations of § 1202(b). That verdict lacks a legally sufficient evidentiary basis for four reasons.

First, both sections of § 1202 have a double-scienter element, requiring two forms of culpable knowledge or intent.

Section 1202(a) requires that the defendant (1) ***knowingly*** provide copyright management information ("CMI") that is false, and (2) do so with the ***intent*** to induce, enable, facilitate, or conceal infringement. Post's § 1202(a) claim rested on generic copyright markings and logos on the Course Hero website and watermarks on certain downloaded documents noting they were shared via Course Hero. But Post failed to introduce sufficient evidence to allow a reasonable jury to find either prong of the double-scienter requirement met. Post produced no evidence that Learneo knew those markings and watermarks were false, or even that Learneo knew they were CMI. And Post produced no evidence that Learneo intended to induce, enable, facilitate, or conceal infringement. For most challenged content, Post failed even to offer a theory of how the website markings ***could*** further or conceal infringement. And no one offered any testimony or other evidence concerning Learneo's intent or belief. Learneo's witnesses offered unrebutted testimony that the challenged features were understood to be accurate, standard, and in some respects helpful to rightsholders—not intended to make infringement easier or harder to detect.

Section 1202(b) requires that the defendant (1) ***intentionally*** remove or alter CMI or

distribute works ***knowing*** their CMI had been removed or altered; while (2) ***knowing or having reason to know*** that doing so would induce, enable, facilitate, or conceal infringement. Again, Post failed to adduce evidence of either prong. Post offered no evidence of Learneo's intent to remove CMI from any particular work or of Learneo's distribution of any particular work from which Learneo knew CMI had been removed or altered. And Post offered no evidence that Learneo was aware that the blurring of some documents and the lack of a metadata-display feature would induce, enable, facilitate, or conceal infringement. To the contrary, the evidence shows that Post's works were not concealed on the website, that Post's employees had no trouble finding them, and that Post's letters failed to inform Learneo about any of the works in suit or particular CMI, blurring, or metadata.

Second, Post failed to prove that Learneo took a volitional act subjecting it to liability for each violation the jury found. Under copyright principles, Learneo cannot be held liable an unlimited number of times for the single act of designing its website to function a certain way. Leaving aside the issues with Post's proof of double scienter, a correctly instructed jury could have found at most one violation of each § § 1202(a) and (b).

Third, Post did not establish the predicate harm required for constitutional or statutory standing on its § 1202 claims. Post's trial evidence demonstrated that Post suffered no harm attributable to a CMI violation. And because Post was unable to prove ownership of all but four works-in-suit, it cannot demonstrate the protectable interest required for statutory standing. Alternatively, because Post was unable to prove ownership for all but those four works, it could not show that Learneo removed CMI or distributed works with CMI removed "without the authority of the copyright owner," as required under § 1202(b).

Fourth, with respect to the copyright claim, Post failed to prove that Learneo does not qualify for the Digital Millenium Copyright Act ("DMCA") safe harbor. It is undisputed that Learneo meets the threshold requirements for safe harbor, and that Post never sent a takedown request for its five copyright works-in-suit. Learneo is entitled to JMOL on Post's copyright claim.

Finally, a new trial is warranted because the verdict's violation counts lack evidentiary support. The jury plainly rejected Post's expert's violation count theory but did not have the evidence required to generate its own document-by-document count.

STANDARD

Post-verdict judgment as a matter of law is warranted when, viewing the evidence in the light most favorable to the non-movant and drawing every reasonable inference in its favor, there is still no legally sufficient evidentiary basis for a reasonable jury to find for that party. Fed. R. Civ. P. 50(a), (b); *Conte v. Emmons*, 895 F.3d 168, 171 (2d Cir. 2018). The movant must show a "complete absence of evidence supporting the verdict [such] that the jury's findings could only have been the result of sheer surmise and conjecture." *Conte*, 895 F.3d at 171 (citation omitted).

Under Federal Rule of Civil Procedure 59, "[a] motion for a new trial should be granted when, in the opinion of the district court, 'the jury has reached a seriously erroneous result or . . . the verdict is a miscarriage of justice.'" *Chin v. Port Auth. of New York & New Jersey*, 685 F.3d 135, 146 (2d Cir. 2012) (citation omitted). "A new trial may be granted, therefore, when the jury's verdict is against the weight of the evidence." *Laws v. Cleaver*, 140 F. Supp. 2d 145, 149 (D. Conn. 2001). "Unlike a motion for judgment as a matter of law, a motion for a new trial may be granted even if there is substantial evidence to support the jury's verdict." *United States v. Landau*, 155 F.3d 93, 104 (2d Cir. 1998). Moreover, a trial judge considering such a motion "is free to weigh the evidence himself and need not view it in the light most favorable to the verdict

winner." *Id.* (citation omitted). Furthermore, an erroneous jury instruction requires a new trial unless the error is harmless. *Callahan v. Wilson*, 863 F.3d 144, 148 (2d Cir. 2017).

FACTUAL BACKGROUND

Learneo owns Course Hero, an online educational platform enabling students and educators to share and access user-uploaded, course-related study materials. To create an account or upload a document, a user must agree to Course Hero's Terms of Use, Copyright Policy, and Honor Code. Ex. 1, Tr. vol. V, at 110:4–23 (Wentworth). When a user accesses a document, the platform generates a webpage presenting a partially blurred preview of content alongside standard website elements such as a header, footer, and navigational features. Ex. 2, PTX982, at 2; Ex. 1, Tr. vol. V, at 165:22–167:11; 171:25–173:3 (Wentworth). After four previews, Course Hero shows a fully blurred page. Ex. 3, PTX986, at 2; Ex. 1, Tr. vol. V, at 165:22–167:11 (Wentworth). A user may unlock a document to view it in full and can download an unlocked document. Ex. 4, PTX993, at 1; Ex. 1, Tr. vol. V, at 145:6–146:2.

In January 2021, Post sent Learneo a takedown notice for 62 documents on the Course Hero website. Ex. 5, PTX658; Ex. 6, Tr. vol. VI, at 107:14–21 (Chew). Learneo promptly removed those 62 documents. Ex. 7, DTX10020; Ex. 6, Tr. vol. VI, at 108:5–11 (Chew). Over a month later, Post sent an additional takedown notice for 35 documents. Ex. 8, PTX659; Ex. 6, Tr. vol. VI, at 235:3–17 (Park). Learneo promptly removed those 35 documents. Ex. 9, DTX10021; Ex. 6, Tr. vol. VI, at 238:17–20 (Park). In its February letter, Post made general claims about additional Post documents on the Course Hero platform. Ex. 8, PTX659. But Post did not notify Learneo of any other specific Post documents until Post filed suit in September 2021. Ex. 6, Tr. vol. VI, at 240:1–23 (Park).

Post alleged that Learneo violated 17 U.S.C. § 1202(a) each time Course Hero displayed a

Post document on its website along with the Course Hero copyright notice, logos, and banners typically displayed on the Course Hero website. ECF No. 355, at 18–19. Post also alleged that Learneo violated 17 U.S.C. § 1202(a) each time a Post document was downloaded with a watermark indicating it was shared via Course Hero. *Id.* Post alleged that Learneo violated 17 U.S.C. § 1202(b) each time Learneo converted an uploaded document containing Post CMI into preview assets and each time a Post document was displayed on or downloaded from the website without its original metadata or with other Post CMI in blurred form. ECF No. 355, at 19–20.

ARGUMENT

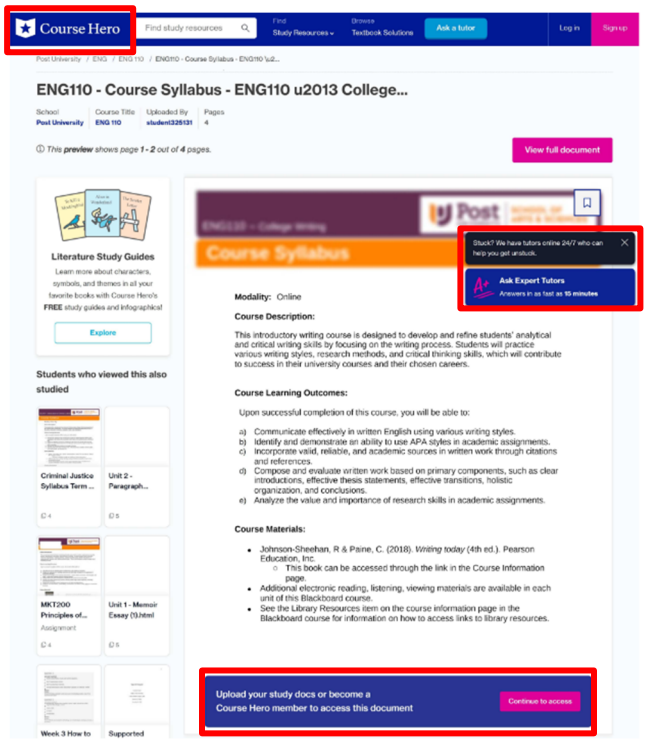
I. LEARNEO IS ENTITLED TO JMOL OR A NEW TRIAL ON POST'S § 1202(A) CLAIM

Post failed to prove either scienter element of § 1202(a). Section 1202(a) makes it unlawful to: (1) "knowingly" provide or distribute false CMI, (2) "with the intent to induce, enable, facilitate, or conceal [an] infringement." *Krechmer v. Tantaros*, 747 F. App'x 6, 9 (2d Cir. 2018); 17 U.S.C. § 1202(a). The statute thus imposes a double-scienter requirement: "[T]o be liable, a party must both have *actual knowledge* that the CMI at issue is false and have acted with the *intent* to induce, enable, facilitate, or conceal infringement." *McGucken v. Shutterstock*, 166 F.4th 361, 369 (2d Cir. 2026) (emphasis in original); *cf. Cox Commc'ns, Inc. v. Sony Music Entm't*, No. 24-171, 2026 WL 815823, at *3 (U.S. Mar. 25, 2026) ("[A] company is not liable as a copyright infringer for merely providing a service to the general public with knowledge that it will be used by some to infringe copyrights.").

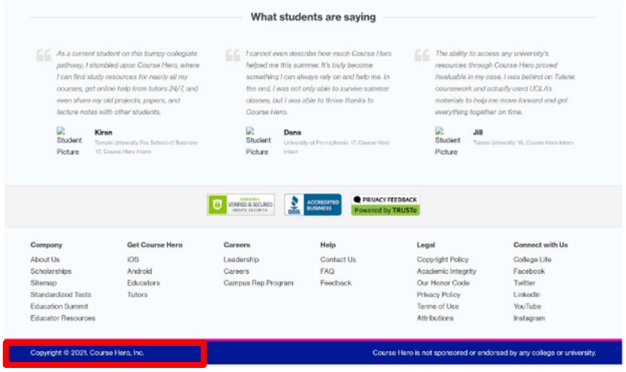
With respect to the first prong, no reasonable juror could have found that Learneo knew its website markings and watermarks were false, or that Learneo knew they were CMI. With respect to the second prong, no reasonable juror could have found that Learneo had the intent to induce, enable, facilitate, or conceal copyright infringement.

A. Post Presented No Evidence That Learneo Knew the Course Hero Website Markings and Watermark Are False CMI

The supposedly "false CMI" that the jury found violated § 1202(a) fell into two categories. First were the ordinary Course Hero website features displayed alongside previews of the works-in-suit—the same way they were displayed alongside any document on Course Hero: the website logos, copyright notice, and other markings indicating that the viewer is on the Course Hero site:



. . .



Ex. 2, PTX982, at 2–4 (cropped; red boxes added for emphasis).

Second were the watermarks on some downloaded documents accurately indicating that the document was "shared via coursehero.com." Ex. 10, DTX10467, at 1.

In an attempt to show that these unremarkable website features constituted false CMI knowingly placed by Learneo, Post advanced two propositions: first, that Post did not authorize Course Hero to display these markings alongside Post documents; and second, that they could mislead some viewers into believing that Course Hero was the source of the documents or had a license to display them. That evidence does not bear on the questions relevant to the § 1202(a) inquiry: (1) are the statements false; (2) are the statements CMI; and (3) did Learneo know they were false CMI? Neither a lack of authorization nor survey-measured confusion shows falsity. The challenged markings and watermarks do not qualify as CMI at all. And given the absence of evidence demonstrating falsity and at least the ambiguity concerning whether the challenged statements are CMI, a reasonable jury *a fortiori* could not have concluded that Learneo "knew the CMI associated with [Post's works] was false." *See McGucken*, 166 F.4th at 370.

1. Post failed to show that the Course Hero website markings and watermarks are false.

To prevail on its § 1202(a) claim, Post had to establish that the Course Hero website information and watermarks are false. *See Steinmetz v. Shutterstock, Inc.*, 629 F. Supp. 3d 74, 85 (S.D.N.Y. 2022) ("Defendant's use of a watermark does not constitute false CMI. It identifies Defendant as the source of an image downloaded from its portfolio or platform."); *McGucken v. Shutterstock, Inc.*, No. 22 CIV. 00905 (JHR), 2023 WL 6390530, at *11 (S.D.N.Y. Oct. 2, 2023), *aff'd in relevant part*, 166 F.4th 361 (2d Cir. 2026) (Plaintiff's "evidence shows only that Shutterstock adds watermarks generally and does not support that Defendant adds its watermark to hold out a Contributor's image as its own."). Because Learneo's website information and watermarks are true, Post failed to make the required showing.

First, the information conveyed on the Course Hero website is not false. Ex. 2, PTX982, at 2–4. To the extent they have any truth value at all, the logos and copyright notices—which appear identically on every preview page, regardless of the document's source, and similarly on pages without uploaded documents—convey that the user is viewing the Course Hero website, to which Course Hero owns the copyright. Those things are true.[1] Ex. 11, Tr. vol. VII, at 204:22–24 (Wind) ("Q: And by the way, you don't disagree that Course Hero owns the Course Hero website, right? A: No."). Course Hero's terms of use also make clear what content on the website is and is not owned by Learneo. Ex. 12, DTX10001, at 3–4. They expressly ***disclaim*** ownership in user-uploaded documents. *Id.*

Whatever one concludes about Course Hero's website markings, they are not literally false as a matter of law. *See Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144, 158 (2d Cir. 2007) (If "the language or graphic is susceptible to more than one reasonable interpretation, the advertisement cannot be literally false."); *cf. S&L Vitamins, Inc. v. Australian Gold, Inc.*, 521 F. Supp. 2d 188, 208–09 (E.D.N.Y. 2007) ("All Rights Reserved" underneath images of plaintiff's products on defendant's website was not literally false); ECF No. 319, at 19 (Defendant's proposed jury instruction concerning falsity). Post did not attempt to prove otherwise. Instead, Post presented a survey expert to argue that the website markings contribute to "clear level[s] of confusion" concerning the authorship and ownership of the displayed document. Ex. 11. Tr. vol. VII, at 125:12–19 (Wind). But proof of confusion is evidence that a statement is ***misleading***, not false. *Time Warner Cable*, 497 F.3d at 158 ("If the words or images, considered in context, necessarily imply a false message, the advertisement is literally false and no extrinsic evidence of consumer confusion is required.").

[1] Additionally, the website statements are not CMI. *See infra* Section I.A.2.

In contrast to, for example, the Lanham Act, which proscribes "false or misleading description[s] of fact," 15 U.S.C. § 1125, § 1202(a) prohibits only the provision or distribution of CMI that is "false." As the Supreme Court has held, a statute prohibiting "false" statements does not also prohibit statements that are "misleading but true." *Thompson v. United States*, 604 U.S. 408, 414 (2025) ("[A] statement that is misleading but true is by definition not a 'false statement.'"). "[W]hen Congress intend[s] to cover all misleading statements, 'it kn[ows] how to do so.'" *Id.*, at 416 (citation omitted). Dr. Wind's trademark-style survey is therefore insufficient as a matter of law to show that the accused website markings are "false CMI."

Second, the watermark and footer on downloaded documents are also true. The watermark states, "This study resource was shared via coursehero.com," and the footer states the downloader and uploader IDs. Ex. 10, DTX10467, at 1. Those statements are literally true as to the path of distribution—the documents ***are*** shared via coursehero.com, and the downloader and uploader are correct identifiers. Ex. 1, Tr. vol. V , at 146:10–15, 147:12–22 (Wentworth).

Post did not attempt to dispute this at trial. Post's witnesses testified to only two things arguably relevant to this issue. First, Kristin Santa Maria testified that she did not authorize Course Hero or anyone else to place watermarks on her work. Ex. 13, Tr. vol. III, at 133:8–135:14 (Santa Maria). But a lack of authorization to place them does not make the watermarks false. Second, Frank Monteiro testified that the watermark and footer "give[] the impression that Post has licensed it or provided it to someone else to distribute." *Id.* at 184:14–19 (Monteiro). But a false impression is not a false statement. *Cf. Mills v. City of Phenix City, Ala.*, No. 3:11CV529-MHT, 2012 WL 2887933, at *6 (M.D. Ala. July 16, 2012) ("Williams's 'false impression' of Smith's speech is not synonymous with a 'false fact.'"). Moreover, it is unclear how a true statement about where the document was obtained creates such a misimpression. Indeed, Mr. Monteiro testified

that the watermark accurately tells you that the document comes from Course Hero and makes it easier to trace back to the point of distribution. Ex. 13, Tr. vol. III, at 191:3–13 (Monteiro). As multiple courts have held, watermarks identifying the source of a downloaded document are not CMI falsely indicating ownership. *Steinmetz*, 629 F. Supp. 3d at 85; *McGucken*, 2023 WL 6390530, at *11.

Learneo is entitled to JMOL on Post's § 1202(a) claim because no reasonable jury could have found that Course Hero's website markings and watermarks were false CMI. Alternatively, the court should grant a new trial because the verdict is against the great weight of the evidence and the jury was not properly instructed that false CMI must be literally false.

2. The Course Hero website markings and watermarks are not CMI conveyed in connection with any work-in-suit.

Learneo is also entitled to JMOL on the § 1202(a) claim because the website markings and watermarks alleged to be "false CMI" are not CMI as a matter of law. Section 1202(c) defines CMI as information "conveyed in connection" with a work that identifies the work, its author, its owner, or applicable terms and conditions. 17 U.S.C. § 1202(c). To be "conveyed in connection with a work," the location and content of the CMI must "suggest that it [is] associated with or linked to" the work. *SellPoolSuppliesOnline.com, LLC v. Ugly Pools Arizona, Inc.*, 804 Fed. App'x 668, 670–671 (9th Cir. 2020); *see also FurnitureDealer.Net, Inc. v. Amazon.com, Inc.*, No. CV 18-232 (JRT/HB), 2022 WL 891473, at *19 (D. Minn. Mar. 25, 2022) ("To be 'conveyed in connection with' a work, the information must appear in either the body or the area around the work."); ECF No. 319, at 6 (Defendant's proposed jury instruction concerning "conveyed in connection with"). "Such a rule prevents a 'gotcha' system where a picture or piece of text has no CMI near it but the plaintiff relies on a general copyright notice buried elsewhere on the website." *Pers. Keepsakes, Inc. v. Personalizationmall.com, Inc.*, No. 11 C 5177, 2012 WL 414803, at *7

(N.D. Ill. Feb. 8, 2012).

Moreover, the context in which the claimed CMI appears matters. A mere mention of, for example, an author or company name reproduced near copyrighted text does not qualify as CMI if it "cannot be reasonably construed as an identifier of the copyright holder" of the work. *Fischer v. Forrest*, 968 F.3d 216, 223–24 (2d Cir. 2020). Learneo cannot be held liable for placing a copyright notice on its own website. *Michael Grecco Prods., Inc. v. Time USA, LLC*, No. 20 CIV. 4875 (NRB), 2021 WL 3192543, at *5 (S.D.N.Y. July 27, 2021) ("[A] party that puts its own CMI on work distinct from work owned by a copyright holder is not liable under Section 1202(a), even if the party's work incorporates the copyright holder's work."). If that were the rule, no service provider protected under 17 U.S.C. § 512 could place notice of its copyright on any website allowing user uploads.

As shown on the screenshot *supra* at 6–7, Post identifies three aspects of the Course Hero website as "false CMI" accompanying the document displayed in the preview pane: the Course Hero header at the top of the page, the copyright notice at the bottom, and banner ads in various positions on the webpage. Ex. 2, PTX982, at 2, 4. The header and copyright notice do not appear "in either the body or the area around the work," *FurnitureDealer.Net, Inc.*, 2022 WL 891473, at *19, and their context does not "suggest that [they are] associated with or linked to" the document displayed in the preview pane. *SellPoolSuppliesOnline.com, LLC*, 804 Fed. App'x at 670–71. A reasonable juror, properly instructed, could not have concluded that the Course Hero logo at the top of the Course Hero website, and the website copyright notice at the bottom, were "conveyed in connection with the copyrighted work" so as to constitute CMI for the document displayed in the separate preview pane. *See id.* ("Defendants' copyright notice was located at the bottom of the webpage in a shaded box, separating it from the rest of the content on the webpage; [it] was generic

and did not communicate that Defendants owned the photos; [and it] was not located on or next to Plaintiff's photos.").

Likewise, ***all*** of the website markings (including the banner ads) and the watermarks on downloaded documents are not CMI as a matter of law because they "cannot be reasonably construed as an identifier of the copyright holder" of the user-uploaded documents. *Fischer*, 968 F.3d at 223–24. Consistent with Dr. Wind's examination, which showed that survey respondents interpreted what they were looking at to be the Course Hero website, the Course Hero header and copyright notice are sitewide interface elements that on their face pertain to the Course Hero site, not the document in the preview pane. Ex. 11, Tr. vol. VII, at 197:13–208:10 (Wind); Ex. 1, Tr. vol. V, at 141:20–144:5 (Wentworth). Likewise, the banner ads are not part of the document itself and do not purport to identify the author, copyright owner, or convey other information about the work. Ex. 2, PTX982, at 2–3. The ads are also generically applied to all previews and are not engineered to cover or replace CMI on documents. Ex. 1, Tr. vol. V, at 142:7–14 (Wentworth). Particularly since the Post University document in the preview pane was displayed alongside markings identifying Post University and the course number, none of these website markings are reasonably construed as CMI. Ex. 2, PTX982, at 2; *Fischer*, 968 F.3d at 224.

The same is true of the watermark and footer on some downloaded documents. Although a "watermarked corporate name or symbol" can constitute CMI, the watermark must "refer to the author or copyright owner" or otherwise convey identifying information about the work. *Michael Grecco Prods., Inc. v. Alamy, Inc.*, 372 F. Supp. 3d 131, 138 (E.D.N.Y. 2019). A true statement that the document was "shared via Course Hero" does nothing to identify the author or copyright holder; it merely provides information about where the document was obtained. Ex. 10, DTX10467, at 1. So too for the uploader and downloader identifier in the footer. *Id.*

Notably, even if the watermark is found to be CMI, the jury could not have reached its verdict based on downloads alone. Post's experts testified to a total of 232 violations under § 1202(a) based on the watermark, which cannot support the 1,557 violations of § 1202(a) found by the jury. Ex. 14, Tr. vol. VIII, at 30:6–25 (Mooney). Because none of the website and document elements are CMI for the Post document being displayed as a matter of law, Learneo is entitled to JMOL. At minimum a new trial is warranted because the verdict is against the great weight of the evidence and the jury was not properly instructed on the definition of CMI.

3. Post failed to show that Learneo knew that the Course Hero website markings and watermarks are false CMI.

Even if Post could show that the website markings and watermarks were false CMI, Post still had to prove that Learneo ***knew*** both that they were false and that they were CMI. *See McGucken*, 166 F.4th at 369; ECF No. 319 at 13 (Defendant's proposed jury instruction). But Post presented no evidence—not direct, not circumstantial, not testimonial, and not documentary—on that question at all. Not a single document or piece of testimony raised an inference of culpable knowledge that the industry-standard website logos, banner ads, and copyright notice on the Course Hero preview page conveyed that Learneo authored or owned the document being displayed. Nor was there ***any*** evidence that Learneo knew or believed that the watermark stating that a document was shared via Course Hero and identifying its uploader sent any false message about authorship or ownership.

To the contrary, the record evidence on Learneo's knowledge went the other way. The only evidence that the website markings were false or misleading was the testimony of a survey expert whom Post retained to measure customer confusion. That Post had to hire an expert to conduct a survey to reach that conclusion is itself evidence that Learneo did not have the requisite knowledge. Likewise, Mr. Monteiro's bare suggestion that stating a document had been shared

via Course Hero "gives the impression that Post has licensed it or provided it to someone else to distribute" does not bear on Learneo's knowledge. Ex. 13, Tr. vol. III, at 184:14–19 (Monteiro). Post introduced no document or testimony establishing that anyone at Learneo ever had the same counterintuitive idea.

Learneo's own witnesses confirmed that no one inside or outside the company ever suggested that the challenged website elements were false or misleading. Learneo's former Vice President of Engineering, Jason Wentworth, confirmed that he himself never thought they were, and that "[e]verything that's there is accurate and truthful and is, in general, pretty standard on most websites." Ex. 1, Tr. vol. V, at 143:16–144:5 (Wentworth). Rather, as Learneo's co-founder and Chief Technology Officer, Gregor Carrigan, testified, Course Hero's logos, banners, copyright notice, watermark, and footer are "extremely common elements [in] extremely common places." Ex. 15, Tr. vol. IV, at 229:2–231:6 (Carrigan).

Post's witnesses and documentary evidence did not contradict this testimony. Post did not cross-examine any Learneo witness concerning their knowledge that the website markings and watermark were false. And its own witnesses could not—and did not—opine on Learneo's knowledge. Dr. Wind expressly stated he did not seek to determine Learneo's knowledge, intent, or beliefs and did not explore whether Learneo intended to convey any particular message through its website design. Ex. 11, Tr. vol. VII, at 192:19–194:4 (Wind). Instead, he studied consumer perception, which is irrelevant to Learneo's knowledge or intent. *Id.*; *see In re The Rsrv. Fund Sec. & Derivative Litig.*, No. 09 CIV. 4346 PGG, 2010 WL 11248673, at *13 (S.D.N.Y. Nov. 30, 2010) (no law suggesting that "a third party's knowledge or views are relevant in determining a defendant's state of mind"). Dr. Wind's testimony thus cannot supply the subjective knowledge § 1202(a) demands, leaving the record devoid of evidence that Learneo knew it had added false

CMI to Post's documents.

The Second Circuit's recent ruling in *McGucken* bears directly on this point. There, third-party contributors uploaded over 300 of the plaintiff's photographs to Shutterstock, "an online marketplace for photographs, video footage, music, and other digital content." *McGucken*, 166 F.4th at 367–68. As it did with all uploaded photographs, Shutterstock "automatically remove[d] all metadata associated with the file" and added a watermark comprising Shutterstock's name and logo. *Id.* at 367, 369. Shutterstock testified that it "automatically affixes its watermark to every image on its site 'in order to prevent third parties from using the image without a license' and that [the practice] 'is intended and understood to identify Shutterstock as the source or distributor of the image, rather than as the author or copyright owner.'" *Id.* at 370. In the absence of "evidence suggesting that Shutterstock affixed its watermark to his images—or indeed, to any images—with knowledge that it constituted false CMI and for the purpose of concealing copyright infringement," the district court granted summary judgment. *Id.* The Second Circuit affirmed, finding that Shutterstock's affirmative evidence and the total lack of countervailing evidence left "no triable issue as to Shutterstock's knowledge or intent." *Id.*

The facts here are analogous and leave no basis for a reasonable jury to have found that Learneo knew the challenged website and document elements were false CMI. As in *McGucken*, Learneo offered affirmative evidence that it did not act with knowledge that the website markings and watermarks were either false or CMI. Learneo's witnesses testified that the website markings are "common elements" in "common places." Ex. 15, Tr. vol. IV, at 229:25–230:5 (Carrigan). The navigational header and copyright notice identify and claim Course Hero's website. *Id.* at 200:13–22, 201:19–25 (Carrigan). The banners are applied generically, do not systematically cover CMI, and are intended to encourage users to engage with other features of the website. *Id.*

at 200:24–201:17, 202:4–13 (Carrigan); Ex. 1, Tr. vol. V, at 142:7–14 (Wentworth). The watermark was added to track if a downloaded document was uploaded to a competitor site and to help rightsholders trace the document to Course Hero. Ex. 1, Tr. vol. V, at 147:12–22 (Wentworth). Indeed, the facts here present an even weaker case than in *McGucken* because Shutterstock's watermark comprised only its name and logo, leaving at least a shred of an argument that it might indicate ownership or authorship. Here, the watermark expressly and correctly identifies Course Hero as the "source or distributor" of the document. *McGucken*, 166 F.4th at 370. Because a reasonable jury could not conclude that Learneo knew the challenged statements were false CMI, Learneo is entitled to JMOL on Post's § 1202(a) claim. At minimum, a new trial is warranted because the verdict is against the great weight of the evidence and the jury was not properly instructed concerning scienter.

B. Post Presented No Evidence That Course Hero Intended to Induce, Enable, Facilitate, or Conceal Infringement

The second § 1202(a) scienter requirement is equally fatal to the verdict. In addition to proving that Learneo knew the challenged content was false CMI, Post had to prove that Learneo added it "with the intent to induce, enable, facilitate, or conceal infringement." 17 U.S.C. § 1202(a); ECF No. 319 at 14 (no violation if false CMI is provided for reasons unrelated to infringement). Other courts have found a range of evidence—including circumstantial evidence—sufficient to demonstrate intent. In *GC2 Inc. v. Int'l Game Tech., IGT, Doubledown Interactive LLC*, 391 F. Supp. 3d 828, 841–42 (N.D. Ill. 2019), the court pointed to evidence of the defendant's bad-faith licensing negotiations concerning the works at issue. In *Mango*, assessing the lesser "reasonable grounds to know" threshold under § 1202(b), the court pointed to evidence that the defendant knew from "training and experience" that he was required to get permission to use the photographs, from which he nonetheless removed the photographer's credit and replaced it with

his own. *Mango v. BuzzFeed, Inc.,* 970 F.3d 167, 172–73 (2d. Cir. 2020).

Post produced no direct or circumstantial evidence of intent. Post's evidence fell into two categories. ***First***, Post pointed to two letters it sent Learneo seeking to have its documents taken down and noting difficulties finding additional copyrighted documents on the Course Hero website given the paywall and blurring. Exs. 5, 8, PTX658; PTX659. Post highlighted that while Learneo's responses complied with the takedown request, Learneo failed to address Post's other concerns, including the possible presence of additional, unidentified infringing works on the Course Hero website. Exs. 7, 9, DTX10020; DTX10021. But even crediting Post's suggestion that Learneo's response was an intentional brush-off rather than—as Learneo's witnesses testified—an error and a failure of customer service custom and practice, and even accepting the legally erroneous argument that the reference to unspecified additional documents on the Course Hero site provided notice of additional infringing works, the letters and Learneo's responses still have no nexus to the § 1202(a) claim. The website markings and watermarks were a sitewide practice that long preceded Post's letters. *See* Ex. 15, Tr. vol. IV, at 229:20–230:23 (Carrigan). The letters do not mention the copyright notice, logos, banner ads, or watermarks. Exs. 5, 8, PTX658; PTX659. And none of the complaints in the letters relate to the Course Hero website design or the watermarks on downloaded documents—none of which have any connection to Post's supposed inability to locate its documents on the website. There is simply no logical relationship between the letters and the alleged "false CMI," and nothing from which a reasonable jury could infer intent to induce, enable, facilitate, or conceal infringement ***using the challenged website elements***.

Second, Post introduced evidence that Course Hero's systems were intentionally designed and that the website's revenue model depended on incentivizing users to upload documents or pay

for access. Ex. 1, Tr. vol. V, at 167:12–16 (Wentworth); Ex. 6, Tr. vol. VI, at 11:16–18, 14:13–22 (Van Horne). But a deliberate website design is not the same thing as a design intended to facilitate infringement. *McGucken* rejected exactly that inferential leap: Shutterstock's watermarking and metadata-removal practices were intentional and systematic, yet the Second Circuit still held the plaintiff had no evidence of the intent § 1202 requires, because there was no connection between the watermarking or metadata removal and inducing, enabling, facilitating, or concealing infringement. 166 F.4th at 369–370. The evidence of Learneo's business model fares no better. Even considering Post's argument that Learneo was incentivized to paywall and blur documents, there is no connection between the branding characteristics of the website markings and watermark and inducing, enabling, facilitating, or concealing copyright infringement. There is simply no basis on which to infer from the former the required intent to do the latter.

The last point exposes a fundamental flaw in Post's § 1202(a) case and is the clearest demonstration of its failure of proof on scienter. Leaving aside the lack of ***evidence*** of culpable intent, Post failed to present even a ***theory*** about how the supposed false CMI could have been added with the requisite intent to induce, enable, facilitate, or conceal copyright infringement. No witness or document drew a connection between the Course Hero logo on the Course Hero website—or any of the other markings, or the watermark on downloaded documents—and any ***means*** by which its placement could have induced copyright infringement, hid it, or made it easier. Even Post's attorney argument did not fill in that blank.

Mr. Carrigan and Mr. Wentworth testified that the watermark and footer were meant in part to help rightsholders trace material back to Course Hero, and that none of the challenged website features were intended to make infringement easier or harder to detect. Ex. 15, Tr. vol. IV, at 229:2–230:23 (Carrigan); Ex. 1, Tr. vol. V, at 141:7–144:5 (Wentworth). In the face of that

testimony, and absent any rational way for the jury to connect the addition of the alleged false CMI to any prospective—or retrospective but concealed—copyright infringement, no reasonable jury could have concluded that Learneo possessed the requisite intent to violate § 1202(a). At a minimum, a new trial should be granted because the verdict is against the great weight of the evidence and the jury was not properly instructed concerning scienter.

II. LEARNEO IS ENTITLED TO JMOL OR A NEW TRIAL ON POST'S § 1202(B) CLAIM

Post failed to prove either scienter element of its § 1202(b) claim. Section 1202(b) required Post to prove that Learneo intentionally removed or altered Post CMI, or distributed Post works knowing that Post CMI had been removed or altered without authority, and that Learneo knew or had reasonable grounds to know that doing so would induce, enable, facilitate, or conceal infringement. 17 U.S.C. § 1202(b)(1), (3); *McGucken*, 166 F.4th at 369.

A. Post Presented No Evidence That Learneo Was Aware of *Specific* Post Copyrighted Works or Their CMI on the CourseHero.com Website

The evidence presented at trial shows that Course Hero's process is automated, not a case-by-case decision to strip Post CMI from identified Post works. Under § 1202(b), Post had to prove that, at the time of the offense, Learneo "intentionally remove[d] or alter[ed] [CMI]," 17 U.S.C. § 1202(b)(1), or "knew the CMI associated with [Post's documents] was removed or altered without authorization." *McGucken*, 166 F.4th at 370; 17 U.S.C. § 1202(b)(3). Learneo needed the required scienter as to ***each*** work-in-suit. *See Mango, Inc.*, 970 F.3d at 172 ("The DMCA's first scienter element requires that a defendant distributing copyrighted material have ***actual knowledge*** that CMI 'has been removed or altered without authority of the copyright owner or the law.'"); *see also* ECF No. 319 at 26–27 (Defendant's Proposed Instruction No. 4). It did not have it.

Post adduced no evidence that Learneo was aware of any specific Post work, either when

it was uploaded or later, such that Learneo could have had either the intention to remove CMI from that work or awareness that the distributed work had Post's CMI removed or altered. The Course Hero platform has "tens of millions" of documents, and Learneo needs a rightsholder to identify content to recognize it as subject to a copyright claim. Ex. 1, Tr. vol. V, at 230:22–231:7 (Van Horne); *see also* 17 U.S.C. § 512(c)(3). Like for § 1202(a), the evidence of Learneo's specific knowledge on which Post rested was its two pre-suit letters. But none of the documents listed in those letters are works-in-suit because they were all removed when Learneo complied with the takedown notices. Exs. 7, 9, DTX10020; DTX10021.

Generalized knowledge of infringement is insufficient as a matter of law to establish the required scienter. *Cf. Cox*, 2026 WL 815823, at *7 ("This Court has repeatedly made clear that mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe."). No Learneo witness testified that he or she was aware of any specific Post document on Course Hero, knew it contained Post CMI, and was aware that the CMI was removed. After initially contacting Learneo, Post failed to identify further works on the website with CMI removed, which would have given Learneo actual knowledge of those works. Ex. 6, Tr. vol. VI, at 193:15–194:7 (Chew). Instead, after sending two letters—to which Learneo took down documents in response—Post waited seven months and filed suit. *Id.* at 240:1–8 (Park).

B. Post Did Not Prove That Learneo Knew, or Had Reasonable Grounds to Know, That Any Removal or Distribution Would Induce, Enable, Facilitate, or Conceal Copyright Infringement

Post also failed to prove the second scienter element of § 1202(b). For the same reasons that the evidence does not show Learneo intended to induce, enable, facilitate, or conceal infringement under § 1202(a), the evidence likewise failed to show Learneo knew or had reasonable grounds to know that the removal or alteration of Post's CMI would "induce, enable, facilitate, or conceal an infringement" under § 1202(b). *See McGucken*, 166 F.4th at 369; ECF

No. 319 at 29 (no violation if CMI is removed for reasons unrelated to infringement).

When a document is uploaded to Course Hero, the platform divides it into previews to show a partially or fully blurred version to a user. Ex. 1, Tr. vol. V, at 131:19–133:19; 135:20–136:13 (Wentworth). Creating blurred previews serves two purposes unrelated to infringement. First, it helps Google and other search engines identify relevant content on the Course Hero website. *Id.* Second, using a "give-to-get" model with previews encouraged students to contribute their own content to the platform. Ex. 15, Tr. vol. IV, at 188:4–189:25 (Carrigan). As in *McGucken*, although Learneo knew that documents were being blurred, the evidence shows that Learneo blurred documents for legitimate business reasons and did not know the blurring would induce, enable, facilitate, or conceal infringement. 166 F.4th at 370.

Post's letters complained in general terms that blurring made it more difficult to find its works on the website but did not show that it was the alteration or removal of ***CMI*** in particular that caused the difficulty. The most relevant CMI on any document—the Post University name and course title—was placed above each blurred document on the Course Hero website. Ex. 16, PTX1018, at 2; Ex. 1, Tr. vol. V, at 139:6–22 (Wentworth). The evidence shows that Post and its witnesses were capable of finding their documents on Course Hero pre-suit, and that Post's witnesses could recognize their own documents and Post's logo through the blurring. Ex. 5, PTX658, at 1; Ex. 8, PTX659, at 1; Ex. 17, Tr. vol. II, at 114:22–116:8, 119:7–120:5 (Bauer), Ex. 13, Tr. vol. III, at 192:3–193:12 (Monteiro).

As Learneo's witnesses testified, Learneo worked directly with copyright holders to facilitate takedowns, including promptly processing notices and notifying both rightsholders and uploaders. Ex. 1, Tr. vol. V, at 217:24–219:25 (Van Horne). It also created software tools to enable bulk takedowns by rightsholders and prevent infringing works from being uploaded in the

first instance. *Id.* at 239:2–242:8 (Van Horne); *see also* Ex. 18, DTX10030. And in the majority of cases, Learneo provided rightsholders free unlocks if they had difficulty identifying their work on the website. Ex. 1, Tr. vol. V, at 235:12–22 (Van Horne). The evidence shows that in the vast majority of cases where a rightsholder complained about accessing the site, Learneo was able to work with that rightsholder to take down infringing content pursuant to the DMCA. Ex. 6, Tr. vol. VI, at 81:13–85:11, 96:19–25, 97:7–105:10 (Chew), Ex. 1, Tr. vol. V, at 224:10–233:5 (Van Horne). Such evidence does not show the "pattern of conduct" required to circumstantially prove that Learneo was aware of the "probable future impact of its actions." *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 674 (9th Cir. 2018). It shows the opposite. Learneo is entitled to JMOL on Post's § 1202(b) claim. At minimum, Learneo is entitled to a new trial because the verdict is against the great weight of the evidence and because the jury was not correctly instructed with respect to the required scienter.

III. LEARNEO IS ENTITLED TO JMOL OF NO VOLITIONAL CONDUCT AS TO MORE THAN A SINGLE VIOLATION FOR EACH OF § § 1202(A) AND 1202(B), OR A NEW TRIAL WITH A CORRECTED INSTRUCTION

Section 1202 requires a defendant to act with volition to commit a violation. It is undisputed that Learneo's only volitional act was designing the architecture of the Course Hero platform. Thus, even assuming Learneo committed any § 1202 violations, no properly instructed rational jury could have found more than one violation for each of § § 1202(a) and (b).

A. Section 1202 Requires Proof of Volitional Conduct

The DMCA's double-scienter requirement targets culpable conduct—actions performed with the requisite knowledge or intent. *See McGucken*, 166 F.4th at 369. Culpability, in turn, presupposes a volitional act, not passive or automated behavior. Courts therefore require volitional conduct as a predicate to liability under § 1202, as they do for other copyright claims. *See Sheldon v. Plot Commerce*, No. 15-CV-5885 (CBA)(CLP), 2016 WL 5107072, at *12 (E.D.N.Y. Aug. 26,

2016), adopted, 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016) (holding that § 1202 (a) requires "volitional conduct"); *Michael Grecco Prods., Inc. v. Function(X) Inc.*, No. 18 Civ. 386, 2019 WL 1368731, at *3 (S.D.N.Y. Mar. 11, 2019) (dismissing § 1202 claim where no facts supported an inference of "volitionally dishonest" conduct designed to conceal infringement).

The Second Circuit has long required volitional conduct for copyright liability. *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, 536 F.3d 121, 131 (2d Cir. 2008) ("*Netcom* and its progeny direct our attention to the volitional conduct that causes the copy to be made"). Automated processes that respond to user commands do not suffice. *Id*. A service provider acts volitionally only where it selects content or designs a system specifically to promote infringement—not when it merely displays user-uploaded content through an automated system. *BWP Media USA Inc. v. Polyvore, Inc.*, 922 F.3d 42, 50–51 (2d Cir. 2019) (Walker, J., concurring). The volitional act requirement is not unique to copyright infringement as a strict liability offense. The "'volition' element of direct infringement is not a judicially-created element of intent or knowledge; it is a basic requirement of causation. As its name suggests, *direct* liability must be premised on conduct that can reasonably be described as the *direct cause* of the infringement." *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017) (emphasis in original); *see also CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 550 (4th Cir. 2004) ("There must be actual [] conduct with a nexus sufficiently close and causal to the illegal copying that one could conclude that the machine owner himself trespassed on the exclusive domain of the copyright owner."). It is a way of asking the question: "who is close enough to the infringing event to be considered the most important cause?" *Perfect 10*, 847 F.3d at 666.

Courts applying § 1202 have followed the same rule, as reflected in the jury instructions sought by Learneo. *See Sheldon*, 2016 WL 5107072, at *12 (holding that § 1202 (a) requires

"volitional conduct"); ECF No. 319, at 38–41 (Defendant's Proposed Instruction No. 5). Liability turns on a defendant's own volitional acts—not on downstream distributions or user activity. *See Stockwire Rsch. Grp., Inc. v. Lebed*, 577 F. Supp. 2d 1262, 1266–67 (S.D. Fla. 2008) (finding that the term "each violation" in § 1203 "is best understood to mean each violative act performed") (quoting *McClatchey v. Associated Press*, No. 305-cv-145, 2007 WL 1630261, at *6 (W.D. Pa. June 4, 2007)). Expanding liability to automated processing of document uploads or user access, without corresponding volitional conduct by the defendant, contravenes the governing legal standard.

B. The Undisputed Evidence Shows, at Most, a Single Volitional Act by Learneo

In *Cartoon Network*, the Second Circuit described two kinds of volitional conduct: the defendant's "conduct in designing, housing, and maintaining a system that exists only to produce a copy" and the "customer's conduct in ordering that system to produce a copy of a specific program." 536 F.3d at 131. The customer's conduct could not be attributed to the defendant as a potential ground for liability. *Id*. Similarly here, there are two categories of volitional conduct: Learneo's conduct in designing and maintaining the Course Hero website, and user conduct in uploading, viewing, unlocking, or downloading a document allegedly owned by Post. Post's theory of what constitutes a "violation" by Learneo was premised entirely on the latter—volitional conduct by the ***user***.

That is legally improper. The undisputed testimony established that Course Hero operates through an automated process: when users upload documents, the platform automatically processes and makes those materials available when other users request to view them. Ex. 1, Tr. vol. V, at 113:20–114:3; 114:8–116:25; 131:15–134:2 (Wentworth). Post presented no evidence of volitional conduct ***by Learneo*** with respect to user requests to view, unlock, or download particular documents. As in *Cartoon Network*, Learneo's role is limited to creating and

maintaining an automated system, while the only conduct tied to specific content is user decisions to upload or view an alleged Post document.

At most, therefore, the record supports a single volitional act connected to the alleged addition, removal, or alteration of CMI: the creation and implementation of that automated system. *Cf.* Ex. 1, Tr. vol. V, at 70:19–71:1 (Wentworth). Accordingly, with respect to § 1202(a), no properly instructed rational jury could find more than one volitional act—the creation of the automated upload-and-display system. The same is true for Post's § 1202(b) claims, which similarly rest on automated processing of user-uploaded documents. Because each alleged § 1202(b) violation arises only when a user uploads a document, views a preview, or unlocks or downloads a document, the requisite volitional act is attributable solely to the user.

The jury's verdict imposing multiple violations under both § 1202(a) and § 1202(b) necessarily rests on a legally impermissible theory: that each instance of user upload, processing, or display constitutes a separate violation, despite the absence of volitional conduct by the defendant. Because there is no legally sufficient evidentiary basis for more than one violation under either provision, the Court should grant judgment as a matter of law reducing the verdict to, at most, a single violation of § 1202(a) and a single violation of § 1202(b)—or, in the alternative, a new trial with a jury instruction that correctly reflects the law.

IV. POST LACKED STANDING TO SUE FOR ANY § 1202 VIOLATION

A. Learneo Is Entitled to JMOL That Post Lacked Statutory Standing to Sue for Any Alleged § 1202 Violation Because Post Failed to Prove Ownership, or a New Trial on the Issue.

To bring a civil action under 17 U.S.C. § 1202, the plaintiff must have been "injured by a violation of section . . . 1202." 17 U.S.C. § 1203. Although § 1203 is not limited exclusively to copyright owners, "the U.S. Supreme Court has found that a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Squires*

v. Lancaster Cnty. Prison, No. 25-CV-5490, 2025 WL 3298948, at *3 (E.D. Pa. Nov. 26, 2025) (quotation marks omitted); *see also VidAngel LLC v. ClearPlay, Inc.*, 703 F. Supp. 3d 1329, 1335 (D. Utah 2023) (noting that "[t]he court is not aware of any cases extending the cause of action in Section 1203 beyond copyright owners and owners of an access control measure"). In the DMCA context, the zone of interests does not include a party who has no legal interest in the material. *Squires*, 2025 WL 3298948, at *3; *see also VidAngel*, 703 F. Supp. 3d at 1336 ("[T]hat Congress intended a statute to be enforced does not mean that anyone seeking to enforce that statute falls within its zone of interests."); *Sheldon*, 2016 WL 5107072, at *9–10 ("Both the Copyright Act and the DMCA create private rights of action for 'owners' of copyrights.").

Post failed to present legally sufficient evidence that it had any legal interest in 2,193 of the works-in-suit. And with respect to the four works for which Post did present evidence from which a reasonable jury could find Post ownership, Post failed to present any evidence of a § 1202 violation. Accordingly, this Court should grant judgment as a matter of law that Post lacked statutory standing to assert the alleged § 1202 violations, or a new trial on the issue.

1. Post failed to prove that it had an ownership interest in 2,193 of the works-in-suit.

Post bore the burden of proving ownership of the 2,197 works by a preponderance of the evidence. *See* Ex. 44, Tr. vol. IX, at 42:9–16. It failed to do so for 2,193 of them. For that reason, it has failed to establish statutory standing to sue as to those works.

Post presented evidence of ownership for, at most, four § 1202 works. Post introduced evidence of only five copyright registrations. Ex. 14, Tr. vol. VIII, at 4:21–5:23. Of those, at most two correspond to the § 1202 works-in-suit: Ex. 19, PTX501 (registration for "English 110 College Writing Syllabus"), corresponding to Ex. 20, DTX11352 / Ex. 21, PTX115, and Ex. 22, PTX606 (registration for "AC 111 Syllabus"), corresponding to EX. 23, DTX11967 / Ex. 24, PTX117. No

presumption of ownership applies to the remaining 2,195 works. Beyond those registrations, Post offered testimony supporting ownership of only two additional works: Ex. 25, DTX10900 / Ex. 26, PTX1239, Ex. 13, Tr. vol. III, at 79:14–82:17 (Dumont); and Ex. 27, DTX12977 / Ex. 28, PTX1734, Ex. 13, Tr. vol. III, at 55:19–57:9 (Bauer).

As to the remaining 2,193 works, Post did not present legally sufficient evidence of ownership. Instead, Post relied entirely on Exhibit PTX4144 (Ex. 29), a summary chart. But such a chart has evidentiary value only if it accurately reflects admissible underlying evidence. *Patriarch Partners Agency Servs., LLC v. Zohar CDO 2003-1, Ltd.*, No. 16-CV-4488 (VM), 2026 WL 685730, at *4 (S.D.N.Y. Mar. 11, 2026) (citing Fed. R. Evid. 1006). As the Court instructed the jury, it must "first determine that the chart accurately reflects the evidence on which the chart is based." Ex. 14, Tr. vol. VIII, at 26:21–27:3. Post presented no evidence from which a reasonable jury could make that determination.

To the contrary, Post's witnesses admitted that the ownership identification process was error prone. Ex. 17, Tr. vol. II, at 142:16–142:24 (Bauer); Ex. 13, Tr. vol. III, at 25:24–26:1, 51:7–13 (Bauer). Post admitted that it mistakenly identified that it owned at least nineteen asserted works, including a Time Magazine article.[2] Critically, Dr. Bauer conceded that he did not know how many additional errors existed and that there was no way to determine the error rate. Ex. 13, Tr. vol. III, at 51:7–13; 51:22–24 (Bauer). The jury could not determine from the chart ***which***

[2] Dr. Bauer testified that at least sixteen of the works-in-suit that Post claims to own are identical to third-party textbook materials or to a Time Magazine article that Post does not own. *See* Ex. 32, DTX11142 (Ex. 17, Tr. vol. II at 133:9–137:12); Ex. 33, DTX10053 (*id.* at 137:21–140:18); Ex. 34, DTX10785 (*id.* at 140:19–144:11); Ex. 35, PTX1071 (Ex. 36, DDX13.3) (*id.* at 144:13–146:20); Ex. 37, DTX12847 (*id.* at 149:1–152:1); Ex. 38, DTX11084 (*id.* at 153:14–156:19); Ex. 39, DTX12862 (Time Magazine) (Ex. 13, Tr. vol. III at 23:14–26:1); Ex. 40, DTX10814 (*id.* at 26:3–28:18); Ex. 41, DTX10942 (*id.* at 28:20–32:3); Ex. 42, DTX11533 (*id.* at 32:4–34:10); Ex. 43, DTX12126 (*id.* at 34:18–38:5); Ex. 30, DTX11012 (*id.* at 38:17–41:22); Ex. 45, DTX10940 (*id.* at 41:20–44:3); Ex. 46, PTX3342 (*id.* at 45:21–47:5); Ex. 47, PTX2123 (*id.* at 47:6–48:20); and Ex. 48, PTX2315 (*id.* at 48:21–50:19). Likewise, Dumont testified that at least three additional works-in-suit are not owned by Post. *See* Ex. 49, DTX10885 (Ex. 13, Tr. vol. III at 102:23–103:3); Ex. 50, DTX11630 (*id.* at 104:9–24); and Ex. 51, DTX11158 (*id.* at 105:11–14).

works had been erroneously identified as owned by Post. On this record, no reasonable jury could conclude that Ex. 29, PTX4144 reliably established ownership of the remaining 2,193 works.

Absent a reliable summary, the jury would have to rely on the works-in-suit binders themselves to determine whether Post owned the works-in-suit. But the copies in those binders do not demonstrate ownership. Ownership requires (1) that "the work is original, meaning that it was independently created by the author by use of at least some minimal creativity" and (2) that "Post is the author or creator of the work, or Post received . . . the copyright from the author." ECF No. 355, at 25. Post's own witnesses acknowledged that many works—even those bearing Post branding—consist of third-party content. Ex. 30, DTX11012; Ex.13, Tr. vol. III, at 38:17–41:22 (Bauer). Thus, nothing on the works-in-suit, even Post's logos or formatting, establishes ownership. In short, Post presented legally sufficient evidence of ownership for ***no more than four § 1202 works***. Post did not present evidence that it had any other legal interest in the works.

2. Post failed to present evidence that it was injured by a § 1202 violation as to the remaining four § 1202 works-in-suit.

Post also failed to provide evidence from which a reasonable jury could have tied § 1202 violations to particular documents. Post's damages expert, Mr. Myers, testified that some of the 2,197 works-in-suit have ***no § 1202 violations*** because they were not uploaded during the damages period and were never downloaded or displayed. *See* Ex. 15, Tr. vol. IV, at 139:7–144:8, 144:13–147:18 (Myers). He further testified that he could not determine without analysis of his master spreadsheet—which is not in evidence—how many additional works-in-suit lacked any alleged § 1202 violations during the damages period. Ex. 15, Tr. vol. IV, at 147:19–148:6, 164:10–15 (Myers). On this record, there was no basis for a jury to determine that there were any § 1202 violations attributable to any particular work. In particular, the jury could not have concluded that there were violations with respect to any of the four works for which Post introduced evidence of

ownership, and thus that Post suffered a cognizable injury related to those works.

Accordingly, this Court should grant judgment as a matter of law that Post lacked statutory standing to bring a civil action under 17 U.S.C. § 1202. At a minimum, Learneo is entitled to a new trial because a necessary conclusion for the jury's verdict—that Post owned the works-in-suit—was against the weight of the evidence. Post offered no credible evidence from which the jury could have found that Post owned 2,193 of the 2,197 works-in-suit. Thus, because Post did not provide the jury with a work-by-work violation count, *see* Section V *infra*, the jury could not estimate the number of violations associated with the remaining four works. Absent impermissible speculation, the jury certainly could not conclude the correct number of violations was 3,015. *See Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1038 (2d Cir. 1992)("[T]he jury is not allowed to base its award on speculation or guesswork."). Accordingly, any finding that Learneo was liable for 1,458 violations of § 1202(a) and 1,557 violations of § 1202(b) based on its actions with respect to four works-in-suit was at least seriously erroneous and warrants a new trial.

B. Learneo Is Entitled to JMOL That Post Lacked Article III Standing to Sue for Any Alleged § 1202(a) Violation

"Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). To establish Article III standing, "[a] plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). A plaintiff must demonstrate standing "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "Therefore, in a case like this that proceeds to trial, the specific facts set forth by the plaintiff to support standing must be supported adequately by the evidence adduced at trial." *TransUnion*,

594 U.S. at 431 (internal quotations omitted). Standing "is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press." *Id.*

Post failed to provide legally sufficient evidence that it suffered any concrete injury traceable to violations of § 1202(a). Accordingly, Learneo is entitled to judgment as a matter of law as to Post's § 1202(a) claims.

Post failed to connect any harm attributable to Learneo's alleged provision or distribution of false CMI. At trial, Post presented no evidence concerning any harm from the display of the Course Hero logo, banner ads, and website copyright notice on the preview pages for Post documents. Post's only "evidence" of harm came from the testimony of Post's former Chief Financial Officer, Frank Monteiro, who said he "believe[s]" Post has been harmed by the addition of Course Hero watermarks. Ex. 13, Tr. vol. III, at 184:14–19 (Monteiro). But subjective beliefs, without more, cannot support a jury's verdict. *Cf. John Paul Mitchell Sys. v. Quality King Distribs., Inc.*, 106 F. Supp. 2d 462, 474 (S.D.N.Y. 2000) ("[E]ven a party's fervent belief that it will be damaged by another's action cannot replace evidence of that damage.").

Mr. Monteiro articulated one "harm" from Course Hero's watermarks—a "[mis]impression that Post has licensed" its works—and two from Course Hero's "blurring . . . [or] watermarking": "ha[ving] to update . . . courses more frequently," and "having [the documents] out there" in a general sense. Ex. 13, Tr. vol. III, at 184:14-19; 185:5-21 (Monteiro). As to the first, Mr. Monteiro's own impression is not a sufficient basis in which to ground the jury's verdict. *See Ya-Chen Chen v. City Univ. of New York*, 805 F.3d 59, 75 (2d Cir. 2015) ("Quite simply, even if sincerely held, a plaintiff's 'feelings and perceptions of being discriminated against' do not provide a basis on which a reasonable jury can ground a verdict."). The other two harms have no tie to Course Hero's watermarks or website information: Post having

to update its courses more frequently or its works being available online has no logical connection to the alleged false CMI. *See Lujan*, 504 U.S. at 560 ("[T]here must be a causal connection between the injury and the conduct complained of."). They are, instead, complaints about the works-in-suit being on Course Hero at all—i.e., alleged harms that may relate to a hypothetical copyright infringement claim that Post did not bring with respect to any of the works but two. Even if blurring made documents harder to take down, that only goes to § 1202(b), not (a).

Indeed, the objective facts presented to the jury only support the finding that Post was not injured by any violation of § 1202(a). When asked to identify and quantify the harm attributable to the addition or distribution of false CMI, Mr. Monteiro could not answer. Ex. 13, Tr. vol. III, at 184:20–22 (Monteiro). When asked about the effect of the watermarks, Mr. Monteiro testified he agreed "the watermark makes it easier to figure out where the document came from," he is "not aware of any student who believed that Course Hero was offering a Post University education after seeing the watermark," and he is "not aware of any Post student who was confused" and thought Learneo offered Post degrees. *Id.* at 191:11–21.

Post's survey expert, Dr. Wind, likewise failed to present evidence of harm linked to the provision or distribution of false CMI. Dr. Wind presented survey evidence related to the likelihood that prospective consumers of the Course Hero platform would be confused. But not once did Dr. Wind suggest that his findings were evidence of any harm Post suffered—nor could he have, as Dr. Wind did not measure harm. *See* Ex. 11, Tr. vol. VII, at 118:16-23 (Wind). His testimony cannot support the finding that Post was injured by an alleged violation of § 1202(a).

Because Post presented no legally sufficient evidence that it suffered any concrete injury traceable to violations of § 1202(a), the Court should grant judgment as a matter of law that Post lacked Article III standing and reverse the jury's verdict as to Post's § 1202(a) claims.

C. Learneo Is Entitled to JMOL or a New Trial on Post's § 1202(b) Claims Because Post Failed to Prove That Any Removal or Distribution was "Without the Authority of the Copyright Owner"

In the alternative to JMOL on lack of standing, Learneo is entitled to judgment as a matter of law on Post's § 1202(b) claim because § 1202(b) requires proof that the removal or alteration of CMI (or the distribution of works with CMI removed or altered) occurred "without the authority of the copyright owner[.]" 17 U.S.C. § 1202(b). At trial, Post argued this requirement was met because *Post* did not authorize Learneo's conduct. Ex. 17, Tr. vol. II, at 71:4–6, 78:9–12, 99:3–13 (Bauer); Ex. 13, Tr. vol. III, at 195:18–25 (Monteiro). As Learneo proposed, removal or alteration must have been "without the authority of the copyright owner or the law," not, as the Court instructed, "without Post's permission." *Compare* ECF No. 319 at 21–31 *with* ECF No. 355, at 19–20. Because Post failed to present evidence that it owned 2,193 of the 2,197 works-in-suit, and because there's no evidence of any violation or injury as to the remaining four works-in-suit, *see supra* Section IV.A, the Court should grant JMOL with respect to § 1202(b). At a minimum, Learneo is entitled to a new trial.

V. LEARNEO IS ENTITLED TO A NEW TRIAL ON POST'S § 1202 CLAIMS BECAUSE THE JURY HAD NO BASIS FOR ITS VIOLATION COUNTS

The Court should grant a new trial on Post's § 1202 claims because the evidence did not support the violation count in the jury's verdict, which is thus at a minimum seriously erroneous.

Post's expert, Mr. Myers, proposed a total of 299,322 alleged § 1202 violations for all 2,197 works-in-suit, broken up by stages in the Course Hero document lifecycle—but not by work-in-suit. Ex, 15, Tr. vol. IV, at 84:9–85:5 (Myers). For example, he calculated 29,582 alleged § 1202(a) violations associated with the preview stage and the 23,413 alleged § 1202(b) violations associated with the unlock stage. Ex. 15, Tr. vol. IV, at 69:12–18, 80:23–81:2 (Myers). He also provided "alternative" calculations in which the analysis criteria (but not the categorization of

alleged violations) changed slightly. Ex. 15, Tr. vol. IV, at 89:24–90:4 (counting only fully blurred views at the preview stage) (Myers).

This was a tactical decision. As Mr. Myers explained, he "believe[d] part of the reason why the attorneys wanted [him] to have all the different options was to provide backups" so that "the jury could perhaps use the[m] for part of [their] work." Ex. 15, Tr. vol. IV, at 64:24–65:2 (Myers). But Post decided not to introduce work-by-work evidence of the number of § 1202 violations. The jury, therefore, did not have evidence of the number of times each work-in-suit was uploaded, previewed, unlocked, downloaded, and displayed. As Mr. Myers acknowledged, the jury lacked the necessary tools to remove works-in-suit from its analysis and determine a new violation count for the remaining works. *Id.*at 137:4–138:3.

This necessarily means that the jury's verdict was not grounded in the evidence. The jury rejected Mr. Myers's proposed violation count and found Learneo liable for 1,458 violations of § 1202(a) and 1,557 violations of § 1202(b). Although it is unclear exactly how the jury calculated its violation counts, the jury must have disregarded Mr. Myers's analysis[3] and substituted its own calculations. But the jury did not have the tools to attribute violation counts to particular works or remove from its calculations works Post admitted Post did not own. Nor could the jury have rationally concluded that a specific number of violations (e.g., one) was attributable to ***each*** work-in-suit. Mr. Myers admitted that some works-in-suit had zero § 1202 violations in the relevant time period but that he did not know or attempt to figure out how many or remove the documents as works-in-suit. Ex. 15, Tr. vol. IV, at 143:11–148:6 (Myers). Because Post did not otherwise put in evidence of how many works-in-suit had zero violations, the jury could not remove those works from its consideration.

[3] There is no combination of the different sub-counts Mr. Myers provided that adds up to the number of violations the jury reached. *See* Ex. 15, Tr. vol. IV, 60:1-90:4 (Myers).

Based on these facts, the jury's verdict cannot stand. It does not reflect a violation count drawn either from the evidence presented by Mr. Myers or any other rational analysis supported by the evidence. Accordingly, it is necessarily the result of impermissible speculation. *See Sir Speedy*, 957 F.2d at 1038 ("[T]he jury is not allowed to base its award on speculation or guesswork."). A new trial is warranted on Post's DMCA claims.

VI. LEARNEO IS ENTITLED TO JMOL OF NO LIABILITY FOR COPYRIGHT INFRINGEMENT, OR A NEW TRIAL ON THE ISSUE

Learneo is also entitled to judgment as a matter of law on Post's copyright infringement claims for the five copyright works-in-suit because Learneo is entitled to safe harbor under § 512(c) of the DMCA, or at least a new trial on this issue.

The DMCA protects "service providers" who store materials on their systems at the direction of their users from liability for copyright infringement if they comply with certain requirements. 17 U.S.C. § 512(c); *Capitol Records., LLC v. Vimeo, Inc.*, 125 F.4th 409, 413 (2d Cir. 2025) (*Capitol Recs. II*), *amended on reh'g in part*, 151 F.4th 13 (2d Cir. 2025). At trial, Learneo established—and Post did not dispute—that it qualifies as a "service provider" under 17 U.S.C. § 512(c), and that the allegedly infringing materials were stored on its system at the direction of users. Once a defendant makes this showing, the burden shifts to the plaintiff to prove that the defendant is not entitled to the § 512(c) safe harbor. *Capitol Recs. II*, 125 F.4th at 419; *Capitol Recs., LLC v. Vimeo, LLC*, 826 F.3d 78, 94–96 (2d Cir. 2016) (*Capitol Recs. I*). Post failed to carry that burden as a matter of law.

A. Learneo Established That It Is a "Service Provider" Meeting the Threshold Qualifications for Safe Harbor

Under Second Circuit law, if a service provider meets the threshold qualification criteria described in 17 U.S.C. § 512(k)(1)(B), (i)(1)-(2), it passes the test for safe harbor eligibility under § 512(c), and the burden shifts to the plaintiff to show the defendant has lost eligibility for the safe

harbor in one of the ways prescribed in the statute. *Capitol Recs. II*, 125 F.4th at 413.

At trial, Learneo established that it met the four threshold eligibility criteria for the service provider safe harbor.[4] ***First***, Learneo is a "service provider" (*i.e.*, a "provider of online services or network access") as defined in 17 U.S.C. § 512(k)(1)(B). *See, e.g.*, Ex. 6, Tr. vol. VI, at 11:19–12:8, 20:20–25 (Van Horne). ***Second***, Learneo "adopted, reasonably implemented, and informed users of a policy to terminate users who are repeat copyright infringers." Ex. 6, Tr. vol. VI, at 37:13–18 ("We have a repeat infringer policy . . . . [A] three-strike policy." (Van Horne)); 39:13–23 ("[W]e've communicated . . . we do not want [users] to upload content that they . . . don't own." (Van Horne)). ***Third***, Learneo designated DMCA agents to receive DMCA-compliant takedown notices. *See, e.g.*, Ex. 6, Tr. vol. VI, at 52:2–7 (Van Horne). ***Finally***, it is undisputed that the copyright works-in-suit were stored on its system at the direction of its users. *See, e.g.*, Ex. 6, Tr. vol. VI, at 11:19–12:8, 20:20–25 (Van Horne).

Post did not dispute that Learneo met any of these threshold criteria. Post acknowledged in its opening statement that Course Hero is a "file sharing site." Ex. 31, Tr. vol. I, at 26:24–25. Post's expert, Mr. Myers, acknowledged that Course Hero's documents are stored at the direction of users. Ex. 15, Tr. vol. IV, at 106:24–107:2 ("Course Hero's website has a system to where documents can be—students or whoever the uploader is can determine where that document is going to go." (Myers)). And Post never disputed that Learneo met the requirements for a repeat infringer policy and designated DMCA agent.

B. Post Did Not Establish That Learneo Lost Safe Harbor Eligibility Under Second Circuit Law

Because Learneo established that it met the threshold qualifications for safe harbor, it was

[4] The parties' agreed-upon jury instructions do not include a fifth requirement, that the service provider "accommodates and does not interfere with standard technical measures" because it is undisputed that there are no "standard technical measures" applicable to this case.

Post's burden to prove that Learneo lost safe harbor eligibility. *Capitol Recs. II*, 125 F.4th at 419. A service provider can lose safe harbor eligibility if (1) it received a valid takedown notice and failed to act expeditiously to remove or disable access to the infringing works, § 512(c)(1)(C); (2) it had actual or red flag knowledge of, or was willfully blind to, specific acts of infringement, *see* § 512(c)(1)(A); or (3) it received a financial benefit directly attributable to the infringing activity and had the right and ability to control that activity, § 512(c)(1)(B)). Post failed to produce evidence disqualifying Learneo.

1. Post failed to prove that Learneo received a valid takedown notice as to any of the copyright works-in-suit.

There was no takedown notification that could have caused Learneo to lose its safe harbor with respect to the copyright works-in-suit. A service provider's obligation to remove or disable access to material is triggered upon receipt of a ***valid*** notification. *Capitol Recs. II*, 125 F.4th at 414. The notification must include "information reasonably sufficient to permit the service provider to locate the material" to be taken down. 17 U.S.C. § 512(c)(3)(A)(iii); *see also Wolk v. Kodak Imaging Network, Inc.*, 840 F. Supp. 2d 724, 747 (S.D.N.Y. 2012) ("Notices that do not identify the ***specific location*** of the alleged infringement are not sufficient to confer 'actual knowledge' on the service provider.") (emphasis added). Absent a compliant takedown notice, there can be no liability predicated on a failure to remove content.

Post sent two notices to Learneo. Ex. 1, Tr. vol. V, at 245:8–16, 247:19–248:17; Ex. 5, PTX658; Ex. 8, PTX659. Each was only valid with respect to works it specifically identified. *Wolk*, 840 F. Supp. 2d at 747. Neither identified the five copyright works.

Nor did the notices adequately identify any additional works. General references to other infringing Post works on Course Hero are not "information reasonably sufficient to permit the service provider to locate [such] material," as § 512(c)(3)(A)(iii) requires. *See UMG Recordings,*

Inc. v. Veoh Networks Inc., 665 F. Supp. 2d 1099, 1110 (C.D. Cal. 2009) (artist names insufficient when "simply searching for a name would not necessarily unearth only unauthorized material"). The record bolsters that conclusion. Of the roughly 47,000 documents on Course Hero that related to Post, Post asserted only about 2,200 as Post-owned works-in-suit. Ex. 17, Tr. vol. II, at 42:10–70:5 (Bauer) (describing Post's process to identify alleged Post-owned works). That disparity underscores the inadequacy of Post's notices. Statements such as "this is not a comprehensive list of all Post University copyrighted materials located on your website" (Exs. 5, 8, PTX658; PTX659) and a bare reference to "a search" (Ex. 8, PTX659) did not provide information sufficient to locate any Post-owned works beyond those listed by URL.

Accordingly, Post's generalized reference to other works did not trigger any duty to act. Post presented no evidence of a valid notice covering the five copyright works-in-suit. And it is undisputed that Learneo promptly removed the works that were specifically identified. Ex. 1, Tr. vol. V, at 245:8–16, 247:19–248:17 (Van Horne).[5] On this record, no reasonable jury could find that Learneo lost safe harbor eligibility based on a valid takedown notice.

2. Post failed to prove actual or red flag knowledge of specific infringement for any of the copyright works-in-suit.

To defeat safe harbor based on knowledge of infringement, a plaintiff must show that the service provider had actual or "red flag" knowledge of ***specific*** infringing material or was willfully blind to ***specific*** infringements. *Capitol Recs. I*, 826 F.3d at 99; *see also Viacom Int'l Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 116–17 (S.D.N.Y. 2013) ("[T]he examples proffered by plaintiffs . . . give at most information that infringements were occurring with particular works, and occasional indications of promising areas to locate and remove them," but not notice of

[5] The first letter listed 64 URLs and 62 works were removed—but this was because two of the URLs were duplicates. There is no dispute that all identified works were expeditiously removed. Ex. 6, Tr. vol. VI at 108:23-110:4.

specific infringements). Generalized awareness of infringement is insufficient as a matter of law. *Viacom Int'l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 31 (2d Cir. 2012). Nor does the DMCA impose a duty to investigate based on mere suspicion. *Capitol Recs. I*, 826 F.3d at 98.

Here, Post introduced no evidence that Learneo had knowledge—actual or constructive—of any of the five specific works-in-suit being on the platform without authorization. Post's two takedown notices were insufficient for the same reasons discussed above—they provided no facts that would have made the ***specific*** infringement objectively obvious to a reasonable person. *Capitol Recs. I*, 826 F.3d at 93. Nor did Post present evidence that Learneo was willfully blind to specific acts of infringement related to these works. At most, Post showed Learneo "failed to make any effort to identify additional Post University copyrighted materials unlawfully posted on [its] website." Ex. 8, PTX659. But § 512(m) expressly provides that a service provider has no duty to monitor its service or affirmatively seek facts indicating infringing activity. Failure to monitor cannot be a basis for finding willful blindness. *Capitol Recs. I*, 826 F.3d at 98.

On this record, no reasonable jury could find that Learneo possessed the requisite knowledge to disqualify it from safe harbor protection.

3. Post failed to prove a disqualifying financial benefit and right and ability to control.

To lose safe harbor protection under § 512(c)(1)(B), a plaintiff must prove that the service provider (1) received a financial benefit directly attributable to the infringing activity and (2) had the "right and ability to control" that activity. Post failed to make that showing.

First, Post adduced no evidence that Learneo had the "right and ability to control" the activity of the users who uploaded the copyright works-in-suit. The Second Circuit has narrowly interpreted this requirement, holding that it requires more than the mere ability to remove content and instead demands "substantial influence" over user activity. *Viacom*, 676 F.3d at 38. Courts

have found only two situations where a service provider has the "right and ability to control" infringing activity—when the service provide substantively pre-screens content types using moderators and when it requires specific layouts while monitoring image uploads. *Capitol Recs. II* , 125 F.4th at 424 (collecting cases). Here, the evidence showed only that Learneo applies de-duplication and copyright filter checks to uploads, which do not amount to prescreening of preferred content *types*. Ex.1, Tr. vol. V, at 114:9–115:9, 119:21–120:2 (Wentworth). Post adduced no evidence that Learneo exerted "substantial influence" over user uploads through substantive prescreening or limitations on content types. Accordingly, no reasonable jury could have found that Learneo meets the "right and ability to control" requirement.

Second, Post introduced no evidence that Course Hero derived any financial benefit ***directly attributable*** to the five copyright works-in-suit. Post's expert testified that he divided the "revenue that Course Hero recognized from self-identified Post U subscribers" by the number of Post-associated documents on the website to obtain an "estimate" of $22.97 per document. Ex. 14, Tr. vol. VIII, at 38:7–43:3 (Mooney). But subscriber revenue alone is insufficient to meet the "financial benefit" prong. "[If] that were sufficient, then practically every revenue-generating website would satisfy the financial benefit prong of 17 U.S.C. § 512(c)(1)(B)." *Downs v. Oath Inc.*, 385 F. Supp. 3d 298, 307 (S.D.N.Y. 2019). The statute requires more: "[t]he words 'the' and 'directly' in § 512(c)(1)(B) must mean that some revenue has to be distinctly attributable to the infringing material." *Id.* (quoting *Ventura Content, Ltd. v. Motherless, Inc.*, 885 F.3d 597, 613 (9th Cir. 2018)) (cleaned up). Post made no such showing. It offered no evidence that Learneo's revenue was distinctly tied to the alleged infringement, no evidence that Learneo promoted infringing content, and no evidence that the five copyright works-in-suit drove subscriptions. *See id.* On this record, no reasonable jury could have found that Learneo derived a financial benefit

directly attributable to the five copyright works-in-suit. Accordingly, Post failed to prove that Learneo was disqualified from safe harbor protection under § 512(c)(1)(B).

4. Post's failure to prove Learneo's disqualification from safe harbor eligibility is dispositive.

The DMCA safe harbor reflects Congress's intent to protect service providers from liability absent proof of specific knowledge, proper notice, or disqualifying control and benefit. *See Viacom*, 676 F.3d at 26–27. Post's failure to present legally sufficient evidence on any of these required elements means that no reasonable jury could find Course Hero liable for copyright infringement with respect to the five copyright works-in-suit.

Accordingly, Learneo is entitled to judgment as a matter of law that it is not liable for copyright infringement for the five copyright works-in-suit under 17 U.S.C. § 512(c)—or, at minimum, a new trial is warranted because the verdict is against the great weight of the evidence.

CONCLUSION

For the foregoing reasons, Learneo respectfully requests the Court grant JMOL or a new trial on Post's § 1202 and copyright claims.

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