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 14

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 15

16 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

18 SARAH ANDERSEN, an individual;  
 KELLY MCKERNAN, an individual;  
 19 KARLA ORTIZ, an individual,  
 20 Individual and Representative Plaintiffs,

21 v.

22 STABILITY AI LTD., a UK corporation;  
 STABILITY AI, INC., a Delaware  
 23 corporation; MIDJOURNEY, INC., a  
 Delaware corporation; DEVIANTART, INC.,  
 24 a Delaware corporation,

25 Defendants.  
 26  
 27  
 28

Case No.

**COMPLAINT**

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. AI IMAGE GENERATORS ARE 21ST-CENTURY COLLAGE TOOLS THAT VIOLATE THE RIGHTS OF MILLIONS OF ARTISTS .....1

II. JURISDICTION AND VENUE..... 2

III. INTRADISTRICT ASSIGNMENT ..... 3

IV. DEFINITIONS..... 3

V. PARTIES..... 6

VI. AGENTS AND CO-CONSPIRATORS ..... 8

VII. CLASS ALLEGATIONS ..... 9

    A. Class Definitions..... 9

    B. Numerosity..... 9

    C. Typicality.....10

    D. Commonality & Predominance.....10

    E. Adequacy..... 11

    F. Other Class Considerations .....12

VIII. FACTUAL ALLEGATIONS .....12

    A. Stability AI.....12

    B. Midjourney.....14

    C. DeviantArt.....14

    D. How Stable Diffusion Works: A 21st-Century Collage Tool .....14

    E. The source of the Stable Diffusion training data: LAION..... 22

    F. DeviantArt’s betrayal of its artist community by embracing generative AI images..... 24

    G. Midjourney: the 21st-century collage tool (in)famous for its artistic style 27

IX. CLAIMS FOR RELIEF..... 30

XI. JURY TRIAL DEMANDED ..... 43

1 Plaintiffs Sarah Andersen, Kelly McKernan, and Karla Ortiz (“Plaintiffs”), on behalf of  
2 themselves and all others similarly situated, bring this Class Action Complaint (the  
3 “Complaint”) against Defendants Stability AI Ltd. and Stability AI, Inc. (collectively  
4 “Stability”); Midjourney, Inc. (“Midjourney”); and DeviantArt, Inc. (“DeviantArt”) (all  
5 collectively “Defendants”) for direct and vicarious copyright infringement under 17 U.S.C.  
6 § 501; violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201–1205 (the  
7 “DMCA”); violation of Plaintiffs’ statutory and common law rights of publicity, Cal. Civ. Code  
8 section 3344; violation of Unfair Competition law, *Cal. Bus. & Prof. Code* §§ 17200, *et seq.*; and  
9 declaratory relief.

10 **I. AI IMAGE GENERATORS ARE 21ST-CENTURY COLLAGE TOOLS**  
11 **THAT VIOLATE THE RIGHTS OF MILLIONS OF ARTISTS**

12 1. Stable Diffusion is a software product—defined below as an AI Image Product—  
13 maintained and sold by Stability.

14 2. Stability downloaded or otherwise acquired copies of billions of copyrighted  
15 images without permission to create Stable Diffusion, including Plaintiffs’. These images are  
16 defined below as “Training Images.”

17 3. By training Stable Diffusion on the Training Images, Stability caused those images  
18 to be stored at and incorporated into Stable Diffusion as compressed copies. Stability made them  
19 without the consent of the artists and without compensating any of those artists.

20 4. When used to produce images from prompts by its users, Stable Diffusion uses the  
21 Training Images to produce seemingly new images through a mathematical software process.  
22 These “new” images are based entirely on the Training Images and are derivative works of the  
23 particular images Stable Diffusion draws from when assembling a given output. Ultimately, it is  
24 merely a complex collage tool.

25 5. These resulting derived images compete in the marketplace with the original  
26 images. Until now, when a purchaser seeks a new image “in the style” of a given artist, they must  
27 pay to commission or license an original image from that artist. Now, those purchasers can use  
28 the artist’s works contained in Stable Diffusion along with the artist’s name to generate new

1 works in the artist’s style without compensating the artist at all. As used herein, the phrase “in  
2 the style of,” refers to a work that others would accept as a work created by that artist whose  
3 “style” was called upon, not the general category of work, such as fantasy or impressionism. Only  
4 a very small number of incredibly talented artists are capable of this same feat for a single other  
5 artist (i.e., reproducing art that is convincingly in that artist’s style), let alone for countless other  
6 artists. AI Image Products do so with ease by violating the rights of millions of artists.

7 6. All AI Image Products operate in substantially the same way and store and  
8 incorporate countless copyrighted images as Training Images.

9 7. Defendants, by and through the use of their AI Image Products, benefit  
10 commercially and profit richly from the use of copyrighted images.

11 8. The harm to artists is not hypothetical—works generated by AI Image Products  
12 “in the style” of a particular artist are already sold on the internet, siphoning commissions from  
13 the artists themselves.

14 9. Plaintiffs and the Class seek to end this blatant and enormous infringement of their  
15 rights before their professions are eliminated by a computer program powered entirely by their  
16 hard work.

## 17 II. JURISDICTION AND VENUE

18 10. Plaintiffs bring this action on their own behalf and as representatives of a Class of  
19 similarly situated individuals and entities. They seek to obtain injunctive relief and recover  
20 damages as a result and consequence of Defendants’ unlawful conduct.

21 11. Jurisdiction and venue are proper in this judicial district pursuant to Defendants’  
22 unauthorized use of Plaintiffs’ and the Class’s intellectual property in violation of the Copyright  
23 Act, 17 U.S.C. § 501, the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201–1205 (the  
24 “DMCA”); Unjust Enrichment, and Unfair Competition; California’s right of publicity,  
25 contract, negligence, privacy, and unfair competition statutes and case law.

26 12. A substantial part of the events giving rise to Plaintiffs’ claims occurred in this  
27 District.

28



1 diffusion appears below. Stable Diffusion is an AI software program that includes a diffusion  
2 model.

3 20. “*Generative AI*” is a subset of machine learning where the program copies training  
4 data and uses it to produce derivative works of that training data. Stable Diffusion is an example  
5 of a generative AI system, because it is trained using copied images, and produces similar images.  
6 Other generative AI systems exist that produce conversational text, software code, and music, in  
7 each case similar to the respective training data.

8 21. “*Machine Learning*” or “*ML*” is a type of AI process in which the behavior of the  
9 software program is derived from copying a corpus of material called *training data*. In this  
10 context, the term “learning” is metaphorical. The process bears very little similarity to human  
11 learning. In this context, it denotes a technique for developing a software program through  
12 massive data input and statistical operations, calculations, and linear algebra, rather than line-by-  
13 line coding using a programming language. Machine-learning programs can find patterns or make  
14 calculations based on datasets or training data. The operator of the algorithm is sometimes called  
15 a “trainer.” Machine learning will be referred to as “AI” unless further distinction is necessary.  
16 Stable Diffusion, the Midjourney Product, DreamStudio, and DreamUp all include both AI  
17 programs and ML programs.

18 22. “*Model*” denotes the software component of an AI program that is the output of a  
19 machine-learning process. The model is a computer file that contains all the information that has  
20 been extracted from analyzing the training data, including the rules and data structures produced  
21 by the algorithm.

22 23. A “*Software Library*” is a self-contained software program that is designed to  
23 provide certain functions or services to another software program, such as a desktop or  
24 smartphone application, thereby reducing the development time. When used as a Software  
25 Library, Stable Diffusion provides image-generating services to the other program. Stable  
26 Diffusion has been used as a Software Library within multiple programs, including DreamStudio,  
27 DreamUp, and, on information and belief, the Midjourney Product.

28

1           24.     A “*Text Prompt*” is a textual description that is used as an interface to certain  
2 generative AI systems to produce output, including the AI Image Products. For instance, a user  
3 of Stable Diffusion can input the text prompt “a dog wearing a baseball cap while eating ice  
4 cream,” and Stable Diffusion will attempt to generate an image that corresponds to that text  
5 prompt. Because randomness is injected into the generative process alongside the text prompt, a  
6 particular text prompt will usually produce a varied set of results. In a generative AI system like  
7 Stable Diffusion, a text prompt is not part of the training data. It is part of the end-user interface  
8 for the tool. Thus, it is more akin to a text query passed to an internet search engine. Just as the  
9 internet search engine looks up the query in its massive database of web pages to show us  
10 matching results, a generative AI system uses a text prompt to generate output based on its  
11 massive database of training data.

12           25.     A “*Training Image*” is an image, or image paired with a descriptive text caption,  
13 that is included among the training data for a machine-learning process. Training images are often  
14 gathered through web scraping. For its training data, Stable Diffusion has taken billions of  
15 Training Images scraped from public websites.

16           26.     “*Web Scraping*” refers to the harvesting, copying, or extracting data from websites  
17 by using automated tools, including bots or web crawlers. Usually, the scope and quantity of data  
18 so “scraped” is massive. Web scraping can be used to harvest any kind of data available on public  
19 websites, especially copyrighted data such as text, images, or software code. These collections of  
20 scraped copyrighted data are used as input for other computer programs, such as search engines  
21 and machine-learning processes. The training data for all AI Image Products are collected via web  
22 scraping. For example, the training data for Stable Diffusion—a database of billions of captioned  
23 images—was collected via web scraping.

24           27.     “*Work*” or “*Works*” refers to any image that was used to train any version of  
25 Stable Diffusion that was offered directly and/or incorporated into another product by one or  
26 more Defendants during the Class Period.

27

28

## V. PARTIES

### A. Plaintiffs

28. Plaintiff Sarah Andersen is a resident of the State of Oregon. Ms. Andersen is a full-time cartoonist and illustrator and relies on the income therefrom. Her semi-autobiographical comic strip, [Sarah's Scribbles](#), finds the humor in living as an introvert. Her graphic novel [FANGS](#) was nominated for an Eisner Award. Ms. Andersen has created and owns a copyright interest in over two hundred Works included in the Training Data.<sup>1</sup> Ms. Andersen has complied with the statutory requirements for registration and has applied for and owns copyright registrations for sixteen collections that include Works used as Training Images. Copies of these registrations as reflected in the Copyright Office's records are attached as Exhibits 1 through 16 and are valid and enforceable. Ms. Andersen was, and continues to be, injured during the Class Period as a result of Defendants' unlawful conduct alleged herein.

29. Plaintiff Kelly McKernan is a resident of the State of Tennessee. Mx. McKernan is a full-time artist and relies on their income therefrom. Kelly creates original watercolor and acrylic gouache paintings for galleries, private commissions, and their [online store](#). Mx. McKernan has created and owns a copyright interest in over thirty Works used as Training Images.<sup>2</sup> Mx. McKernan was, and continues to be, injured during the Class Period as a result of Defendants' unlawful conduct alleged herein.

30. Karla Ortiz is a resident of the State of California. Ms. Ortiz is a Puerto Rican, internationally recognized, award winning full-time artist and relies on the income therefrom. Ms. Ortiz is renowned for her exceptional design sense, realistic renders, and character-driven narratives, and has contributed to many big-budget projects in the film, television, and video-game industries. Ms. Ortiz is also a regular illustrator for major publishing and role playing game companies. Lastly, Ms. Ortiz is a recognized fine artist, and her deeply personal fine art has been

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<sup>1</sup> Examples of Ms. Andersen's Works included in the Training Data can be found here: [https://haveibeen trained.com/?search\\_text=sarah%20andersen](https://haveibeen trained.com/?search_text=sarah%20andersen).

<sup>2</sup> Examples of Mx. McKernan's Works included in the Training Data can be found here: [https://haveibeen trained.com/?search\\_text=kelly%20mckernan](https://haveibeen trained.com/?search_text=kelly%20mckernan) and <https://laion-aesthetic.datasette.io/laion-aesthetic-6pls/images?search=kelly+mckernan&sort=rowid>.



1 showcased in notable galleries such as Spoke Art and Hashimoto Contemporary in San Francisco;  
2 Nucleus Gallery, Thinkspace, and Maxwell Alexander Gallery in Los Angeles; and Galerie  
3 Arludik in Paris. Ms. Ortiz has created and owns a copyright interest in at least twelve Works that  
4 were used as Training Images.<sup>3</sup> Ms. Ortiz was, and continues to be, injured during the Class  
5 Period as a result of Defendants' unlawful conduct alleged herein.

## 6 **B. Defendants**

7 31. Defendant Stability AI Ltd. is a UK corporation with its principal place of business  
8 located at 88 Notting Hill Gate, London, England, W11 3HP. Stability AI Ltd. is a party to the  
9 unlawful conduct alleged herein.

10 32. Defendant Stability AI, Inc. is a Delaware corporation with its principal place of  
11 business located at 88 Notting Hill Gate, London, England, W11 3HP. Stability AI, Inc. is a party  
12 to the unlawful conduct alleged herein. Stability AI, Inc. conducts business in this judicial district.  
13 On information and belief, Defendant Stability AI, Inc. is a wholly owned subsidiary of Defendant  
14 Stability AI Ltd.

15 33. Stability AI Ltd. and Stability AI, Inc. jointly created, trained, and maintain Stable  
16 Diffusion, an AI Image Product. Stable Diffusion is used to derive the output images of Stability's  
17 DreamStudio product. DreamStudio is a web-based app that outputs images in response to text  
18 prompts. DreamStudio requires Stable Diffusion to function; the images are produced by Stable  
19 Diffusion. DreamStudio provides a user interface and access to a trained version of Stable  
20 Diffusion. As noted above, Defendant Stability AI, Inc. is referred collectively with Defendant  
21 Stability AI Ltd. as "Stability."

22 34. Defendant Midjourney, Inc.<sup>4</sup> is a Delaware corporation with its principal place of  
23 business located at 333 Harrison Street, Apt. 605, San Francisco, California 94105. Midjourney  
24 created, sells, markets, and distributes the Midjourney Product, which is an AI Image Product.

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25 <sup>3</sup> Examples of Ms. Ortiz's Works included in the Training Data can be found here: [https://laion-  
26 aesthetic.datasette.io/laion-aesthetic-6pls/images? search=karla+ortiz](https://laion-aesthetic.datasette.io/laion-aesthetic-6pls/images?search=karla+ortiz).

27 <sup>4</sup> To avoid confusion between Midjourney's eponymous product and the entity itself,  
28 Midjourney, Inc. is referred to herein as "Midjourney," and the image-generating product the  
company offers is referred to as the "Midjourney Product."

1 Like Stable Diffusion, the Midjourney Product is a commercial product that produces images in  
2 response to text prompts. On information and belief, Stable Diffusion was used in iterations of the  
3 Midjourney Product. On information and belief, the version of the Midjourney Product currently  
4 available was trained on a subset of the images used to train Stable Diffusion. Midjourney is a  
5 party to the unlawful conduct alleged herein.

6 35. Defendant DeviantArt, Inc. (“DeviantArt”) is a Delaware corporation with its  
7 principal place of business located at 100 Gansevoort Street, New York, New York 10014.  
8 DeviantArt created, sells, markets, and distributes DreamUp, which is an AI Image Product. Like  
9 Stable Diffusion and the Midjourney Product, DreamUp is a commercial product that relies on  
10 Stable Diffusion to produce images. DreamUp is sold directly on the internet as well as other  
11 sales channels throughout the United States, including in this District. DeviantArt released  
12 DreamUp on November 9, 2022. DeviantArt is a party to the unlawful conduct alleged herein.

#### 13 VI. AGENTS AND CO-CONSPIRATORS

14 36. The unlawful acts alleged against the Defendants in this class action complaint  
15 were authorized, ordered, or performed by the Defendants’ respective officers, agents,  
16 employees, representatives, or shareholders while actively engaged in the management, direction,  
17 or control of the Defendants’ businesses or affairs.

18 37. The Defendants’ agents operated under the explicit and apparent authority of  
19 their principals.

20 38. Each Defendant, and its subsidiaries, affiliates and agents operated as a single  
21 unified entity.

22 39. Various persons and/or firms not named as Defendants herein may have  
23 participated as co-conspirators in the violations alleged herein and may have performed acts and  
24 made statements in furtherance thereof.

25 40. Each acted as the principal, agent, or joint venture of, or for other Defendants with  
26 respect to the acts, violations, and common course of conduct alleged herein.

27

28

1 **VII. CLASS ALLEGATIONS**

2 **A. Class Definitions**

3 41. Plaintiffs bring this action for damages and injunctive relief on behalf of  
4 themselves and all others similarly situated as a class action pursuant to Rules 23(a), 23(b)(2), and  
5 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following Classes:

6 **“Injunctive Relief Class” under Rule 23(b)(2):**

7 All persons or entities nationalized and/or domiciled in the United  
8 States that own a copyright interest in any work that was used to  
9 train any version of an AI Image Product that was offered directly  
and/or incorporated into another product by one or more  
Defendants during the Class Period.

10 **“Damages Class” under Rule 23(b)(3):**

11 All persons or entities nationalized and/or domiciled in the United  
12 States that own a copyright interest in any work that was used to  
13 train any version of an AI Image Product that was offered directly  
and/or incorporated into another product by one or more  
Defendants during the Class Period.

14 **“DeviantArt Damages Subclass” under Rule 23(b)(3):**

15 All members of the Damages Class who (1) maintained an account  
16 on DeviantArt; (2) posted copyrighted work on DeviantArt; and  
(3) had that work used to train any version of an AI Image Product.

17 These “Class Definitions” specifically exclude the following person or entities:

- 18 a. Any of the Defendants named herein;
- 19 b. Any of the Defendants’ co-conspirators;
- 20 c. Any of Defendants’ parent companies, subsidiaries, and affiliates;
- 21 d. Any of Defendants’ officers, directors, management, employees,  
22 subsidiaries, affiliates, or agents;
- 23 e. All governmental entities; and
- 24 f. The judges and chambers staff in this case, as well as any members of their  
25 immediate families.

26 **B. Numerosity**

27 42. Plaintiffs do not know the exact number of Class members, because such  
28 information is in the exclusive control of Defendants. Plaintiffs are informed and believe that

1 there are at least thousands of Class members geographically dispersed throughout the United  
2 States such that joinder of all Class members in the prosecution of this action is impracticable.

3 **C. Typicality**

4 43. Plaintiffs' claims are typical of the claims of their fellow Class members because  
5 Plaintiffs' claims arise out of the same course of conduct from which their injuries result.  
6 Plaintiffs and all Class own copyrights in the Works. Plaintiffs and the Class created or owned  
7 Works that were published on the internet by themselves or others. The Works were used to train  
8 various AI Image Products without permission. Plaintiffs and absent Class members were  
9 damaged by this and other wrongful conduct of Defendants as alleged herein. Damages and the  
10 other relief sought herein are common to all members of the Class.

11 **D. Commonality & Predominance**

12 44. Numerous questions of law or fact common to the entire Class arise from  
13 Defendants' conduct—including, but not limited to those identified below:

14 **i. Direct Copyright Infringement**

- 15 • Whether Defendants violated the copyrights of Plaintiffs and the Class  
16 when they downloaded and stored copies of the Works.  
17 • Whether Defendants violated the copyrights of Plaintiffs and the Class  
18 when they used copies of the Works to train AI Image Products.

19 **ii. Vicarious Copyright Infringement**

- 20 • Whether Defendants vicariously violated the copyrights of Plaintiffs and  
21 the Class when third parties used Defendants' products to create Fakes, as  
22 defined herein.

23 **iii. DMCA Violations**

- 24 • Whether Defendants violated the DMCA by removing copyright  
25 management information ("CMI") from the Works and/or causing their  
26 respective AI Image Products to omit CMI from their output images.  
27  
28

1            **iv. Right of Publicity Violations**

- 2            • Whether Defendants violated Plaintiffs’ and the Class’s rights of publicity  
3            when they designed their AI Image Products to respond to prompts  
4            requesting output images “in the style” of specific individuals, namely  
5            Plaintiffs and the Class.

6            **v. Unlawful-Competition**

- 7            • Whether Defendants’ AI Image Products are being used by Defendants to  
8            engage in Unfair Competition under the Lanham Act and/or California  
9            law.

10          **vi. Injunctive Relief**

- 11          • Whether this Court should enjoin Defendants from engaging in the  
12          unlawful conduct alleged herein. And what the scope of that injunction  
13          would be.

14          **vii. Anticipated Defenses**

- 15          • Whether any affirmative defense excuses Defendants’ conduct, including  
16          but not limited to whether some or all of Defendants’ conduct is allowed  
17          under the Fair Use Doctrine.

18          45. These and other questions of law and fact are common to the Class and  
19          predominate over any questions affecting the Class members individually.

20          **E. Adequacy**

21          46. Plaintiffs will fairly and adequately represent the interests of the Class because  
22          they have experienced the same harms as the Class and have no conflicts with any other members  
23          of the Class. Furthermore, Plaintiffs have retained sophisticated and competent counsel (“Class  
24          Counsel”) who are experienced in prosecuting federal and state class actions throughout the  
25          United States and other complex litigation and have extensive experience advising clients and  
26          litigating intellectual property, competition, contract, and privacy matters.



1 its associated machine-learning models derived from the Training Images and then use the  
2 software according to the terms of the open-source license.

3 54. Stability’s choice to release Stable Diffusion under an open-source license—rather  
4 than under a traditional paid license—has led to rapid adoption of Stable Diffusion, with many  
5 programmers devising and releasing their own software based on Stable Diffusion.

6 55. In August 2022, the same month that Stable Diffusion was released, Stability  
7 released DreamStudio (<https://dreamstudio.ai>). DreamStudio is a web-server-based AI Image  
8 Product through which users can generate images with Text Prompts. DreamStudio relies on  
9 Stable Diffusion as its underlying Software Library, meaning that DreamStudio relies on Stable  
10 Diffusion to generate images from Text Prompts.

11 56. DreamStudio is billed in packages of “credits,” priced at \$1 for 100 credits, with a  
12 minimum purchase of 1000 credits for \$10. New DreamStudio users receive a certain number of  
13 credits for free, after which they must buy more. The credits generally represent computer-  
14 processing resources on Stability’s cloud-based servers. For each image generated with  
15 DreamStudio, a certain number of credits are redeemed. DreamStudio represents that the  
16 number of credits consumed per image depends on user-controlled settings related to the quality  
17 and size of the requested image, and the computing resources used. With 1000 credits, Stability  
18 estimates that a user can make “approximately 5000 images with default settings.”

19 57. Stability scraped, and thereby copied over five billion images from websites as the  
20 Training Images used as training data for Stable Diffusion. Stability did not seek consent from  
21 either the creators of the Training Images or the websites that hosted them from which they were  
22 scraped.

23 58. Stability did not attempt to negotiate licenses for any of the Training Images.  
24 Stability simply took them. Stability has embedded and stored compressed copies of the Training  
25 Images within Stable Diffusion.

26 59. Stable Diffusion uses the compressed copies in generating its output in response to  
27 Text Prompts. Since launching its DreamStudio app or Stable Diffusion, Stability has not  
28

1 attempted to negotiate any licenses for any of the Training Images and is not sharing any of the  
2 revenue with the artists who created the Training Images nor any other owners of the Works.

3 60. DreamStudio has been lucrative for Stability. In October 2022, Stability  
4 announced it had raised \$100 million, led by Coatue and Lightspeed Venture Partners. At the  
5 time, Stability was valued at approximately \$1 billion.

### 6 **B. Midjourney**

7 61. Midjourney was incorporated on September 16, 2020 by David Holz. Midjourney  
8 launched an open beta of the first public version of its Midjourney Product on July 12, 2022.  
9 Since then, it has released Versions 2 and 3, and, most recently, an alpha iteration of Version 4.

### 10 **C. DeviantArt**

11 62. DeviantArt was founded in 2000, DeviantArt has been primarily known as an  
12 online community (<https://deviantart.com>) where digital artists post and share their work,  
13 primarily in the form of digital images. Today DeviantArt bills itself as “the world’s largest art  
14 community.” DeviantArt hosts millions of such images.

15 63. Thousands—and possibly millions—of the Training Images for Stability’s Stable  
16 Diffusion product were scraped and copied from DeviantArt.

17 64. In November 2022, DeviantArt released DreamUp  
18 (<https://deviantart.com/dreamup>). Like Stability’s DreamStudio, DreamUp is a web-based app  
19 that generates images in response to Text Prompts. Like DreamStudio, DreamUp relies on  
20 Stability’s Stable Diffusion software as its underlying software engine.

### 21 **D. How Stable Diffusion Works: A 21st-Century Collage Tool**

22 65. As mentioned above, Stable Diffusion is an AI Image Product released by Stability.  
23 It has been incorporated as an image-generating engine into many other software programs,  
24 including DreamStudio (by Stability), the Midjourney Product, and DreamUp (released by  
25 DeviantArt). Thus, the description that follows of how Stable Diffusion works also describes the  
26 operation of DreamStudio, the Midjourney Product, and DreamUp, because they rely on Stable  
27 Diffusion as an embedded image-generating engine.  
28



1           66.     The word “diffusion” in its name refers to the technique the software uses to  
2 generate output images that are similar to those found in its training data.

3           67.     The diffusion technique was invented in 2015 by a team of researchers led by  
4 Jascha Sohl-Dickstein at Stanford University and introduced in their paper “Deep Unsupervised  
5 Learning Using Nonequilibrium Thermodynamics” (2015).<sup>6</sup> The technique can be applied to any  
6 kind of data, but the paper focuses on its application to digital images.

7           68.     Diffusion operates in two phases. The first phase of diffusion is to take an image  
8 and progressively add more noise to it in a series of steps. In this case, “noise” refers to  
9 something seen rather than heard, but the connotation is the same: random fluctuations that we  
10 perceive as chaotic and unstructured. At each step, the program records how the addition of noise  
11 changes the image. By the last step, the image has been “diffused” into essentially random noise.

12           69.     The second phase is like the first but reversed. Having recorded the process of  
13 turning a certain image into noise over many steps, the program can then run the sequence  
14 backwards. Starting with some random noise, the program applies the steps in reverse order. As it  
15 progressively removes noise (or “denoises”) the data, the program is eventually able to  
16 reconstruct the original image.

17           70.     The program relies on complicated mathematics, linear algebra, and a series of  
18 algorithms and requires powerful computers and computer processing to recognize underlying  
19 relationships in the data.  
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28 <sup>6</sup> Available at <https://arxiv.org/abs/1503.03585>



1 incidental side effect. The **primary goal** of a diffusion model is to reconstruct  
2 copies of the training data with maximum accuracy and fidelity to the Training  
3 Image. It is meant to be a duplicate.

4 b. These reconstructed copies do not perfectly match the originals. For instance, in  
5 the diagram, the reconstructed spiral (in red) has some fuzzy parts in the lower  
6 half that the original spiral (in blue) does not. Though the red spiral is plainly a  
7 copy of the blue spiral, in computer terms it is known as a *lossy* copy, meaning  
8 small, unimportant, or insignificant details are lost as the data is compressed into a  
9 smaller size. This is true of many digital data formats, including MP3, AAC, and  
10 JPEG, that also make highly compressed copies of digital data by omitting small,  
11 unimportant, or insignificant details. This technique is called *lossy compression*. A  
12 diffusion model is a form of lossy compression applied to the Training Images.

13 c. Because a trained diffusion model can produce a copy of any of its Training  
14 Images—which could number in the billions—the diffusion model can be  
15 considered an alternative way of storing a copy of those images. In essence, it’s  
16 similar to having a directory on your computer of billions of JPEG image files. But  
17 the diffusion model uses statistical and mathematical methods to store these  
18 images in an even more efficient and compressed manner.

19 76. In December 2020, the diffusion technique was improved by a team of researchers  
20 at UC Berkeley led by Jonathan Ho. These ideas were introduced in their paper “Denoising  
21 Diffusion Probabilistic Models”.<sup>7</sup>

22 77. Ho’s paper described two improvements to the diffusion technique.

23 78. First, Ho introduced what he called “progressive lossy compression”, a way for a  
24 diffusion model to store its training data more efficiently without impacting its ability to  
25 reconstruct high-quality copies of the training data. These compressed versions of Training  
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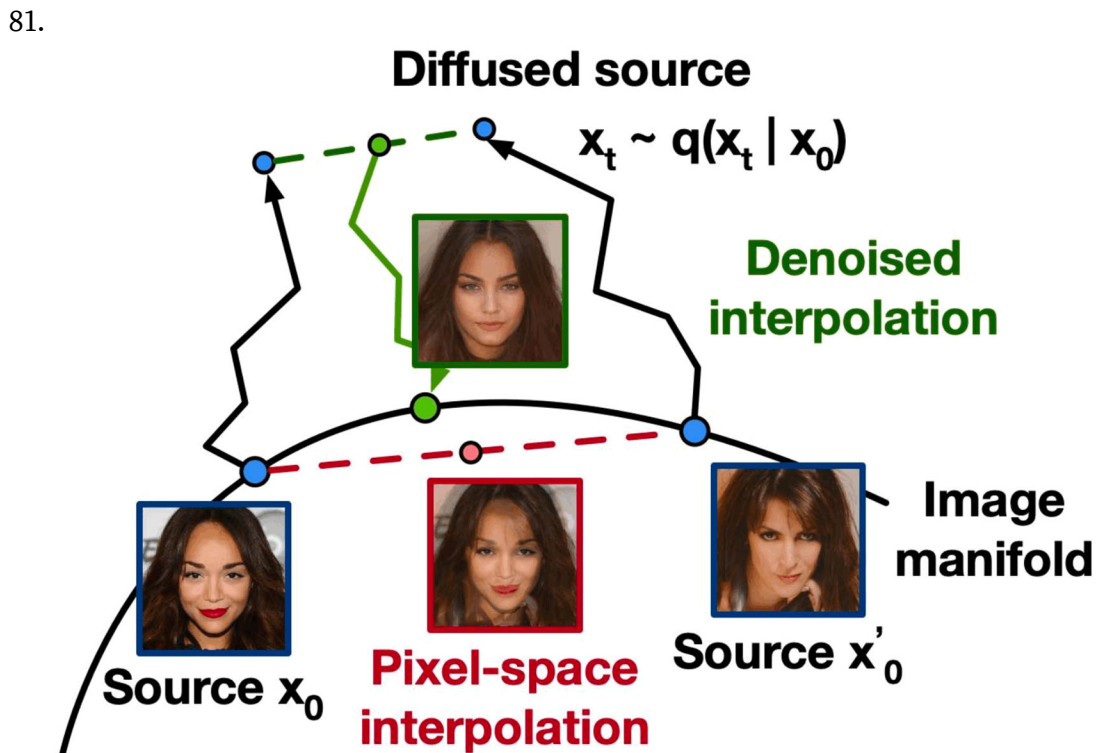
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28 <sup>7</sup> Available from <https://arxiv.org/abs/2006.11239>

1 Images have come to be known as *latent image representations* (or just *latent images*). Ultimately, a  
 2 latent image is just another copy of an image from the training dataset.

3 79. Second, Ho showed how a latent image could be interpolated—meaning, blended  
 4 mathematically—to produce new derivative images. Rather than combine two images pixel by  
 5 pixel—which gives unappealing results—Ho showed how Training Images can be stored in the  
 6 diffusion model as latent images and then interpolated as a new latent image. This interpolated  
 7 latent image can then be converted back into a standard pixel-based image.

8 80. The diagram below, taken from Ho’s paper, shows how this process works, and  
 9 demonstrates the difference in results between interpolating pixels and interpolating latent  
 10 images.



23 82. In the diagram, two photos are being blended: the photo on the left labeled  
 24 “Source  $x_0$ ,” and the photo on the right labeled “Source  $x'_0$ .”

25 83. The image in the red frame has been interpolated pixel by pixel, and is thus labeled  
 26 “pixel-space interpolation.” This pixel-space interpolation simply looks like two translucent face  
 27 images stacked on top of each other, not a single convincing face.

1           84.     The image in the green frame, labeled “denoised interpolation”, has been  
2 generated differently. In that case, the two source images have been converted into latent images  
3 (illustrated by the crooked black arrows pointing upward toward the label “Diffused source”).  
4 Once these latent images have been interpolated (represented by the green dotted line), the newly  
5 interpolated latent image (represented by the smaller green dot) has been reconstructed into  
6 pixels (a process represented by the crooked green arrow pointing downward to a larger green  
7 dot). This process yields the image in the green frame. Compared to the pixel-space interpolation,  
8 the difference is apparent: the denoised blended interpolation looks like a single convincing  
9 human face, not an overlay or combination of images of two faces.

10           85.     A enlarged detail of the two interpolated images is shown below.



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19           86.     Despite the difference in results, these two modes of interpolation are equivalent:  
20 they both generate derivative works from the source images. In the pixel-space interpolation (the  
21 red-framed image), the source images themselves are being directly interpolated to make a  
22 derivative image. In the denoised interpolation (the green-framed image), (1) the source images  
23 are being converted to latent images, which are lossy-compressed copies; (2) those latent images  
24 are being interpolated to make a derivative latent image; and then (3) this derivative latent image  
25 is decompressed back into a pixel-based image.

26           87.     In April 2022, the diffusion technique was further improved by a team of  
27 researchers led by Robin Rombach at Ludwig Maximilian University of Munich. These ideas  
28 were introduced in his paper “High-Resolution Image Synthesis with Latent Diffusion Models.”

1           88.     Rombach is also employed by Stability as one of the primary developers of Stable  
2 Diffusion, which is a software implementation of the ideas in his paper.

3           89.     Rombach’s diffusion technique offered one key improvement over previous efforts.  
4 Rombach devised a way to supplement the denoising process by using extra information, so that  
5 latent images could be interpolated in more complex ways. This process is called *conditioning*. The  
6 most common tool for conditioning is short text descriptions, previously introduced as *Text*  
7 *Prompts*, that might describe elements of the image, e.g.—“a dog wearing a baseball cap while  
8 eating ice cream”. This metric uses Text Prompts as conditioning data to select latent images that  
9 are already associated with text captions indicating they contain “dog,” “baseball cap,” and “ice  
10 cream.” The text captions are part of the Training Images, and were scraped from the websites  
11 where the images themselves were found.

12           90.     The resulting image is necessarily a derivative work, because it is generated  
13 exclusively from a combination of the conditioning data and the latent images, all of which are  
14 copies of copyrighted images. It is, in short, a 21st-century collage tool.

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1           91.     The result of this conditioning process may or may not be a satisfying or accurate  
 2 depiction of the Text Prompt. Below is an example of output images from Stable Diffusion (via  
 3 the DreamStudio app) using this Text Prompt—“a dog wearing a baseball cap while eating ice  
 4 cream”. All these dogs in the resulting images seem to be wearing baseball hats. Only the one in  
 5 the lower left seems to be eating ice cream. The two on the right seem to be eating meat, not ice  
 6 cream.

7           92.



21           93.     In general, none of the Stable Diffusion output images provided in response to a  
 22 particular Text Prompt is likely to be a close match for any specific image in the training data.  
 23 This stands to reason: the use of conditioning data to interpolate multiple latent images means  
 24 that the resulting hybrid image will not look exactly like any of the Training Images that have been  
 25 copied into those latent images.

26           94.     But it is also true that the only thing a latent-diffusion system can do is interpolate  
 27 latent images into hybrid images. There is no other source of visual information entering the  
 28 system.

1           95. Every output image from the system is derived exclusively from the latent images,  
2 which are copies of copyrighted images. For these reasons, every hybrid image is necessarily a  
3 derivative work.

4           96. A latent-diffusion system can never achieve a broader human-like understanding of  
5 terms like “dog,” “baseball hat,” or “ice cream.” Hence, the use of the term “artificial  
6 intelligence” in this context is inaccurate.

7           97. A latent-diffusion system can only copy from latent images that are tagged with  
8 those terms. The system struggles with a Text Prompt like “a dog wearing a baseball cap while  
9 eating ice cream” because, though there are many photos of dogs, baseball caps, and ice cream  
10 among the Training Images (and the latent images derived from them) there are unlikely to be any  
11 Training Images that combine all three.

12           98. A human artist could illustrate this combination of items with ease. But a latent-  
13 diffusion system cannot because it can never exceed the limitations of its Training Images.

14           99. In practice, the quality of the latent-diffusion images depends entirely on the  
15 breadth and quality of the Training Images used to generate the latent images. If that weren’t  
16 true, then it wouldn’t matter where Stable Diffusion (or any other AI-Image Product) got its  
17 Training Images.

18           100. In actuality, the provenance of an AI-Image-Product’s Training Images matters  
19 very much. According to Emad Mostaque, CEO of Stability, Stable Diffusion has “compress[ed]  
20 the knowledge of over 100 terabytes of images.”<sup>8</sup> Though the rapid success of Stable Diffusion  
21 has been partly reliant on a great leap forward in computer science, it has been even more reliant  
22 on a great leap forward in appropriating copyrighted images.

23           **E. The source of the Stable Diffusion training data: LAION**

24           101. LAION (acronym for “Large-Scale Artificial Intelligence Open Network”) is a  
25 nonprofit organization based in Hamburg, Germany. LAION is led by Christoph Schuhmann.

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27 <sup>8</sup> See Kyle Wiggers, *This Startup is Setting a DALL-E 2-Like AI Free, Consequences Be Damned*,  
28 TechCrunch (Aug. 12, 2022, 3:55 PM), <https://techcrunch.com/2022/08/12/a-startup-wants-to-democratize-the-tech-behind-dall-e-2-consequences-be-damned/>



1 LAION’s stated goal is “to make large-scale machine learning models, datasets and related code  
2 available to the general public.” All of LAION’s projects are made available for free.

3 102. One of LAION’s most well-known projects is the image datasets it used train AI  
4 systems.

5 103. In August 2021, LAION released LAION-400M, a dataset of 400 million Training  
6 Images that included text captions. The Training Images in LAION-400M and their text captions  
7 were copied or scraped from web pages or other sources without the consent of the image owners  
8 or website operators. At the time, LAION-400M was the largest freely available dataset of its  
9 kind.

10 104. Stability paid LAION to create LAION-5B, a new dataset of 5.85 billion Training  
11 Images—more than 14 times bigger than LAION-400M. The only reason LAION-5B exists is  
12 because Stability paid for it, so that Stability could have sufficient Training Images for Stable  
13 Diffusion.

14 105. At the time, Stability was in the process of developing Stable Diffusion. As  
15 admitted by Mostaque, Stability needed a bigger set of training images for training Stable  
16 Diffusion.

17 106. Mostaque has publicly acknowledged the importance of using licensed training  
18 images, saying that future versions of Stable Diffusion would be based on “fully licensed” training  
19 images.<sup>9</sup> But for the current version, he took no steps to obtain or negotiate suitable licenses.

20 107. Stability also paid LAION to create LAION-Aesthetics, a subset of LAION-5B  
21 containing the images rated most highly for beauty and visual appeal by testers of Stable  
22 Diffusion. To improve the quality of the output images, Stable Diffusion received more  
23 concentrated training on version 2.5 of the LAION-Aesthetics dataset,<sup>10</sup> which contains 600  
24 million Training Images.

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25 <sup>9</sup> See @EMostaque, Twitter (Dec. 15, 2022, 8:03 AM),  
26 <https://twitter.com/EMostaque/status/1603390169192833027>.

27 <sup>10</sup> See Stable Diffusion v1 Model Card, GitHub, [https://github.com/CompVis/stable-](https://github.com/CompVis/stable-diffusion/blob/main/Stable_Diffusion_v1_Model_Card.md#training)  
28 [diffusion/blob/main/Stable\\_Diffusion\\_v1\\_Model\\_Card.md#training](https://github.com/CompVis/stable-diffusion/blob/main/Stable_Diffusion_v1_Model_Card.md#training) (last visited Dec. 21,  
2022).

1 108. Because LAION releases its datasets to the public, it is possible to study the  
2 sources of the data, including the websites that the Training Images were scraped or copied from.

3 109. The LAION-Aesthetics dataset is heavily reliant on scraping and copying images  
4 from commercial image-hosting services: according to one study, 47% of the images in the dataset  
5 were scraped from only 100 web domains.<sup>11</sup> The sources of some of the copies and scrapes are  
6 stock-image sites, including Getty Images, Shutterstock, and Adobe Stock, as well as shopping  
7 sites (like Shopify, Pinterest, Wix, and Squarespace). Significantly, websites featuring user-  
8 generated content were a huge source of images, including sites like Smugmug, Flickr,  
9 Wikimedia, Tumblr, and DeviantArt.

10 110. DeviantArt is the source of a significant portion of the LAION-Aesthetic dataset  
11 amounting to an estimate of one out of every fifty images. Reasonable estimates show that there  
12 are likely 3.3 million images from DeviantArt in the LAION-Aesthetics dataset.

13 **F. DeviantArt’s betrayal of its artist community by embracing generative AI images**

14 111. In 2000, Angelo Sotira, Scott Jarkoff, and Matthew Stephens founded DeviantArt.

15 112. In 2017, Wix acquired DeviantArt. Wix acquired all of DeviantArt’s corporate  
16 stock for \$36 million.

17 113. Shortly afterward, in March 2017, Moti Levy became Chief Operating Officer  
18 (COO) of DeviantArt. In April 2022, Levy was promoted to Chief Executive Officer (CEO) of  
19 DeviantArt.

20 114. Since its founding in 2000, DeviantArt has held itself out as an online community  
21 friendly to artists, colloquially known on the site as “deviants.” A primary activity of artists on  
22 DeviantArt is sharing digital images of their artwork, colloquially called “deviations.” Today,  
23 DeviantArt bills itself as “the world’s largest art community,” hosting millions of such images.

24 115. DreamUp is a commercial product for DeviantArt and available only to customers  
25 who pay DeviantArt. DeviantArt offers paid subscriptions to its artist members called “Core  
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27 <sup>11</sup> Andy Baio, *Exploring 12 Million of the 2.3 Billion Images Used to Train Stable Diffusion’s Image*  
28 *Generator*, Waxy (Aug. 30, 2022), <https://waxy.org/2022/08/exploring-12-million-of-the-images-used-to-train-stable-diffusions-image-generator/>.

1 Plans.” Custom Core Plans typically range in price from \$3.95 to \$14.95 per month. To use  
2 DreamUp, a member must first subscribe to a Core Plan. A Core Plan subscriber is allowed to use  
3 DreamUp for a certain number of Text Prompts per month. For instance, the \$9.95 “Pro” level  
4 permits 200 DreamUp Text Prompts per month. Core Plan members can purchase additional  
5 Text Prompts by purchasing packages of “points.” DeviantArt charges \$1 for 80 points, with a  
6 minimum purchase of 400 points for \$5.

7 116. Stability copied thousands—and possibly millions—of the Training Images from  
8 DeviantArt created by artists and other DeviantArt subscribers.

9 117. DeviantArt claims that DreamUp “lets you create AI art knowing that creators  
10 and their work are treated fairly.”

11 118. This statement is false and misleading.

12 119. Like Stability, DeviantArt has not attempted to negotiate licenses for any of the  
13 Training Images. Like Stability, DeviantArt is not sharing any of the revenue from the DreamUp  
14 app with the artists or other owners of the Training Images.

15 120. DeviantArt has betrayed its artist community. Rather than standing up for the  
16 rights of its members by rejecting Stable Diffusion and other sources of AI-generated art,  
17 DeviantArt has gone the opposite direction: it has built an app called DreamUp that is based on  
18 Stable Diffusion.

19 121. By releasing DreamUp as a paid product, DeviantArt is a co-conspirator in the  
20 illegal use of copyrighted works.

21 122. In addition, by offering for sale AI-generated work based on Stable Diffusion,  
22 DeviantArt is in fact competing with and displacing the work of the artists and other subscribers  
23 to DeviantArt.

24 123. DeviantArt’s choice to embrace Stable Diffusion by incorporating it into their  
25 website via the DreamUp app violates their own terms of service and privacy policy and  
26 represents unfair competition against their artist customers.

27 124. DeviantArt’s terms of service have long contained a strict prohibition against  
28 using content on the site “for any commercial purpose,” and also says no “commercial activities

1 are permitted on or through the Service without DeviantArt’s written approval.” The terms of  
2 service elsewhere state that “You may not reproduce, distribute, publicly display or perform, or  
3 prepare derivative works based on any of the [DeviantArt-hosted artworks] without the express,  
4 written consent of DeviantArt or the appropriate owner of copyright in such works.”

5 125. DeviantArt was aware or reasonably should have been aware that Stability was  
6 acting in violation of those terms. Thus, having been put on notice that DeviantArt images had  
7 been used for a commercial purpose—namely, training Stable Diffusion—DeviantArt could have  
8 taken legal action against Stable Diffusion for violating those terms.

9 126. DeviantArt did not do so.

10 127. There is no evidence that DeviantArt, despite its professed dedication to its terms  
11 of service, has ever challenged Stability’s violation of the terms of service by training Stable  
12 Diffusion on the work of DeviantArt members.

13 128. The scope of DeviantArt’s betrayal of its artist community by embracing Stable  
14 Diffusion was evident in a group audio session held by DeviantArt management on November 11,  
15 2022, from approximately 1:00–2:30 pm Pacific Time. DeviantArt scheduled the discussion  
16 specifically to allay the well-founded concerns of DeviantArt members that DeviantArt’s embrace  
17 of AI art was a complete repudiation of its longstanding community principles, as well as  
18 economically and legally unfair.

19 129. At one point in the audio session, CEO Moti Levy explicitly took ownership of the  
20 decision to bring Stable Diffusion onto DeviantArt via the DreamUp app: “The reason why we’re  
21 using Stable Diffusion because it’s the only option for us to take an open source [software engine]  
22 and modify it . . . . The other platforms or the other companies do not allow it. . . . [A]nd by the  
23 way, that was my decision. **That’s our decision by me as the CEO. That’s my decision to take**  
24 **Stable Diffusion.**” (Emphasis added.)

25 130. Shortly after the end of this audio session, DeviantArt updated its terms of  
26 service. DeviantArt added a new paragraph about “Data Scraping & Machine Learning  
27 Activities” that explicitly *permits* this kind of usage under certain circumstances, so that Stable  
28 Diffusion and future generative AI services can continue to scrape DeviantArt for images. In so

1 doing, DeviantArt has reneged on its promises. It plainly switched its loyalties from its artist  
2 members to the AI companies, like Stability, infringing Plaintiffs’ and the Class’s intellectual  
3 property rights in the work of those members. According to the Internet Archive, this new data-  
4 scraping provision was added to the DeviantArt terms of service on November 11, 2022,  
5 sometime between 1:41pm and 4:22pm Pacific Time.

6 131. Furthermore, although the new “Data Scraping” provision acknowledges that  
7 certain kinds of data scraping will continue to be an “unauthorized use” of the DeviantArt  
8 website, that “owners of the works are responsible for policing their own works”. In other words,  
9 despite its professed interest in using its terms of service to protect artists, DeviantArt is washing  
10 its hands of the matter. Instead of standing up for artists and using its resources to combat illegal  
11 AI data scraping, it is forcing artists to take matters into their own hands.

12 **G. Midjourney: the 21st-century collage tool (in)famous for its artistic style**

13 132. Midjourney is a generative AI company based in San Francisco, California.

14 133. Midjourney was founded in August 2021 by David Holz, who also serves as CEO.  
15 According to its website, Midjourney is “self-funded” and employs “11 full-time staff”.

16 134. Midjourney’s main product is an online AI-based image generator offered under  
17 the name “Midjourney.” Like DreamUp and DreamStudio, the Midjourney image generator uses  
18 Text Prompts as input and produces digital images as output. Just like DreamUp and  
19 DreamStudio, Midjourney relies on Stable Diffusion as its underlying software engine for  
20 generating images.

21 135. Midjourney released the first version of its service in March 2022, and has  
22 continued to update the product continually since. Version 2 was launched in April 2022. Version  
23 3 was launched in July 2022. On November 10, 2022, the alpha iteration of Version 4 was  
24 launched.

25 136. Midjourney has deployed its service through an internet-chat system called  
26 Discord. Users can visit certain Discord servers where Midjourney is enabled and use the  
27 command “\imagine . . .” in a group chat room to introduce a Text Prompt. Midjourney will take  
28

1 this Text Prompt and return an image within the chat-room window. These chat rooms are shared  
2 by other users, so everyone can see each others' Text Prompts, and the images that result.

3 137. Midjourney allows anyone to sample its service for free by providing a small  
4 number of image outputs in response to Text Prompts. Midjourney offers a number of paid  
5 subscription plans. For instance, its "Standard" plan costs \$30 per month and allows unlimited  
6 Text Prompts and digital image outputs. For an additional \$20 per month, a customer can get  
7 "Private Visibility", allowing users to keep private Text Prompts, images, and digital output.  
8 Midjourney also has a "Corporate" plan for \$600 per year per person that is "required for  
9 employees" of companies with "over \$1Million/year [sic] in gross revenue."

10 138. Though Holz has described Midjourney as a "diverse research lab" that is "not  
11 really financially motivated," Holz intends for Midjourney to make money by enrolling corporate  
12 and other professional customers to generate images. Holz has said that "Millions are using  
13 [Midjourney] ... maybe 30%-50% of our users right now are professionals."

14 139. Midjourney subscribers also receive access to the Midjourney web app, similar to  
15 DreamStudio or DreamUp, which lets users access the Midjourney service through a web  
16 interface.

17 140. In its terms of service, Midjourney calls the images generated by its service  
18 "Assets." The terms of service require that users grant Midjourney an "irrevocable copyright  
19 license . . . [in the] Assets produced by the service at your direction." Midjourney is therefore  
20 necessarily asserting that the images generated by its system are copyrightable, and that the  
21 copyright inheres in the subscriber who makes the image.

22 141. According to Holz, Midjourney distinguishes itself from competitors like  
23 DreamUp and DreamStudio by being "focused toward making everything beautiful and artistic  
24 looking."

25 142. In September 2022, New York resident Kris Kashtanova sought and received U.S.  
26 copyright registration for a comic book titled *Zarya of the Dawn*, featuring images generated by  
27 Midjourney. In December 2022, the U.S. Copyright Office revoked this registration, deeming the  
28 work ineligible for registration because it was generated by AI.

1           143. Also in September 2022, Colorado resident Jason Allen used Midjourney to  
2 generate an image that he submitted to an art competition at the Colorado State Fair, which later  
3 won. In response to artists who felt he had cheated, Allen later told the *New York Times*, “Art is  
4 dead, dude. It’s over. A.I. won. Humans lost.” He also said that while using Midjourney, “I felt  
5 like ... some otherworldly force was involved.”

6           144. But the secret to Midjourney isn’t some “otherworldly force”. Just like DreamUp  
7 and DreamStudio, Midjourney relies on appropriating millions of copyrighted images created by  
8 artists and using these images as Training Images.

9           145. Thus, just like DreamUp and DreamStudio, Midjourney is a collage tool, only  
10 capable of producing images that are remixed and reassembled from the copyrighted work of  
11 others.

12           146. Holz has been sanguine about the copyright-infringement aspect of Midjourney,  
13 saying that “To my knowledge, every single large AI model is basically trained on stuff that’s on  
14 the internet. And that’s okay, right now. **There are no laws specifically about that.**” (Emphasis  
15 added.)

16           147. That statement is false. There are a number of laws that protect and preserve the  
17 rights and interests with respect to their art.

18           148. Holz has been cagey when asked direct questions about the source of  
19 Midjourney’s Training Images. When asked how the dataset of Training Images was built, he said  
20 “It’s just a big scrape of the internet. We use the open data sets that are published and train  
21 across those. And I’d say that’s something that 100% of people do. We weren’t picky.”

22           149. On information and belief, because the LAION image datasets are the only large  
23 “open data sets that are published,” Holz’s comment implies that Midjourney has used the  
24 LAION image datasets for training. In August 2022, Midjourney released a beta version that used  
25 SD.

26           150. When asked whether he sought consent from the creators of the Training Images,  
27 Holz said “No. **There isn’t really a way to get a hundred million images and know where**  
28 **they’re coming from.** . . . There’s no way to find a picture on the internet, and then

1 automatically trace it to an owner and then have any way of doing anything to authenticate it.”

2 (Emphasis added.)

3 151. Holz’s statement is false. LAION and other open datasets are simply lists of URLs  
4 on the public web. Many of those URLs are derived from a small handful of websites that  
5 maintain records of image ownership. Thus, many images could be traced to their owner. Holz  
6 and LAION possess information sufficient to perform such tracing.

7 152. But Holz is correct that the project of licensing artworks ethically and complying  
8 with copyright is not automatic—on the contrary, it is difficult and expensive. This is why Holz  
9 was able to say in August 2022, one year after Midjourney’s founding: “To be honest, we’re  
10 already profitable, and we’re fine.” This stands to reason: Midjourney skipped the expensive part  
11 of complying with copyright and compensating artists, instead helping themselves to millions of  
12 copyrighted works for free.

## 13 IX. CLAIMS FOR RELIEF

### 14 COUNT I

#### 15 DIRECT COPYRIGHT INFRINGEMENT

16 17 U.S.C. §§ 106, *et seq.*

(All Defendants)

17 153. Plaintiffs and the Class hereby repeat and incorporate by reference each preceding  
18 and succeeding paragraph as though fully set forth herein.

19 154. As the owners of the copyright rights associated with the Works and/or Training  
20 Images, Plaintiffs and the Class hold the exclusive rights under 17 U.S.C. § 106.

21 155. Defendants had access to but were not licensed by Plaintiffs or the Class to train  
22 any machine learning, AI, or other computer program, algorithm, or other functional prediction  
23 engine using the Works.

24 156. Defendants had access to but were not licensed by Plaintiffs nor the Class to  
25 incorporate the Works into the products offered by Stability, DeviantArt, Midjourney, or related  
26 software applications.

27

28



1 157. Defendants had access to but were not licensed by Plaintiffs or the Class to  
2 download, store, or distribute copies of the Works for use in training or otherwise creating AI  
3 Image Products.

4 158. Defendants had access to but were not licensed by Plaintiffs nor the Class to create  
5 Derivative Works based upon the Works.

6 159. Defendants had access to but were not licensed by Plaintiffs nor the Class to  
7 distribute the Works.

8 160. Defendants directly infringed Plaintiffs' and the Class's rights because they have:

- 9 a. reproduced one or more of the Works in violation of 17 U.S.C. § 106(1);  
10 b. prepared Derivative Works based upon one or more of the Works in violation of 17  
11 U.S.C. § 106(2);  
12 c. distributed copies of one or more of the Works to the public in violation of 17  
13 U.S.C. § 106(3);  
14 d. performed one or more of the Works publicly in violation of 17 U.S.C. § 106(4);  
15 and/or  
16 e. displayed one or more of the Works publicly in violation of 17 U.S.C. § 106(5).

17 161. Plaintiffs and the Class have been damaged by Defendants' actions.

18 162. Defendants have directly and indirectly profited from their acts of infringement.

19 163. Defendants have infringed the Training Images for commercial purposes.

20 164. Defendants are using copies of the Training Images interconnected with their AI  
21 Image Products to generate digital images and other output that are derived exclusively from the  
22 Training Images, and that add nothing new.

23 165. Defendants' AI Image Products produce digital images and other output that act  
24 as market substitutes for the underlying Training Images, thereby competing with Plaintiffs and  
25 members of the Class.

26 166. Defendants' AI Image Products contain copies of every image in the set of  
27 Training Images and are capable at any time of producing as output a copy of any of the Training  
28 Images.

1 167. Defendants’ AI Image Products, because they generate images derived from the  
2 Training Images, will substantially negatively impact the market for the work of Plaintiffs and the  
3 Class.

4 168. The conduct of Defendants is causing and, unless enjoined and restrained Court,  
5 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot fully be  
6 compensated or measured in money and have no adequate remedy at law.

7 **COUNT II**  
8 **VICARIOUS COPYRIGHT INFRINGEMENT**  
9 **17 U.S.C. §§ 106, *et seq.***  
**(All Defendants)**

10 169. Plaintiffs and the Class hereby repeat and incorporate by reference each preceding  
11 and succeeding paragraph as though fully set forth herein.

12 170. As the owners of the copyright rights, Plaintiffs and the Class hold the exclusive  
13 rights under 17 U.S.C. § 106.

14 171. Individuals have used AI Image Products to create works using the names of  
15 Plaintiffs and the Class in prompts and passed those works off as original works by the artist  
16 whose name was used in the prompt. Such individuals are referred to herein as “Imposters” By  
17 using a particular artist’s name, Imposters can cause the AI Image Product to rely more heavily  
18 on that artist’s prior works to create images that can pass as original works by that artist. These  
19 output images are referred to herein as “Fakes.”

20 172. The ability of AI Image Products to respond to prompts containing specific artists’  
21 names was designed by Defendants with either the knowledge of or reckless disregard for the fact  
22 that this functionality could easily be used to create Fakes.

23 173. Imposters have sold Fakes on ArtStation, Kickstarter, the Unreal Engine  
24 Marketplace, and elsewhere.

25 174. Plaintiffs and the Class have been damaged by Imposters’ actions.

26 175. The Defendant-owner of the AI Image Product used to create each Fake is  
27 vicariously liable for any infringements committed by Imposters.  
28

1 176. Defendants have directly and indirectly profited from acts of infringement by  
2 Imposters.

3 177. The conduct of Defendants and Imposters is causing and, unless and until  
4 enjoined and restrained by this Court, will continue to cause Plaintiffs and the Class great and  
5 irreparable injury that cannot fully be compensated or measured in money and have no adequate  
6 remedy at law.

7 **COUNT III**  
8 **VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT**  
9 **17 U.S.C. §§ 1201-1205**  
**(All Defendants)**

10 178. Plaintiffs and the Class hereby repeat and incorporate by reference each preceding  
11 and succeeding paragraph as though fully set forth herein.

12 179. Plaintiffs and members of the Class own the copyrights to Works used to train AI  
13 Image Products. The AI Image Products were trained on billions of images found on the internet.

14 180. Plaintiffs and members of the Class included the following Copyright  
15 Management Information (as defined in Section 1202(c) of the DMCA) (“CMI”) in the Works:

- 16 a. copyright notices;  
17 b. the title and other information identifying the Works;  
18 c. the name of, and other identifying information about, the creators of the Works;  
19 and  
20 d. the name of, and other identifying information about, the copyright owners of the  
21 Works.

22 181. Defendants did not contact Plaintiffs nor the Class to obtain authority to remove  
23 or alter CMI from the Works within the meaning of the DMCA.

24 182. Defendants knew that they did not contact Plaintiffs nor the Class to obtain  
25 authority to remove or alter CMI from the Works within the meaning of the DMCA.

26 183. As part of the scheme, Defendants did not attempt to contact Plaintiffs to obtain  
27 authority to remove or alter CMI from the Works within the meaning of the DMCA. In fact,  
28 Defendants’ removal of CMI made it difficult or impossible to contact Plaintiffs and the Class to

1 obtain authority to remove or alter CMI from the Works within the meaning of the DMCA.  
2 Rather, Defendants removed or altered CMI from images that are owned by Plaintiffs and the  
3 Class by training Stable Diffusion on those images and designing it to omit any CMI as part of the  
4 output.

5 184. Without the authority of Plaintiffs and the Class, Defendants intentionally  
6 removed or altered CMI from the Works after they were posted on DeviantArt or other websites.

7 185. Defendants had access to but were not licensed by Plaintiffs nor the Class to train  
8 any machine learning, AI, or other pseudo-intelligent computer program, algorithm, or other  
9 functional prediction engine using the Works.

10 186. Defendants had access to but were not licensed by Plaintiffs nor the Class to  
11 incorporate the Works into their AI Image Products.

12 187. Defendants had access to but were not licensed by Plaintiffs nor the Class to create  
13 Derivative Works based upon the Works.

14 188. Defendants had access to but were not licensed by Plaintiffs nor the Class to  
15 distribute the Works as they do through Defendants' AI Image Products.

16 189. Without the authority of Plaintiffs and the Class, Defendants distributed CMI  
17 knowing that the CMI had been removed or altered without authority of the copyright owner or  
18 the law with respect to the Works.

19 190. Defendants distributed copies of the Works knowing and intending that CMI had  
20 been removed or altered without authority of the copyright owner or the law, with respect to the  
21 Works.

22 191. Defendants removed or altered CMI from the Works knowing and intending that it  
23 would induce, enable, facilitate, or conceal infringement of copyright. Both in the dataset used to  
24 source the Training Images as well as the places on the Internet where the Training Images were  
25 found set forth CMI, such as the creator's name. CMI is also incorporated into the Works in the  
26 form of artist's signatures. When any of Defendants' AI Image Products output an image, the  
27 CMI that was previously included with the Works the image is based upon is removed.  
28

1           192. Without the CMI associated with the Works, users of AI Image Products are  
2 induced or enabled to copy the Works and/or make Derivative Works based on them. Without the  
3 CMI, copyright infringement is facilitated or concealed, because Plaintiffs and the Class are  
4 prevented from knowing or learning that the Output is based upon one or more of the Works.

5           193. Defendants removed or altered CMI from Works owned by Plaintiffs and the Class  
6 while possessing reasonable grounds to know that it would induce, enable, facilitate, and/or  
7 conceal infringement of copyright in violation of the DMCA. By omitting and concealing CMI  
8 from Output, Defendants have reasonable grounds to know that innocent infringers are induced  
9 or enabled to copy the Works, because CMI has been removed. Without the CMI, Defendants  
10 have reasonable grounds to know copyright infringement is facilitated or concealed, because  
11 Plaintiffs and the Class have the difficult or impossible task of proving the Works belong to them.

12           194. The profits attributable to Defendants' violation of the DMCA include the  
13 revenue from: any AI Image Products they offer that incorporate Stable Diffusion and other AI  
14 Image Products trained on copyrighted images owned by Plaintiffs and/or the Class. The Works  
15 add nearly all value to these products because the purpose of them is to provide images and the  
16 source of those images are the Works. Without the Works, these products would not be  
17 functional.

18           195. On information and belief, Defendants could have trained their AI Image Products  
19 to include any CMI associated with the Works relied on to create a given Output when providing  
20 that Output.

21           196. Defendants did not request or obtain permission from Plaintiffs and the Class to  
22 use the Works to train their AI Image Products.

23           197. Unless Defendants are enjoined from violating the DMCA, Plaintiffs and the Class  
24 will suffer great and irreparable harm by depriving them of the right to identify and control the  
25 reproduction and/or distribution of their copyrighted works and to pursue copyright-  
26 infringement remedies. Defendants will not be damaged if they are required to comply with the  
27 DMCA. Plaintiffs and the Class members are therefore entitled to an injunction barring  
28 Defendants from violating the DMCA and impounding any device or product that is in the

1 custody or control of Defendants and that the court has reasonable cause to believe was involved  
2 in a violation of the DMCA.

3 198. Plaintiffs and the Class are further entitled to recover from Defendants the actual  
4 or statutory damages Plaintiffs and the Class sustained pursuant to 17 U.S.C. § 1203(c) and for  
5 Plaintiffs' and the Class's costs and attorneys' fees in enforcing the Licenses. Plaintiffs and the  
6 Class are also entitled to recover as restitution from Defendants for any unjust enrichment,  
7 including gains, profits, and advantages that Defendants have obtained as a result of their breach  
8 of the Licenses.

9 199. Defendants conspired together and acted jointly and in concert pursuant to their  
10 scheme to commit the acts that violated the DMCA alleged herein.

11 200. Defendants induced their customers to unknowingly violate the DMCA by  
12 withholding attribution and other information as described herein.

13 **COUNT IV**  
14 **VIOLATION OF THE STATUTORY RIGHT OF PUBLICITY**  
15 *Cal. Civ. Code § 3344*  
16 **(All Defendants)**

17 201. Plaintiffs and the Class hereby repeat and incorporate by reference each preceding  
18 and succeeding paragraph as though fully set forth herein.

19 202. Defendants knowingly used Plaintiffs' names in Defendants' AI Image Products.  
20 At no time did Plaintiffs consent to Defendants' use of their names in this capacity.

21 203. Defendants appropriated Plaintiffs' names to Defendants' advantage, including for  
22 the purposes of advertising, selling, and soliciting purchases through Defendants' AI Image  
23 Products. Defendants' AI Image Products can be directed to prioritize inclusion of specific  
24 artists' Works by invoking the name of the artist or artists. This was a function designed and  
25 promoted by Defendants as a product feature.

26 204. Plaintiffs have invested considerable energy, effort, ingenuity, and creativity into  
27 the development of their distinct artistic identities and have successfully built careers as artists.  
28 Plaintiffs' names are uniquely associated with their art and artistic styles and are recognizable to

1 the public. Plaintiffs have derived value from their names, identities, and distinctive artistic  
2 styles.

3         205. There is a direct connection between Defendants' misappropriation of Plaintiffs'  
4 names and Defendants' commercial purposes, because Defendants used Plaintiffs' names to  
5 advertise art "in the style" of Plaintiffs' work. Defendants used Plaintiffs' names and advertised  
6 their AI's ability to copy or generate work in the artistic style that Plaintiffs popularized in order  
7 to sell Defendants' products and services. Defendants' ability to market art similar to and  
8 associated with Plaintiffs' names also enabled Defendants to establish an advantage over actual  
9 and prospective competitors.

10         206. Defendants' use of Plaintiffs' names was not incidental. Rather, Defendants  
11 specifically and knowingly used Plaintiffs' names because these names were uniquely related to  
12 specific artistic styles, and Defendants generated valuable business from their ability to sell  
13 artworks "in the style" that Plaintiffs popularized. Thus, the use of Plaintiffs' names contributed  
14 value to Defendants' platform and services.

15         207. Defendants used Plaintiffs' names to link and associate the art generated by its AI  
16 with Plaintiffs' specific styles and artistic accomplishments. This link uniquely enhanced the  
17 marketability of Defendants' AI art-generating services to consumers and the public.

18         208. Defendants' emphasized the ability of AI Image Products to create images based  
19 on "in the style" prompts that included specific Class members' names. This functionality was  
20 prominent and used throughout Defendants' apps, website, and social media posts.

21         209. Thus, Defendants' misappropriation of Plaintiffs' names is directly connected  
22 with Defendants' advertising and sale of their products and services.

23         210. Because Defendants advertise the ability of their systems to generate artwork "in  
24 the style" of Plaintiffs' work—and explicitly used Plaintiffs' work to train their AI algorithms—  
25 the art generated by Defendants' AI products is not transformative. Defendants'  
26 misappropriation merely capitalizes on Defendants' theft of Plaintiffs' artistic work and the  
27 associated value of Plaintiffs' names.  
28





1           217. Defendants knowingly used Plaintiffs’ names and identities to further Defendants’  
2 commercial advantage, including for the purposes of advertising, selling, and soliciting purchases  
3 through Defendants’ AI art-generating system.

4           218. Defendants used Plaintiffs’ names and distinct artistic identities to link and  
5 associate the art generated by its AI with Plaintiffs’ specific styles and artistic accomplishments.  
6 This link uniquely enhanced the marketability of Defendants’ AI art-generating services to  
7 consumers and the public.

8           219. Defendants’ use of Plaintiffs’ names and identities was prominent and used  
9 throughout Defendants’ apps, website, and social media posts.

10           220. Thus, Defendants’ misappropriation of Plaintiffs’ names and identities is directly  
11 connected with Defendants’ advertising and sale of their products and services.

12           221. Because Defendants advertise the ability of their systems to generate artwork “in  
13 the style” of Plaintiffs’ work—and explicitly used Plaintiffs’ work to train the algorithms—the art  
14 generated by Defendants’ AI products is not transformative. Defendants’ misappropriation  
15 merely capitalizes on Defendants’ theft of Plaintiffs’ artistic work and the associated value of  
16 Plaintiffs’ names and identities.

17           222. Because of Defendants’ unlawful appropriation of Plaintiffs’ names and identities,  
18 Plaintiffs have suffered injury. The goodwill associated with Plaintiffs’ names and distinct  
19 identities is compromised by a proliferation of AI-generated art associated with Plaintiffs’ names  
20 and identities, but created without Plaintiffs’ consent. The value of Plaintiffs’ name recognition  
21 and Plaintiffs’ distinct artistic styles—and thus the value of their art itself—is diluted in a market  
22 flooded with AI-generated copies built on Plaintiffs’ unique artistic identities. Plaintiffs also suffer  
23 injury through having to compete with knock-off images generated from Plaintiffs’ work and  
24 associated with Plaintiffs’ names.



1 Service and copies of the current DeviantArt Terms of Service and Privacy Policy are attached as  
2 Exhibit 17.

3 231. Plaintiffs and the Class have performed each of the conditions, covenants, and  
4 obligations imposed on them by the terms of DeviantArt’s Policies.

5 232. DeviantArt has substantially and materially breached DeviantArt’s Policies in the  
6 following ways:

- 7 a. Sharing Plaintiffs’ and the Class’s personal data with unauthorized third parties in  
8 violation of the DeviantArt Privacy Statement;
- 9 b. Selling and distributing Plaintiffs’ and the Class’s personal data in contravention  
10 of the DeviantArt’s Policies;
- 11 c. Use of Plaintiffs’ and the Class’s personal data after the DeviantArt Privacy  
12 Statement explicitly claims it will be deleted;
- 13 d. Use and distribution of Plaintiffs’ and the Class’s personal data outside the  
14 limitations set forth in the DeviantArt Privacy Statement.

15 233. Plaintiffs and the Class have suffered monetary damages as a result of  
16 DeviantArt’s conduct.

17 234. DeviantArt’s conduct is causing and, unless enjoined and restrained by this Court,  
18 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot fully be  
19 compensated or measured in money.

20 235. As a direct and proximate result of these material breaches by DeviantArt,  
21 Plaintiffs and the Class are entitled to an injunction requiring DeviantArt to comply with all the  
22 terms of the DeviantArt Policies.

23 236. Plaintiffs and the Class are further entitled to recover from DeviantArt the  
24 damages Plaintiffs and the Class sustained—including consequential damages—for Plaintiffs’ and  
25 the Class’s costs in enforcing DeviantArt’s Policies. Plaintiffs and the Class are also entitled to  
26 recover as restitution from DeviantArt for any unjust enrichment, including gains, profits, and  
27 advantages that it has obtained as a result of its breaches of the DeviantArt Policies.  
28



- e. An award of statutory damages pursuant to 17 U.S.C. § 1203(b)(3) and 17 U.S.C. § 1203(c)(3), or, in the alternative, an award of actual damages and any additional profits pursuant to 17 U.S.C. § 1203(c)(2) (including tripling damages pursuant to 17 U.S.C. § 1203(c)(4) if applicable);
- f. An award of damages, including punitive damages, for harms resulting from Defendants acts of unfair competition;
- g. An award of damages sufficient to compensate Plaintiffs and the Class for harms resulting from Defendants unjust enrichment; and
- h. An award of damages, including punitive damages, for harms resulting from Defendants violations of Plaintiffs' and the Class's rights of publicity.

241. Injunctive relief sufficient to alleviate and stop Defendants' unlawful conduct alleged herein.

242. Plaintiffs and the Class are entitled to prejudgment and post-judgment interest on the damages awarded them, and that such interest be awarded at the highest legal rate from and after the date this class action complaint is first served on Defendants;

243. Defendants are to be jointly and severally responsible financially for the costs and expenses of a Court approved notice program through post and media designed to give immediate notification to the Class.

244. Plaintiffs and the Class receive such other or further relief as may be just and proper.

## XI. JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all the claims asserted in this Complaint so triable.

1 Dated: January 13, 2023

By:           /s/ Joseph R. Saveri            
Joseph R. Saveri

2  
3  
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Cadio Zirpoli (State Bar No. 179108)  
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23  
24 *Counsel for Individual and Representative*  
25 *Plaintiffs and the Proposed Class*

# **EXHIBIT 1**

Type of Work: Text

Registration Number / Date:  
TX0008825086 / 2019-11-06

Application Title: Adulthood is a Myth 2020 Deluxe Day-to-Day Calendar.

Title: Adulthood is a Myth 2020 Deluxe Day-to-Day Calendar.

Description: Calendar.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2019

Date of Publication:  
2019-08-13

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
compilation of previously published art with  
accompanying text.

Pre-existing Material:  
previously published art with accompanying text.

Basis of Claim: compilation of previously published art with accompanying  
text.

ISBN: 9781449498467

Names: Andersen, Sarah

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# **EXHIBIT 2**

Type of Work: Text

Registration Number / Date:  
TX0008826881 / 2019-11-06

Application Title: Adulthood is a Myth 2020 Wall Calendar.

Title: Adulthood is a Myth 2020 Wall Calendar.

Description: Calendar.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2019

Date of Publication:  
2019-06-04

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
compilation of previously published art with  
accompanying text.

Pre-existing Material:  
previously published art with accompanying text.

Basis of Claim: compilation of previously published art with accompanying  
text.

ISBN: 9781449498474

Names: Andersen, Sarah

=====

# **EXHIBIT 3**

Type of Work: Text

Registration Number / Date:  
TX0008614103 / 2018-02-06

Application Title: Adulthood Is A Myth: A "Sarah's Scribbles" 2018 Wall  
Calendar.

Title: Adulthood Is A Myth: A "Sarah's Scribbles" 2018 Wall  
Calendar.

Description: Print Material.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2017

Date of Publication:  
2017-06-27

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen, employer for hire; Citizenship: United  
States. Authorship: artwork, compilation of previously  
published art with corresponding text; some new artwork.

Pre-existing Material:  
text, artwork.

Basis of Claim: artwork, compilation of previously published art with  
corresponding text; some new artwork.

ISBN: 9781449483449

Names: Andersen, Sarah

=====

# **EXHIBIT 4**

Type of Work: Text

Registration Number / Date:  
TX0008660257 / 2018-10-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Daily  
Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Daily  
Calendar.

Description: Calendar.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2018

Date of Publication:  
2018-07-31

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen, employer for hire; Citizenship: United  
States. Authorship: compilation of previously published  
art with corresponding text.

Pre-existing Material:  
previously published art with corresponding text.

Basis of Claim: compilation of previously published art with corresponding  
text.

ISBN: 9781449494490

Names: Andersen, Sarah

=====

# **EXHIBIT 5**

Type of Work: Text

Registration Number / Date:  
TX0008706556 / 2018-10-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Wall  
Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Wall  
Calendar.

Description: Print material.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2018

Date of Publication:  
2018-06-05

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork, compilation of previously published art  
with corresponding text; some new art.

Pre-existing Material:  
previously published art with corresponding text.

Basis of Claim: artwork, compilation of previously published art with  
corresponding text; some new art.

Copyright Note: Basis for Registration: Unit of publication

ISBN: 9781449494070

Names: Andersen, Sarah

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# **EXHIBIT 6**

Type of Work: Text

Registration Number / Date:  
TX0009117084 / 2021-01-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2021 Daily  
Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2021 Daily  
Calendar.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2020

Date of Publication:  
2020-09-01

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
compilation of previously published art with  
accompanying text.

Pre-existing Material:  
previously published art with accompanying text.

Basis of Claim: compilation of previously published art with accompanying  
text.

ISBN: 9781524857684

Names: Andersen, Sarah

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# **EXHIBIT 7**

Type of Work: Text

Registration Number / Date:  
TX0009082399 / 2021-01-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2021 Wall  
Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2021 Wall  
Calendar.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2020

Date of Publication:  
2020-06-30

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
artwork, compilation of previously published art with  
accompanying text; some new art.

Pre-existing Material:  
previously published art with accompanying text.

Basis of Claim: artwork, compilation of previously published art with  
accompanying text; some new art.

ISBN: 9781524857677

Names: Andersen, Sarah

=====

# **EXHIBIT 8**

Type of Work: Text

Registration Number / Date:  
TX0008207926 / 2015-12-10

Application Title: Adulthood Is a Myth: A Sarah's Scribbles Collection.

Title: Adulthood Is a Myth: A Sarah's Scribbles Collection.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2015

Date of Publication:  
2015-12-08

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork.

Pre-existing Material:  
Some cartoons previously appeared on author's website.

Basis of Claim: text, artwork.

ISBN: 9781449474195

Names: Andersen, Sarah

=====

# **EXHIBIT 9**

Type of Work: Text

Registration Number / Date:  
TX0008493928 / 2017-01-09

Application Title: Big Mushy Happy Lump: A Sarah's Scribbles Collection .

Title: Big Mushy Happy Lump: A Sarah's Scribbles Collection .

Description: Book, 125 p.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2016

Date of Publication:  
2016-12-12

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork.

Copyright Note: Basis for Registration: Collective work

ISBN: 9781449479619

Names: Andersen, Sarah

=====



# **EXHIBIT 10**

Type of Work: Text

Registration Number / Date:  
TX0009043380 / 2020-12-16

Application Title: Fangs.

Title: Fangs.

Description: Book, 100 p.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2020

Date of Publication:  
2020-10-06

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork.

ISBN: 9781524860677

Names: Andersen, Sarah

=====

# **EXHIBIT 11**

Type of Work: Text

Registration Number / Date:  
TX0008615735 / 2018-02-06

Application Title: Get It Together! with Sarah Scribbles 2017-2018 16-Month  
Weekly/Monthly Planner.

Title: Get It Together! with Sarah Scribbles 2017-2018 16-Month  
Weekly/Monthly Planner.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2017

Date of Publication:  
2017-05-30

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen, employer for hire; Citizenship: United  
States. Authorship: artwork, compilation of previously  
published art with corresponding text; some new artwork.

Pre-existing Material:  
text, artwork.

Basis of Claim: artwork, compilation of previously published art with  
corresponding text; some new artwork.

ISBN: 9781449482046

Names: Andersen, Sarah

=====

# **EXHIBIT 12**

Type of Work: Text

Registration Number / Date:  
TX0008681086 / 2018-10-22

Application Title: Get It Together! with Sarah Scribbles 2018-2019 16-Month  
Monthly/Weekly Planner.

Title: Get It Together! with Sarah Scribbles 2018-2019 16-Month  
Monthly/Weekly Planner.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2018

Date of Publication:  
2018-06-05

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen, employer for hire; Citizenship: United  
States. Authorship: artwork, compilation of previously  
published art with corresponding text; some new artwork.

Pre-existing Material:  
text, artwork.

Basis of Claim: artwork, compilation of previously published art with  
corresponding text; some new artwork.

ISBN: 9781449494063

Names: Andersen, Sarah

=====

# **EXHIBIT 13**

Type of Work: Text

Registration Number / Date:  
TX0008826626 / 2019-11-06

Application Title: Get It Together! with Sarah's Scribbles 16-Month 2019-2020  
Weekly Monthly Planner.

Title: Get It Together! with Sarah's Scribbles 16-Month 2019-2020  
Weekly Monthly Planner.

Description: Calendar.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2019

Date of Publication:  
2019-06-04

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
compilation of previously published art with  
accompanying text.

Pre-existing Material:  
previously published art with accompanying text.

Basis of Claim: compilation of previously published art with accompanying  
text.

ISBN: 9781449498481

Names: Andersen, Sarah

=====



# **EXHIBIT 14**

Type of Work: Text

Registration Number / Date:  
TX0009082448 / 2021-01-22

Application Title: Get It Together with Sarah's Scribbles16-Month 2020-2021  
Weekly/Monthly Planner Calendar.

Title: Get It Together with Sarah's Scribbles16-Month 2020-2021  
Weekly/Monthly Planner Calendar.

Description: Book.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2020

Date of Publication:  
2020-06-30

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
artwork, compilation of previously published art with  
accompanying text; some new artwork.

Pre-existing Material:  
text, artwork, previously published art with accompanying  
text.

Basis of Claim: artwork, compilation of previously published art with  
accompanying text; some new artwork.

ISBN: 9781524857660

Names: Andersen, Sarah

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# **EXHIBIT 15**

Type of Work: Text

Registration Number / Date:  
TX0008564573 / 2018-02-12

Application Title: Herding Cats: A Sarah's Scribbles Collection.

Title: Herding Cats: A Sarah's Scribbles Collection.

Description: Book, 108 p.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2018

Date of Publication:  
2018-01-16

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork, Curated and themed collection of cartoons  
previously published online.

Pre-existing Material:  
Some cartoons previously published online.

Basis of Claim: text, artwork, Curated and themed collection of cartoons  
previously published online.

ISBN: 9781449489786

Names: Andersen, Sarah

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# **EXHIBIT 16**

Type of Work: Text

Registration Number / Date:  
TX0009153980 / 2022-02-16

Application Title: Oddball: A Sarah's Scribbles Collection.

Title: Oddball: A Sarah's Scribbles Collection.

Description: Book, 105 p.

Copyright Claimant:  
Sarah Andersen.

Date of Creation: 2021

Date of Publication:  
2021-12-07

Nation of First Publication:  
United States

Authorship on Application:  
Sarah Andersen; Citizenship: United States. Authorship:  
text, artwork.

Copyright Note: Basis for Registration: Collective work

ISBN: 9781449489793

Names: Andersen, Sarah

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# **EXHIBIT 17**

## Deviant Art Terms of Service (as of November 11, 2022)

### Introduction

Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of services provided to you by DeviantArt, including information, text, images, graphics, data or other materials ("Content") and products and services provided through [www.DeviantArt.com](http://www.DeviantArt.com), Sta.sh, DeviantArt Protect, and other DeviantArt mobile applications as well as all elements, software, programs and code forming or incorporated in to [www.DeviantArt.com](http://www.DeviantArt.com) (the "Service"). This Service is operated by DeviantArt, Inc. ("DeviantArt"). DeviantArt is also referred to in these Terms as "we", "our", and "us".

By using our Service, you agree to be bound by Section I of these Terms ("General Terms"), which contains provisions applicable to all users of our Service, including visitors to the DeviantArt website (the "Site"). If you choose to register as a member of our Service or purchase products from the DeviantArt Shop, you will be asked to check a box indicating that you have read, and agree to be bound by, the additional terms set forth in Section II of these Terms ("Additional Terms").

### Section I: General Terms

#### 1. Availability

This Service is provided by DeviantArt on an "AS IS" and "AS AVAILABLE" basis and DeviantArt reserves the right to modify, suspend or discontinue the Service, in its sole discretion, at any time and without notice. **You agree that DeviantArt is and will not be liable to you for any modification, suspension or discontinuance of the Service.**

#### 2. Privacy

DeviantArt has a firm commitment to safeguarding your privacy. Please review DeviantArt's [Privacy Policy](#). The terms of DeviantArt's privacy policy are incorporated into, and form a part of, these Terms.

#### 3. Trademarks

All brand, product and service names used in this Service which identify DeviantArt or third parties and their products and services are proprietary marks of DeviantArt and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of DeviantArt or any third party with respect to any such image, logo or name.

#### 4. Copyright

DeviantArt is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to DeviantArt are either the copyright owners of the component parts of that work or are posting the work under license from a copyright owner or his or her agent or otherwise as permitted by law. You may not reproduce,



distribute, publicly display or perform, or prepare derivative works based on any of the Content including any such works without the express, written consent of DeviantArt or the appropriate owner of copyright in such works. DeviantArt does not claim ownership rights in your works or other materials posted by you to DeviantArt (Your Content). You agree not to distribute any part of the Service other than Your Content in any medium other than as permitted in these Terms of Service or by use of functions on the Service provided by us. You agree not to alter or modify any part of the Service unless expressly permitted to do so by us or by use of functions on the Service provided by us.

## 5. Reporting Copyright Violations

DeviantArt respects the intellectual property rights of others and expects users of the Service to do the same. At DeviantArt's discretion and in appropriate circumstances, DeviantArt may remove Your Content submitted to the Site, terminate the accounts of users or prevent access to the Site by users who infringe the intellectual property rights of others. If you believe the copyright in your work or in the work for which you act as an agent has been infringed through this Service, please contact DeviantArt's agent for notice of claims of copyright infringement, Daniel Sowers who can be reached through [violations@deviantart.com](mailto:violations@deviantart.com). You must provide our agent with substantially the following information, which DeviantArt may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- d. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.
- f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please see DeviantArt's [Copyright Policy](#) for further information and details.

## 6. External Links

DeviantArt may provide links to third-party websites or resources. You acknowledge and agree that DeviantArt is not responsible or liable for: the availability or accuracy of such websites or resources; or the Content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by DeviantArt of such websites or resources or the Content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

## **7. Third Party Software**

As a convenience, we may make third-party software available through the Service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider and the agreement to use such software will be solely between you and the third party provider. By downloading third party software, you acknowledge and agree that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall DeviantArt be liable for claims or damages of any nature, whether direct or indirect, arising from or related to any third-party software downloaded through the Service.

MPEG License:

As part of the DeviantArt platform, DeviantArt may provide different video services, available for its Core users.

The use of the video services for your account, may require that you receive a license to use certain patents from MPEG-LA (the "License"). It is your own exclusive responsibility to decide whether your activity requires a License and to obtain it. Information about the License can be obtained from MPEG LA L.L.C. [here](#).

Without derogating from any subclause in these Terms of Use, and without any limitation of liability, you shall fully indemnify, defend and hold DeviantArt its officers, directors, shareholders, employees, affiliates and agents, harmless from any and all damages and costs, obligations, losses, liabilities debt and expenses (including attorneys' fees), as accrued, that arise out of or are related to infringement and/or misuse of the patent pool under the MPEG-LA consortium.

If your needs require a more inclusive plan than those regularly offered by us, please contact our support team at: [help@deviantart.com](mailto:help@deviantart.com)

## **8. Conduct**

You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or provide any information to DeviantArt that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. DeviantArt does not endorse any content placed on the Service by third parties or any opinions or advice contained in such content. You agree to defend,

indemnify, and hold harmless DeviantArt, its officers, directors, employees and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and expert fees, arising out of or in any way connected with your access to or use of the Services, or your violation of these Terms.

#### **9. Disclaimer of Warranty and Limitation of Liability**

DEVIANTART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS, PROVIDED THROUGH THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. DEVIANTART DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW. DEVIANTART MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT DEVIANTART IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, DEVIANTART SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF DEVIANTART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL DEVIANTART'S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO DEVIANTART PURSUANT TO THIS AGREEMENT.

#### **10. Amendment of the Terms**

We reserve the right to amend these Terms from time to time in our sole discretion. If you have registered as a member, we may notify you of any material changes to these Terms (and the effective date of such changes) by sending a notification on the Site. In addition, we will post the revised terms on the Site. If you continue to use the Service after the effective date of the revised Terms, you will be deemed to have accepted those changes. If you do not agree to the revised Terms, your sole remedy shall be to discontinue using the Service.

#### **11. General**

These Terms constitute the entire agreement between DeviantArt and you with respect to your use of the Service. DeviantArt's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable. DeviantArt shall have the right to assign its rights and/or delegate its obligations under these Terms, in whole or in part, to any person or business entity. You may not assign your rights or delegate your obligations under these Terms without the prior written consent of DeviantArt. These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the state and federal courts of the State of California.

## **12. Comments**

If you have any comments or questions about the Service please contact us by email at [help@deviantart.com](mailto:help@deviantart.com).

## **Section II: Additional Terms**

### **13. Registration**

To register as a member of the Service or purchase products, you must be 13 years or lawfully permitted to enter into and form contracts under applicable law. In no event may minors submit Content to the Service. You agree that the information that you provide to us upon registration, at the time of purchase, and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

### **14. Password**

When you register as a member you will be asked to provide a password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you shall be solely responsible for any activities or actions under your password, whether or not you have authorized such activities or actions. You shall immediately notify DeviantArt of any unauthorized use of your password.

### **15. Submitting Content**

*Chat Rooms and Forums* - As a registered member of the Service, you will be granted the privilege of participating in chat rooms and forums on the DeviantArt website as part of the Service, which means you may post Your Content in the form of text for display in these areas of the DeviantArt website, subject to your compliance with the Terms.

*Artist Materials* - As a registered member of the Service, you will also be granted the privilege of submitting certain types of Your Content, known as "Artist Materials," for display on your user

page. Prior to submitting Artist Materials, you must accept the additional terms and conditions of the [Submission Policy](#), which is incorporated into, and forms a part of, the Terms.

## 16. Copyright in Your Content

DeviantArt does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to DeviantArt a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content. **Please note that when you upload Content, third parties will be able to copy, distribute and display your Content using readily available tools on their computers for this purpose although other than by linking to your Content on DeviantArt any use by a third party of your Content could violate paragraph 4 of these Terms and Conditions unless the third party receives permission from you by license.**

## 17. Monitoring Content

DeviantArt has no ability to control the Content you may upload, post or otherwise transmit using the Service and does not have any obligation to monitor such Content for any purpose. You acknowledge that you are solely responsible for all Content and material you upload, post or otherwise transmit using the Service.

## 18. Storage Policy

At this time, DeviantArt provides free online storage of Your Content to registered members of the Service. However, you acknowledge and agree that DeviantArt may, at its option, establish limits concerning your use of the Service, including without limitation the maximum number of days that Your Content will be retained by the Service, the maximum size of any Content files that may be stored on the Service, the maximum disk space that will be allotted to you for the storage of Content on DeviantArt's servers. Furthermore, you acknowledge that DeviantArt reserves the right to terminate or suspend accounts that are inactive, in DeviantArt's sole discretion, for an extended period of time (thus deleting or suspending access to your Content). Without limiting the generality of Section 9, DeviantArt shall have no responsibility or liability for the deletion or failure to store any Content maintained on the Service and you are solely responsible for creating back-ups of Your Content. You further acknowledge that DeviantArt reserves the right to modify its storage policies from time to time, with or without notice to you.

## 19. Conduct

You agree to be subject to and to conduct yourself in accordance with the DeviantArt [Etiquette Policy](#). You are responsible for all of Your Content you upload, download, and otherwise copy, distribute and display using the Service. You must have the legal right to copy, distribute and display all parts of any content that you upload, download and otherwise copy, distribute and display. Content provided to you by others, or made available through websites, magazines, books and other sources, are protected by copyright and should not be uploaded, downloaded, or

otherwise copied, distributed or displayed without the consent of the copyright owner or as otherwise permitted by law. Please refer to DeviantArt's [Copyright Policy](#) for further details.

You agree not to use the Service:

- a. for any unlawful purposes;
- b. to upload, post, or otherwise transmit any public and shared content (content which you offer for free) that is pornographic, obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- c. to upload, post, or otherwise transmit any subscription or paid content featuring pornographic material of real people, which offers sexual services, which glorifies sexual violence, fringe sexual fetish creations, fetish creations that are hard to distinguish from non-consensual sex, or that is obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- d. to harm minors in any way, including, but not limited to, uploading, posting, or otherwise transmitting content that violates child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct, or submitting any personally identifiable information about any child under the age of 13;
- e. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- f. to upload, post, or otherwise transmit any material which is likely to cause harm to DeviantArt or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;
- g. for any commercial purpose, except as expressly permitted under these Terms;
- h. to sell access to the Service on any other website or to use the Service on another website for the primary purpose of gaining advertising or subscription revenue other than a personal blog or social network where the primary purpose is to display content from DeviantArt by hyperlink and not to compete with DeviantArt.

### **19A. Commercial Activities**

Commercial activities mean the offering, solicitation or sale of goods or services by anyone other than DeviantArt. Commercial activities with respect to the arts are permitted for registered members acting as individuals, for small corporations or partnerships engaged primarily in art-related activities in which one or more of the principals is a registered member or for those

seeking to retain the services or works of a registered member. Commercial activities in the form of paid advertising on the Service are subject to the terms and conditions relating to the purchase of such advertising. No other commercial activities are permitted on or through the Service without DeviantArt's written approval. Any interactions with members of the Service with respect to commercial activities including payment for and delivery of goods and/or services and any terms related to the commercial activities including conditions, warranties or representations and so forth are solely between you and the other member. Paragraph 9, above, of these Terms of Service specifically applies with respect to commercial activities.

## **19B. Groups**

As a registered member of the Service, you will also be able to participate as an administrator or member of a "Group" which is a set of user pages and applications formed for the purpose of collecting content, discussions and organizing members of the site with common interests. Further information about Groups can be found in our Etiquette Policy.

1. You agree to participate in a Group on the basis of its own rules consistent with these Terms of Service, the conduct set out in paragraph 19, above, and such other rules created by us for Groups from time to time including with respect to the use of Groups for commercial activities.
2. As an administrator or participant in a Group you acquire no ownership rights over the Group, the Group applications provided by us or over the right to conduct the activities of the Group.
3. Any Content or Artists Materials submitted to a Group remain, as between the Group and the user submitting such content, the property of the person who submitted the content.
4. Groups are managed by registered members of the Service and not by us. We are not responsible for the conduct of Group participants or administrators and will not interfere with the management or society of any specific Group or the rules it establishes for itself as long as they are consistent with these Terms of Service and our policies.
5. Groups may not be used to collect personal data about participants in Groups without the participant's express permission.
6. The Group application permits us to take appropriate action should intervention become necessary as a result of a violation of the Terms of Service or of any other of our policies. We can remove a Group and the Group's privileges at any time at our discretion.
7. The use in a Group name of trademarks or distinctive trade names of properties, goods or services is subject to objections from the owner of the marks and names. DeviantArt will respond to such objections by requiring an appropriate change in the name of the Group. The use of trademarks and trade names in Group names otherwise must be descriptive of Group activity or purpose. To avoid confusion and animosity, Groups wishing to name

themselves after trademarked properties must include a further description in its name of the type of Group it expects to be such as "Master Photoshop Tutorials" instead of simply "Photoshop."

## **20. Suspension and Termination of Access and Membership**

You agree that DeviantArt may at any time, and without notice, suspend or terminate any part of the Service, or refuse to fulfill any order, or any part of any order or terminate your membership and delete any Content stored on the DeviantArt Site, in DeviantArt's sole discretion, if you fail to comply with the Terms or applicable law.

## **21. Product Purchases from the DeviantArt Shop**

DeviantArt users may make certain products available for purchase through the [DeviantArt Shop](#). For example, you may have the opportunity to purchase or commission "Digital Artwork" that a registered member has listed for sale through the Shop.

All payments are to be made in US dollars and prices are subject to change at any time.

Any purchase made via the Shop is between the user and the purchaser only. DeviantArt only provides the platform in which such purchase is available, but in any event will not be responsible for the purchased item, its quality, terms, price etc.

Before making a purchase, we advise you to review the listing and specifications to make sure they fit your needs and are acceptable by you.

## **22. Cryptocurrency**

DeviantArt enables cryptocurrency payments and earnings withdrawals via a Third Party Software blockchain/cryptocurrency payment processor ("**Cryptocurrency Payment Services**").

You acknowledge and agree that regardless of the manner in which such Cryptocurrency Payment Services may be offered to you, DeviantArt merely acts as an intermediary platform between you and the applicable Cryptocurrency Payment Services provider, and shall not be in any way responsible or liable with respect to any services provided by such Cryptocurrency Payment Services provider.

Any and all use of Cryptocurrency Payment Services shall be done solely at your own risk and responsibility, and may be subject to certain legal and financial terms which govern Cryptocurrency Payment Services, which you are encouraged to review and understand before using such services. Additionally, the use of Cryptocurrency Payment Services is subject to the applicable terms of use of the Cryptocurrency Payment Services provider, including but not limited to the lists of prohibited items and businesses not supported by such provider. In the case of BitPay, your use of Cryptocurrency Payment Services is subject to BitPay's [terms of use](#). Each Cryptocurrency Payment Services provider may support different cryptocurrencies, however



DeviantArt has full discretion regarding which cryptocurrencies will be available through the Cryptocurrency Payment Services on the DeviantArt platform. Please avoid paying in unsupported cryptocurrencies, as doing so may result in loss of funds.

While we hope to avoid such instances, DeviantArt may, at any time and at its sole discretion, suspend, disable access to or remove Cryptocurrency Payment Services without any liability to you or to any third party.

You assume the volatility risk of the cryptocurrencies in which cryptocurrency transactions occur.

Any refunds of cryptocurrency transactions are subject to DeviantArt's sole discretion.

### **Services Fees**

Your use of Cryptocurrency Payment Services is subject to certain fees and exchange rates ("**Service Fees**"), which may be modified from time to time. For more information, see [here](#). The Service Fees shall be deducted from your DeviantArt Earnings Account. All Service Fees are non-refundable.

Certain transactions (e.g., underpayment and overpayment of cryptocurrency transactions) may be subject to additional fees by the Cryptocurrency Payment Services provider. In the case of BitPay, please refer to the following [article](#) for additional information.

### **23. DeviantArt Protect**

DeviantArt enables you to use its DeviantArt Protect service (for qualifying images stored in Sta.sh or qualifying images submitted as deviations), in order to detect potential infringements of your images that you submitted or uploaded in the ways specified below. By using DeviantArt Protect, you agree and acknowledge the following:

- a. The DeviantArt Protect service is limited to detecting potentially similar or near-identical images to your images identified on DeviantArt or various blockchains (for more details on the specific platforms scanned, see our [updated list](#)). There might be other similar images that we will not detect, and therefore, we encourage you to keep track of existing works on different platforms.
- b. To use DeviantArt Protect, you will need to open an account with DeviantArt, and agree to these terms and to the DeviantArt [general privacy policy](#).
- c. For images eligible for the DeviantArt Protect service, when a potential infringement is identified, we will send you a notice via email or via platform notification, of any potential similar image found. Upon receiving such a notice, you may choose if you wish to take action regarding such images or not (for example, by filing a DMCA takedown notice).
- d. We will not cause or initiate any legal procedures with respect to the similar images. If you believe that one of our results is infringing upon your image, we encourage you to

enter the relevant platform, and submit a takedown notice independently. DeviantArt will not be responsible, in any event, for such procedures. All results are indicating some similarity, but in no event will we determine or suggest if such work is indeed infringing or not.

- e. DeviantArt Protect for images uploaded to Sta.sh:  
You can upload up to 10 images and up to 2GB for free coverage by the DeviantArt Protect service. To receive coverage of the DeviantArt Protect service for any additional images, you will need to upgrade for a relevant Core Membership. Find out more about our membership, pricing, storage and plans [here](#).
- f. DeviantArt Protect for images published on DeviantArt as deviations:  
For Core Members, we provide the DeviantArt Protect service for all images published as deviations. For non-Core users, we offer the DeviantArt Protect service for 90 days as of the day when the image was submitted as a deviation.

## DeviantArt Terms of Service (as of January 13, 2023)

### Introduction

Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of services provided to you by DeviantArt, including information, text, images, graphics, data or other materials ("Content") and products and services provided through [www.DeviantArt.com](http://www.DeviantArt.com), Sta.sh, DeviantArt Protect, and other DeviantArt mobile applications as well as all elements, software, programs and code forming or incorporated in to [www.DeviantArt.com](http://www.DeviantArt.com) (the "Service"). This Service is operated by DeviantArt, Inc. ("DeviantArt"). DeviantArt is also referred to in these Terms as "we", "our", and "us".

By using our Service, you agree to be bound by Section I of these Terms ("General Terms"), which contains provisions applicable to all users of our Service, including visitors to the DeviantArt website (the "Site"). If you choose to register as a member of our Service or purchase products from the DeviantArt Shop, you will be asked to check a box indicating that you have read, and agree to be bound by, the additional terms set forth in Section II of these Terms ("Additional Terms").

### Section I: General Terms

#### 1. Availability

This Service is provided by DeviantArt on an "AS IS" and "AS AVAILABLE" basis and DeviantArt reserves the right to modify, suspend or discontinue the Service, in its sole discretion, at any time and without notice. **You agree that DeviantArt is and will not be liable to you for any modification, suspension or discontinuance of the Service.**

#### 2. Privacy

DeviantArt has a firm commitment to safeguarding your privacy. Please review DeviantArt's [Privacy Policy](#). The terms of DeviantArt's privacy policy are incorporated into, and form a part of, these Terms.

#### 3. Trademarks

All brand, product and service names used in this Service which identify DeviantArt or third parties and their products and services are proprietary marks of DeviantArt and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of DeviantArt or any third party with respect to any such image, logo or name.

#### 4. Copyright

DeviantArt is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to DeviantArt are either the copyright owners of the component parts of that work or are posting the work under license from a copyright owner or his or her agent or otherwise as permitted by law. You may not reproduce,

distribute, publicly display or perform, or prepare derivative works based on any of the Content including any such works without the express, written consent of DeviantArt or the appropriate owner of copyright in such works. DeviantArt does not claim ownership rights in your works or other materials posted by you to DeviantArt (Your Content). You agree not to distribute any part of the Service other than Your Content in any medium other than as permitted in these Terms of Service or by use of functions on the Service provided by us. You agree not to alter or modify any part of the Service unless expressly permitted to do so by us or by use of functions on the Service provided by us.

## 5. Reporting Copyright Violations

DeviantArt respects the intellectual property rights of others and expects users of the Service to do the same. At DeviantArt's discretion and in appropriate circumstances, DeviantArt may remove Your Content submitted to the Site, terminate the accounts of users or prevent access to the Site by users who infringe the intellectual property rights of others. If you believe the copyright in your work or in the work for which you act as an agent has been infringed through this Service, please contact DeviantArt's agent for notice of claims of copyright infringement, Daniel Sowers who can be reached through [violations@deviantart.com](mailto:violations@deviantart.com). You must provide our agent with substantially the following information, which DeviantArt may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- d. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.
- f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please see DeviantArt's [Copyright Policy](#) for further information and details.

## 6. External Links

DeviantArt may provide links to third-party websites or resources. You acknowledge and agree that DeviantArt is not responsible or liable for: the availability or accuracy of such websites or resources; or the Content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by DeviantArt of such websites or resources or the Content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

## **7. Third Party Software**

As a convenience, we may make third-party software available through the Service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider and the agreement to use such software will be solely between you and the third party provider. By downloading third party software, you acknowledge and agree that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall DeviantArt be liable for claims or damages of any nature, whether direct or indirect, arising from or related to any third-party software downloaded through the Service.

MPEG License:

As part of the DeviantArt platform, DeviantArt may provide different video services, available for its Core users.

The use of the video services for your account, may require that you receive a license to use certain patents from MPEG-LA (the "License"). It is your own exclusive responsibility to decide whether your activity requires a License and to obtain it. Information about the License can be obtained from MPEG LA L.L.C. [here](#).

Without derogating from any subclause in these Terms of Use, and without any limitation of liability, you shall fully indemnify, defend and hold DeviantArt its officers, directors, shareholders, employees, affiliates and agents, harmless from any and all damages and costs, obligations, losses, liabilities debt and expenses (including attorneys' fees), as accrued, that arise out of or are related to infringement and/or misuse of the patent pool under the MPEG-LA consortium.

If your needs require a more inclusive plan than those regularly offered by us, please contact our support team at: [help@deviantart.com](mailto:help@deviantart.com)

## **8. Conduct**

You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or provide any information to DeviantArt that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. DeviantArt does not endorse any content placed on the Service by third parties or any opinions or advice contained in such content. You agree to defend,

indemnify, and hold harmless DeviantArt, its officers, directors, employees and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and expert fees, arising out of or in any way connected with your access to or use of the Services, or your violation of these Terms.

#### **9. Disclaimer of Warranty and Limitation of Liability**

DEVIANTART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS, PROVIDED THROUGH THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. DEVIANTART DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW. DEVIANTART MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT DEVIANTART IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, DEVIANTART SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF DEVIANTART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL DEVIANTART'S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO DEVIANTART PURSUANT TO THIS AGREEMENT.

#### **10. Amendment of the Terms**

We reserve the right to amend these Terms from time to time in our sole discretion. If you have registered as a member, we may notify you of any material changes to these Terms (and the effective date of such changes) by sending a notification on the Site. In addition, we will post the revised terms on the Site. If you continue to use the Service after the effective date of the revised Terms, you will be deemed to have accepted those changes. If you do not agree to the revised Terms, your sole remedy shall be to discontinue using the Service.

## **11. General**

These Terms constitute the entire agreement between DeviantArt and you with respect to your use of the Service. DeviantArt's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable. DeviantArt shall have the right to assign its rights and/or delegate its obligations under these Terms, in whole or in part, to any person or business entity. You may not assign your rights or delegate your obligations under these Terms without the prior written consent of DeviantArt. These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the state and federal courts of the State of California.

## **12. Comments**

If you have any comments or questions about the Service please contact us by email at [help@deviantart.com](mailto:help@deviantart.com).

## **Section II: Additional Terms**

### **13. Registration**

To register as a member of the Service or purchase products, you must be 13 years or lawfully permitted to enter into and form contracts under applicable law. In no event may minors submit Content to the Service. You agree that the information that you provide to us upon registration, at the time of purchase, and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

### **14. Password**

When you register as a member you will be asked to provide a password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you shall be solely responsible for any activities or actions under your password, whether or not you have authorized such activities or actions. You shall immediately notify DeviantArt of any unauthorized use of your password.

### **15. Submitting Content**

*Chat Rooms and Forums* - As a registered member of the Service, you will be granted the privilege of participating in chat rooms and forums on the DeviantArt website as part of the Service, which means you may post Your Content in the form of text for display in these areas of the DeviantArt website, subject to your compliance with the Terms.

*Artist Materials* - As a registered member of the Service, you will also be granted the privilege of submitting certain types of Your Content, known as "Artist Materials," for display on your user page. Prior to submitting Artist Materials, you must accept the additional terms and conditions of the [Submission Policy](#), which is incorporated into, and forms a part of, the Terms.

## **16. Copyright in Your Content**

DeviantArt does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to DeviantArt a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content. **Please note that when you upload Content, third parties will be able to copy, distribute and display your Content using readily available tools on their computers for this purpose although other than by linking to your Content on DeviantArt any use by a third party of your Content could violate paragraph 4 of these Terms and Conditions unless the third party receives permission from you by license.**

## **17. Monitoring Content**

DeviantArt has no ability to control the Content you may upload, post or otherwise transmit using the Service and does not have any obligation to monitor such Content for any purpose. You acknowledge that you are solely responsible for all Content and material you upload, post or otherwise transmit using the Service.

## **18. Storage Policy**

At this time, DeviantArt provides free online storage of Your Content to registered members of the Service. However, you acknowledge and agree that DeviantArt may, at its option, establish limits concerning your use of the Service, including without limitation the maximum number of days that Your Content will be retained by the Service, the maximum size of any Content files that may be stored on the Service, the maximum disk space that will be allotted to you for the storage of Content on DeviantArt's servers. Furthermore, you acknowledge that DeviantArt reserves the right to terminate or suspend accounts that are inactive, in DeviantArt's sole discretion, for an extended period of time (thus deleting or suspending access to your Content). Without limiting the generality of Section 9, DeviantArt shall have no responsibility or liability for the deletion or failure to store any Content maintained on the Service and you are solely responsible for creating back-ups of Your Content. You further acknowledge that DeviantArt reserves the right to modify its storage policies from time to time, with or without notice to you.

## **19. Conduct**

You agree to be subject to and to conduct yourself in accordance with the DeviantArt [Etiquette Policy](#). You are responsible for all of Your Content you upload, download, and otherwise copy, distribute and display using the Service. You must have the legal right to copy, distribute and display all parts of any content that you upload, download and otherwise copy, distribute and display. Content provided to you by others, or made available through websites, magazines, books



and other sources, are protected by copyright and should not be uploaded, downloaded, or otherwise copied, distributed or displayed without the consent of the copyright owner or as otherwise permitted by law. Please refer to DeviantArt's [Copyright Policy](#) for further details.

You agree not to use the Service:

- a. for any unlawful purposes;
- b. to upload, post, or otherwise transmit any public and shared content (content which you offer for free) that is pornographic, obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- c. to upload, post, or otherwise transmit any subscription or paid content featuring pornographic material of real people, which offers sexual services, which glorifies sexual violence, fringe sexual fetish creations, fetish creations that are hard to distinguish from non-consensual sex, or that is obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;
- d. to harm minors in any way, including, but not limited to, uploading, posting, or otherwise transmitting content that violates child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct, or submitting any personally identifiable information about any child under the age of 13;
- e. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;
- f. to upload, post, or otherwise transmit any material which is likely to cause harm to DeviantArt or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;
- g. for any commercial purpose, except as expressly permitted under these Terms;
- h. to sell access to the Service on any other website or to use the Service on another website for the primary purpose of gaining advertising or subscription revenue other than a personal blog or social network where the primary purpose is to display content from DeviantArt by hyperlink and not to compete with DeviantArt.

#### **19A. Commercial Activities**

Commercial activities mean the offering, solicitation or sale of goods or services by anyone other than DeviantArt. Commercial activities with respect to the arts are permitted for registered members acting as individuals, for small corporations or partnerships engaged primarily in art-

related activities in which one or more of the principals is a registered member or for those seeking to retain the services or works of a registered member. Commercial activities in the form of paid advertising on the Service are subject to the terms and conditions relating to the purchase of such advertising. No other commercial activities are permitted on or through the Service without DeviantArt's written approval. Any interactions with members of the Service with respect to commercial activities including payment for and delivery of goods and/or services and any terms related to the commercial activities including conditions, warranties or representations and so forth are solely between you and the other member. Paragraph 9, above, of these Terms of Service specifically applies with respect to commercial activities.

## **19B. Groups**

As a registered member of the Service, you will also be able to participate as an administrator or member of a "Group" which is a set of user pages and applications formed for the purpose of collecting content, discussions and organizing members of the site with common interests. Further information about Groups can be found in our Etiquette Policy.

1. You agree to participate in a Group on the basis of its own rules consistent with these Terms of Service, the conduct set out in paragraph 19, above, and such other rules created by us for Groups from time to time including with respect to the use of Groups for commercial activities.
2. As an administrator or participant in a Group you acquire no ownership rights over the Group, the Group applications provided by us or over the right to conduct the activities of the Group.
3. Any Content or Artists Materials submitted to a Group remain, as between the Group and the user submitting such content, the property of the person who submitted the content.
4. Groups are managed by registered members of the Service and not by us. We are not responsible for the conduct of Group participants or administrators and will not interfere with the management or society of any specific Group or the rules it establishes for itself as long as they are consistent with these Terms of Service and our policies.
5. Groups may not be used to collect personal data about participants in Groups without the participant's express permission.
6. The Group application permits us to take appropriate action should intervention become necessary as a result of a violation of the Terms of Service or of any other of our policies. We can remove a Group and the Group's privileges at any time at our discretion.
7. The use in a Group name of trademarks or distinctive trade names of properties, goods or services is subject to objections from the owner of the marks and names. DeviantArt will respond to such objections by requiring an appropriate change in the name of the Group. The use of trademarks and trade names in Group names otherwise must be descriptive of

Group activity or purpose. To avoid confusion and animosity, Groups wishing to name themselves after trademarked properties must include a further description in its name of the type of Group it expects to be such as "Master Photoshop Tutorials" instead of simply "Photoshop."

## **20. Suspension and Termination of Access and Membership**

You agree that DeviantArt may at any time, and without notice, suspend or terminate any part of the Service, or refuse to fulfill any order, or any part of any order or terminate your membership and delete any Content stored on the DeviantArt Site, in DeviantArt's sole discretion, if you fail to comply with the Terms or applicable law.

## **21. Product Purchases from the DeviantArt Shop**

DeviantArt users may make certain products available for purchase through the [DeviantArt Shop](#). For example, you may have the opportunity to purchase or commission "Digital Artwork" that a registered member has listed for sale through the Shop.

All payments are to be made in US dollars and prices are subject to change at any time.

Any purchase made via the Shop is between the user and the purchaser only. DeviantArt only provides the platform in which such purchase is available, but in any event will not be responsible for the purchased item, its quality, terms, price etc.

Before making a purchase, we advise you to review the listing and specifications to make sure they fit your needs and are acceptable by you.

## **22. Cryptocurrency**

DeviantArt enables cryptocurrency payments and earnings withdrawals via a Third Party Software blockchain/cryptocurrency payment processor ("**Cryptocurrency Payment Services**").

You acknowledge and agree that regardless of the manner in which such Cryptocurrency Payment Services may be offered to you, DeviantArt merely acts as an intermediary platform between you and the applicable Cryptocurrency Payment Services provider, and shall not be in any way responsible or liable with respect to any services provided by such Cryptocurrency Payment Services provider.

Any and all use of Cryptocurrency Payment Services shall be done solely at your own risk and responsibility, and may be subject to certain legal and financial terms which govern Cryptocurrency Payment Services, which you are encouraged to review and understand before using such services. Additionally, the use of Cryptocurrency Payment Services is subject to the applicable terms of use of the Cryptocurrency Payment Services provider, including but not limited to the lists of prohibited items and businesses not supported by such provider. In the case of BitPay, your use of Cryptocurrency Payment Services is subject to BitPay's [terms of use](#). Each

Cryptocurrency Payment Services provider may support different cryptocurrencies, however DeviantArt has full discretion regarding which cryptocurrencies will be available through the Cryptocurrency Payment Services on the DeviantArt platform. Please avoid paying in unsupported cryptocurrencies, as doing so may result in loss of funds.

While we hope to avoid such instances, DeviantArt may, at any time and at its sole discretion, suspend, disable access to or remove Cryptocurrency Payment Services without any liability to you or to any third party.

You assume the volatility risk of the cryptocurrencies in which cryptocurrency transactions occur.

Any refunds of cryptocurrency transactions are subject to DeviantArt's sole discretion.

### **Services Fees**

Your use of Cryptocurrency Payment Services is subject to certain fees and exchange rates ("**Service Fees**"), which may be modified from time to time. For more information, see [here](#). The Service Fees shall be deducted from your DeviantArt Earnings Account. All Service Fees are non-refundable.

Certain transactions (e.g., underpayment and overpayment of cryptocurrency transactions) may be subject to additional fees by the Cryptocurrency Payment Services provider. In the case of BitPay, please refer to the following [article](#) for additional information.

### **23. DeviantArt Protect**

DeviantArt enables you to use its DeviantArt Protect service (for qualifying images stored in Sta.sh or qualifying images submitted as deviations), in order to detect potential infringements of your images that you submitted or uploaded in the ways specified below. By using DeviantArt Protect, you agree and acknowledge the following:

- a. The DeviantArt Protect service is limited to detecting potentially similar or near-identical images to your images identified on DeviantArt or various blockchains (for more details on the specific platforms scanned, see our [updated list](#)). There might be other similar images that we will not detect, and therefore, we encourage you to keep track of existing works on different platforms.
- b. To use DeviantArt Protect, you will need to open an account with DeviantArt, and agree to these terms and to the DeviantArt [general privacy policy](#).
- c. For images eligible for the DeviantArt Protect service, when a potential infringement is identified, we will send you a notice via email or via platform notification, of any potential similar image found. Upon receiving such a notice, you may choose if you wish to take action regarding such images or not (for example, by filing a DMCA takedown notice).

- d. We will not cause or initiate any legal procedures with respect to the similar images. If you believe that one of our results is infringing upon your image, we encourage you to enter the relevant platform, and submit a takedown notice independently. DeviantArt will not be responsible, in any event, for such procedures. All results are indicating some similarity, but in no event will we determine or suggest if such work is indeed infringing or not.
- e. DeviantArt Protect for images uploaded to Sta.sh:  
You can upload up to 10 images and up to 2GB for free coverage by the DeviantArt Protect service. To receive coverage of the DeviantArt Protect service for any additional images, you will need to upgrade for a relevant Core Membership. Find out more about our membership, pricing, storage and plans [here](#).
- f. DeviantArt Protect for images published on DeviantArt as deviations:  
For Core Members, we provide the DeviantArt Protect service for all images published as deviations. For non-Core users, we offer the DeviantArt Protect service for 90 days as of the day when the image was submitted as a deviation.

## **24. Data Scraping & Machine Learning Activities**

DeviantArt is a community of creators that invests significant time and resources to protect its users and foster a cooperative and collaborative environment. Out of respect for its users' choices, DeviantArt has developed clear directives to communicate when its users do not consent to their Content being downloaded and used by third parties for the purposes of developing or operating artificial intelligence or other machine learning systems ("Artificial Intelligence Purposes"). Unless you actively give your consent, for Artificial Intelligence Purposes, DeviantArt will include a robots meta tag with the "noai" or "noimageai" directive in the head section of the HTML page associated with that Content on the Site, and will include an X-Robots-Tag HTTP response header with the "noai" directive when media files associated with that Content are downloaded from the Service. DeviantArt encourages adoption of these directives across other creative platforms, so that creators are able to share their artistic creations with online audiences without fear of losing control of their own works.

DeviantArt expects all users accessing the Service or the Site to respect creators' choices about the acceptable use of their Content, including for Artificial Intelligence Purposes. When a DeviantArt user does not consent to third party use of their Content for Artificial Intelligence Purposes, other users of the Service and third parties accessing the Site are prohibited from using such Content (labeled as "noai" and/or "noimageai") (i) to train an artificial intelligence system, (ii) as input into any previously trained artificial intelligence system, or (iii) to make available any derivative copy unless usage of that copy is subject to conditions at least as restrictive as those set out here. Automated systems or users that fail to respect these choices will be considered to have breached these Terms.

DeviantArt provides no guarantees that "noai" or "noimageai" directives will be present each time Content is accessed, even if the creator does not consent to use of that Content for Artificial Intelligence Purposes; and absence of such directives does not imply creator consent has been granted.

Users acknowledge that by uploading Content to DeviantArt, third-parties may scrape or otherwise use their works without permission. DeviantArt provides no guarantees that third parties will not include certain Content in external data sources, or otherwise use a creator's work for Artificial Intelligence Purposes, even when such directives are present. By prohibiting such conduct, DeviantArt makes no guarantees that it will pursue each unauthorized use of the Service, and the owners of the works are responsible for policing their own works to the extent permitted by law.

## DeviantArt, Inc. Privacy Policy

*Policy last updated: January 12, 2021*

DeviantArt respects your privacy and is fully committed to protect your personal information and use it properly and in compliance with data privacy laws.

This Privacy Policy applies to our web sites, including [www.deviantart.com](http://www.deviantart.com), [sta.sh](http://sta.sh), and our DeviantArt mobile applications (collectively, the "**DeviantArt Sites**" or "**Sites**"). This Privacy Policy explains what information we (together with our affiliated companies worldwide) collect and use pertaining to each of our Account holders and non-Account holders (such as Site visitors) through the Sites, how we use that information, and what choices you have with respect to the information we collect about you. The Sites and our services available via the Sites are collectively called the "**Services**".

Please take a few moments to read this Privacy Policy **before** you access or use the Services. By using or accessing the DeviantArt Sites, you acknowledge that you have read and fully understood this Privacy Policy and our Terms of Service and that they both apply to your use of the Services. If you do not read and fully understand this Privacy Policy, please do not use the Sites or Services. This Privacy Policy is not intended to override the terms of any contract you have with us, nor any rights you might have under applicable data privacy laws. Where you have read this policy but would like further clarification, please contact us at [help@deviantart.com](mailto:help@deviantart.com).

### **1. What information do we collect?**

To provide you the Services, we may collect personal information relating to an identified or identifiable natural person ("**Information**").

We collect Information in order to provide, operate and improve our Sites and Services, to administer your use of the Site or Services (including your Account, as defined below), and to enable you to enjoy and easily navigate our Site and Services. Additionally, we collect your information, among other reasons stated below, to provide you with ongoing customer assistance and technical support, and to enhance our data security and fraud prevention capabilities.

#### **1.1. Information you provide us:**

When you register for our Services and create a DeviantArt account via the DeviantArt Sites (an "**Account**"), when you register for special services (e.g., the Print Program, Premium Content), sign up for e-mail newsletters and purchase products or services, information you include in your communications with us, we collect certain information such as your name, age/ date of birth, postal address, telephone number, e-mail address, details regarding connected third-party accounts (such as the e-mail or username for a connected PayPal, Google or Facebook account), credit card information (if you use certain of our features and services).

If you create your Account using your login credentials from a third party site or service, we'll be able to access and collect your name and email address and other data that your privacy settings

on that third party site or service permit us to access but we don't receive or store passwords for those third party sites and services.

Your Address Book. We may ask users for access to the address books on their mobile devices, so that we may connect Account holders, however we will not access your address book without your permission to do so.

### **1.2. Information collected through your use of the Site or Services.**

When you are visiting or using our Site or Services, including when you browse the Site or a User Account, edit your Account and upload information and content, and/or download and use any Site feature or services, we are aware of it and will usually gather, collect and record such uses, sessions and related information, either independently or with the help of third-party services as detailed herein, including through the use of "cookies" and other tracking technologies, as further detailed in section 5, below.

Our servers automatically collect and record certain information about how a person uses our Services (we refer to this information as "Log Data"), for both Account holders and non-Account holders (such as Site visitors) (both will be referred to as a "User"). Log Data may include information such as a User's Internet Protocol (IP) address, mobile device identifier, browser type, operating system, the pages or features of our Services to which a User browsed and the time spent on those pages or features, search terms, the links on our Services on which a User clicked, the friends of Account holders who also use the Services, purchases made by the User, how often Users click on our advertisements, which files are downloaded most frequently, and which areas of our Site are the most popular and other statistics. We also collect certain information that your mobile device sends when you use our Services, including user settings, the operating system, as well as information about your use of our Services. We use this information to administer the Services and we analyze (and may engage third parties to analyze) this information to further develop, improve and enhance the Services by expanding their features and functionality and tailoring them to our Users' needs and preferences, and to make recommendations.

### **1.3. Information we collect from other sources**

If you create your Account using your login credentials from a third party site or service, we'll be able to access and collect your name and email address and other data that your privacy settings on that third party site or service permits us to access but we never receive or store passwords for those third party sites and services. We cannot delete or change any Information that is stored on third party sites and services.

In addition, We may receive information about you from third-party sources, such as (i) security providers, fraud detection and prevention providers to help us screen out Users associated with fraud, and (ii) advertising and marketing partners in order to monitor, manage and measure our ad campaigns.



## 2. How do we use such information?

2.1. We use your information for the following purposes: to provide and operate the Services; to enhance our data security and fraud prevention capabilities; To create aggregated statistical data and other aggregated and/or inferred information, which we may use to provide and improve our respective Services; to customize advertising and content available on the DeviantArt Sites, to send you service-related notices and promotional information about products and services that may be of interest to you and/or to conduct research for internal purposes; to help us in updating, expanding and analyzing our records to identify new Users; to facilitate, sponsor, and offer certain contests, events, and promotions, monitor performance, contact winners, and grant prizes and benefits; and to comply with any applicable laws and regulations.

2.2. We will only use your Information for the purposes set out in Section 2 where you give us your permission and/or we are satisfied that:

- a. our use of your Information is necessary to perform a contract or take steps to enter into a contract with you (e.g. to provide you with Services, to provide you with our customer assistance and technical support), or
- b. our use of your Information is necessary to comply with a relevant legal or regulatory obligation that we have, or
- c. our use of your Information is necessary to support legitimate interests that we have as a business (for example, to maintain and improve our Services by identifying user trends and the effectiveness of our promotional campaigns and identifying technical issues), provided it is conducted at all times in a way that is proportionate, and that respects your privacy rights

## 3. How we share your information?

We may share your information with service providers and others (or otherwise allow them access to it) in the following manners and instances:

3.1. *Third Party Service Providers:* We may share Information as well as aggregated information that we collect with third party service providers whose services and solutions complement, facilitate and enhance our own. These include but are not limited to hosting and server co-location services, communications and content delivery networks (CDNs), data and cyber security services, billing and payment processing services, fraud detection and prevention services, industry analysis, web analytics, e-mail distribution and monitoring services, session recording and remote access services, performance measurement, data optimisation and marketing services, content providers, and our legal and financial advisors (collectively, "**Third Party Services**")

3.1.1. We may share information with Third Party Services for a business purpose such as identifiers, commercial information and other categories as listed in Section 1.

3.2. *Information Disclosed for Our Protection and the Protection of Others.* Where permitted by local data protection laws, we will disclose Information when required by law or under the good-faith belief that such disclosure is necessary in order to conform to applicable law, comply with subpoenas, court orders or legal process served on DeviantArt, to establish or exercise our legal rights or defend against legal claims, and to protect the property or interests of DeviantArt, its agents and employees, personal safety, or the public. Under these circumstances, DeviantArt may be prohibited by law, court order or other legal process from providing notice of the disclosure, and DeviantArt reserves the right under those conditions not to provide notice in its sole discretion.

3.3. *Parent Companies, Subsidiaries and Affiliated Companies.* We may share Information internally within our family of companies, for the purposes described in this Privacy Policy. For example, we may share your Information with Wix.com Inc., our U.S.-based parent company, or Wix.com Ltd., our Israel based parent company, in the course of facilitating and providing you with our Site or Services. In addition, should we, Wix or any of its affiliates undergo any change in control, including by means of merger, acquisition or purchase of substantially all of its assets, your Information may be shared with the parties involved in such event.

3.4. *APIs.* We offer APIs for use by third parties to access various features of our Services and content on our Sites. Some APIs will be used by third parties to access and use your Information with the third parties' services however, your Information will not be accessed and used by a third party API user without your consent. We also offer APIs to some of our third party service providers to assist with provision of services to us, such as, but not limited to, credit card processing and shipping fulfillment services, and those third party API users will access and use your Information only in order to provide services to us for you, as noted above under "*Third Party Service Providers*".

3.5. *Information We Disclose with Your Consent or at Your Request.* We will share your Information with third-party websites or platforms, such as social networking sites, if you have expressly requested that we do so.

3.6. *Social Media Features and Framed Pages:* Our Services include certain Social Media features and widgets, such as the "Facebook Like" button, the "Share this" button or other interactive mini-programs ("Social Media Features"). These Social Media Features may collect information such as your IP address or which page you are visiting on our Sites, and may set a cookie to enable them to function properly. Social Media Features are either hosted by a third party or hosted directly on our Services. Your interactions with these third parties' Social Media Features are governed by their policies and not ours.

**For the avoidance of doubt, we may share your Information in manners other than as described above, pursuant to your explicit approval, or if we are legally obligated to do so.**

**4. Where do we store your information?**

4.1. Information of Account holders and non-Account holders may be maintained, processed and stored by us and our authorized affiliates and service providers in the United States of America, in Europe (including in Ukraine), in Israel, and in other jurisdictions as necessary for the proper delivery of our Services and/or as may be required by law (as further explained below).

4.1.1 Jobs Applicants Information will be maintained, processed and stored in the United States and Israel, in the applied position's location(s).

4.1.2. Our parent company, Wix.com Ltd. is based in Israel, which is considered by the European Commission to be offering an adequate level of protection for the Information of EU Member State residents.

4.1.3. Our affiliates and service providers that store or process your Information on our behalf are each contractually committed to keep it protected and secured, in accordance with industry standards and regardless of any lesser legal requirements which may apply in their jurisdiction.

4.2. Transfer of EU Personal data : If you are located in Europe, when we will transfer your Personal Information to the United States or anywhere outside Europe, we will make sure that (i) there is a level of protection deemed adequate by the European Commission or (ii) that the relevant Model Standard Contractual Clauses are in place. DeviantArt participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all Information received from European Union (EU) member countries and Switzerland, respectively, in reliance on the Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce's Privacy Shield List, <https://www.privacyshield.gov>.

## **5. Use of Cookies and Similar Technologies**

5.1. A cookie is a small file of letters and numbers downloaded on to your computer when you access certain websites. In general, cookies allow a website to recognize a user's computer. The most important thing to know about cookies placed by DeviantArt is that they make our website a bit more user-friendly, for example, by remembering site preferences and language settings.

5.2. Cookies should be divided in two types:

5.2.1. "First-party cookies" - Cookies that are placed by DeviantArt

5.2.2. "Third-party cookies" - Cookies that are placed and used by Third Party Service Providers

5.3. We also use other technologies with similar functionality to cookies, such as web beacons, pixels, and tracking URLs, to obtain Log Data (as described in the Privacy Policy). For example, our email messages may contain web beacons and tracking URLs to determine whether you have opened a certain message or accessed a certain link.

5.4. Duration: Depending on their function, Cookies may have different durations. There are session cookies and persistent cookies:

5.4.1. Session cookies only last for your online session. It means that the browser deletes these cookies once you close your browser

5.4.2. Persistent cookies stay on your device after the browser has been closed and last for the period of time specified in the cookie

5.5. Categories: The cookies used on our website fall into one of four categories: Essential, Analytics, Functional and Marketing.

5.5.1. *Essential Cookies* let you move around the website and use essential features like secure and private areas.

5.5.2. *Analytics cookies* let us understand how you use our website (e.g. which pages you visit and if you experience any errors). These cookies are essential to us being able to enhance and maintain our platform.

5.5.3. *Functional cookies* are cookies used to remember choices users make to improve their experience.

5.5.4. *Marketing cookies* are used to collect information about the impact of our marketing campaigns performed in other website on users and non-users. These cookies are only used on DeviantArt owned sites under \*.deviantart.com

Please check out the table below to receive information about the type, categories, purpose and duration of cookies placed by DeviantArt and Third Party Service Providers

Type	Name	Purpose	Duration	
Cookie	auth	Identify logged users	1 month	Essential
Cookie	auth_secure	Security	never	Essential
Cookie	userinfo	Identify logged users	1 month	Essential
Cookie	td	image grid sizing for SSR (eclipse)	session	Essential
Cookie	tw	image grid sizing for SSR (green site)	7 day	Essential
Cookie	hubtoken	websocket push messages	session	Essential
Cookie	tpc	Oauth login for stash	session	Essential

Type	Name	Purpose	Duration	
Cookie	vd	Used for Advertising	1 month	Marketing
Local Storage	chatDB	Allow chat feature	persistent	Essential
Local Storage	console_dapi_recent, console_recent	Recently used endpoints list in API developer console	persistent	Analytics
Local Storage	custombox.recent.colors	Remembers colors used in custom boxes	persistent	Functional
Local Storage	FilmQuality	Allow the use of player settings	persistent	Essential
Local Storage	statusUpdateSubmitCounter	Number of status updates submitted via eclipse	persistent	Functional
Local Storage	intents, intents_other	List of signup intents selected by user	persistent	Essential

## Third Party Cookies:

Type	Name	Third party	Purpose	Duration	
Beacon and Cookie	_pxhd	PerimeterX ( <a href="https://www.perimeterx.com/legal/privacy/">https://www.perimeterx.com/legal/privacy/</a> )	Security	1 y	Essential
Beacon and Cookie	_ga, _gat, _gid, _utm*	Google Analytics( <a href="https://policies.google.com/privacy?hl=en-US">https://policies.google.com/privacy?hl=en-US</a> )	Analytics	2y	Analytics
Beacon and Cookie	r/collect	Google Doubleclick Ads (through Google Analytics) <a href="https://policies.google.com/privacy?hl=en-US">https://policies.google.com/privacy?hl=en-US</a>	Analytics	session	Marketing
Beacon and	large number, varies	Google Doubleclick Ads and other Ads networks <a href="https://policies.google.com/privacy?hl=en-US">https://policies.google.com/privacy?hl=en-US</a>	Advertising	varies	Marketing

Type	Name	Third party	Purpose	Duration	
Cookie					
Beacon and Cookie	JSESSIONID	New Relic ( <a href="https://newrelic.com/termsandconditions/privacy">https://newrelic.com/termsandconditions/privacy</a> )	System Monitoring	session	Essential
Script and Cookie	TS#, XSRF-TOKEN	Wix.com <a href="https://www.wix.com/about/privacy">https://www.wix.com/about/privacy</a>	Security	session	Essential
Script and Cookie	<a href="https://www.wix.com">frog.wix.com</a>	Wix.com <a href="https://www.wix.com/about/privacy">https://www.wix.com/about/privacy</a>	Identify logged users	persistent	Essential
Script and Cookie	fed, fedops.logger.sessionId	Wix.com <a href="https://www.wix.com/about/privacy">https://www.wix.com/about/privacy</a>	System monitoring	persistent	Essential
Local Storage	debug, debugpanel-height, debugpanel-tab, debugpanel-visible	Wix.com <a href="https://www.wix.com/about/privacy">https://www.wix.com/about/privacy</a>	System Monitoring	persistent	Essential
Local Storage	firebase:host:wix-engage-visitors-prod-27.firebaseio.com	Wix.com	Allow the Chat feature	persistent	Essential

### Your Choices

You can change your cookie settings by clicking this [link](#).

Alternatively, it is also possible to stop your browser from accepting cookies altogether by changing your browser's cookie settings. You can usually find these settings in the "options" or "preferences" menu of your browser.

Please note that deleting our cookies or disabling future cookies or tracking technologies may prevent you from accessing certain areas or features of our Services or may otherwise adversely affect your user experience.

## 6. Communications:

6.1. *Promotional Messages:* We may use your Information to send you promotional content and messages by e-mail, text messages, notifications within our platform, marketing calls and similar forms of communication from DeviantArt or our partners (acting on our behalf) through such means. If you do not wish to receive such promotional messages or calls, you may notify DeviantArt at any time or follow the "unsubscribe" or STOP instructions contained in the promotional communications you receive.

6.2. *Service and Billing Messages:* We may also contact you with important information regarding our Services, or your use thereof. For example, we may send you a notice (through any of the means available to us) if a certain Service is temporarily suspended for maintenance; reply to your support ticket or e-mail; send you reminders or warnings regarding upcoming or late payments for your current or upcoming subscriptions; forward abuse complaints regarding your Account; or notify you of material changes in our Services.

It is important that you are always able to receive such messages. For this reason, you are not be able to opt-out of receiving such Service and Billing Messages unless you are no longer a DeviantArt User (which can be done by deactivating your Account).

## 7. Your rights in relation to your information

7.1. It is imperative that you will have control over your Information. That is the reason why we are taking reasonable steps in order to enable you to access, receive a copy of, update, amend, delete, or limit the use of your Information.

7.2. We may ask you for additional information to confirm your identity and for security purposes, before disclosing the requested data to you. We reserve the right to charge a fee where permitted by law, for instance if your request is manifestly unfounded or excessive.

7.3. You have the right to lodge a complaint with your local supervisory authority for data protection (but we still recommend you to contact us first).

7.4. For all DeviantArt Users, if you may review and amend your Information by logging in and navigating to your [Settings page](#) on the website. Once there, you may modify information that is incorrect and delete certain information from your profile. You can also change your permission settings for us to send you e-mail newsletters.

7.5. For all DeviantArt Users, if you wish to **retrieve your DeviantArt Account data** or **permanently delete your DeviantArt data**, please follow the instructions provided in the following article: <https://www.deviantart.com/settings/gdpr/>.

7.6. In addition, feel free to contact us online, or mail your request (see [Section 15](#)). We will make all reasonable efforts to honor your request promptly (unless we require further information from you in order to fulfil your request), subject to legal and other permissible considerations.

7.6.1. Please note that permanently deleting your Account erases all of your information from our databases. After completing this process, you can no longer use any of your Services, your Account and all its data will be removed permanently, and we will not be able to restore your Account or retrieve your data in the future. If you contact DeviantArt Support in the future, the system will not recognize your Account and support agents will not be able to locate the deleted Account.

## **8. Additional Information for California residents**

8.1. If you are a California resident using the Services, the California Consumer Privacy Act ( "CCPA ") may provide you the right to request access to and deletion of your information.

8.2. In order to exercise the right to request access to and deletion of your Information, please see the information on the section 7, above.

8.3. DeviantArt does **not** sell user Information to third parties for the intents and purposes of the CCPA.

8.4. Users of the Services who are California residents and under 18 years of age may request and obtain removal of content they posted by emailing us at <help@deviantart.com>. All requests must be labeled "California Removal Request " on the email subject line. All requests must provide a description of the content you want removed and information reasonably sufficient to permit us to locate that content. We do not accept California Removal Requests via postal mail, telephone, or facsimile. We are not responsible for notices that are not labeled or sent properly, and we may not be able to respond if you do not provide adequate information. Please note that your request does not ensure complete or comprehensive removal of the material. For example, materials that you have posted may be republished or reposted by another user or third party.

## **9. Data Retention**

We may retain your Information for as long as your Account is active, as indicated in this Privacy Policy or as otherwise needed to provide you with our Services.

We may continue to retain such Information even after you deactivate your Account and/or cease to use any particular Services, as reasonably necessary to comply with our legal obligations, to resolve disputes regarding our Users, prevent fraud and abuse, enforce our agreements and/or protect our legitimate interests. Where your Information is no longer required, we will ensure it is securely deleted.

## **10. Security**



10.1. We have implemented security measures designed to protect the Information you share with us, including physical, electronic and procedural measures. Among other things, we offer HTTPS secure access to most areas on our Services; the transmission of sensitive payment information (such as a credit card number) through our designated purchase forms is protected by an industry standard SSL/TLS encrypted connection; and we regularly maintain a PCI DSS (Payment Card Industry Data Security Standards) certification. We also regularly monitor our systems for possible vulnerabilities and attacks, and regularly seek new ways and Third Party Services for further enhancing the security of our Services and protection of our visitors' and Users' privacy.

10.2. Regardless of the measures and efforts taken by us, we cannot and do not guarantee the absolute protection and security of your Information, or any other content you upload, publish or otherwise share with us or anyone else. We therefore encourage you to set strong passwords for your User Account, and avoid providing us or anyone with any sensitive information which you believe its disclosure could cause you substantial or irreparable harm.

10.3. If you have any questions regarding the security of our Services, you are more than welcome to contact us at [security-report@deviantart.com](mailto:security-report@deviantart.com).

## **11. Third-Party Websites**

Our Services may contain links to other websites or services. We are not responsible for such websites' or services' privacy practices. We encourage you to be aware when you leave our Services and to read the privacy statements of each and every website and service you visit before providing your information. This Privacy Policy does not apply to such linked third party websites and services which are subject only to the third party policies.

## **12. Your Profile Page**

12.1. Please note that when you create an Account, your profile page will display your Account user name and certain statistics regarding your own use of the Services, including but not limited to, the date you became an Account holder, the categories of materials you posted and how long ago you last visited the Sites. It will also display information about the Account holders who visit your profile page including the names of those Account holders who follow you (if the Account holder has permitted such display), and the number of visitors to, and views of your profile page or pages containing content you have submitted.

12.2. Any information or content that you post to your profile page, or to any Groups which you are a part of, chat rooms or forums will be publicly accessible by Users so please exercise your good judgment before you post. The name you choose when creating your Account is visible to all Users of the Services. If you visit another Account holder's profile page, your user name will appear on that page. DeviantArt does not control, and is not responsible for, the use of any information or content that you have exposed to the public through your use of the Services. You may use the tools we make available via the Services to make decisions about what information about you, including Information, will be visible on your profile page and on the profile pages of

other Account holders that you visit. Please note accounts can be created either by individuals or companies. Note that in some cases, we may not be able to remove your Information from such areas.

### **13. Questions and Complaints**

13.1. If you have any questions or concerns about our collection, use or disclosure of information, or if you believe that we have not complied with this Privacy Policy or applicable data protection laws, please contact us – our details are set out at the end of this Privacy Policy.

13.2. Our Data Protection Officer team will investigate the complaint and determine whether a breach has occurred and what action, if any, to take. We take every privacy complaint seriously and will make all reasonable efforts to resolve your complaint promptly and in accordance with applicable law.

### **14. Updates and Interpretation**

14.1. We may update this Privacy Policy as required by applicable law, and to reflect changes to our information collection, usage and storage practices. In relation to any updated Privacy Policy, we will, as required by applicable law, notify you, seek your consent and/or take any other measures. We encourage you to periodically review this page for the latest information on our privacy practices.

14.2. Any heading, caption or section title contained herein, and any explanation is provided only for convenience, and in no way defines or explains any section or provision hereof, or legally binds any of us in any way

### **15. Contacting Us**

If you have questions about this Privacy Policy or our policies or wish to exercise any of your rights as described, please contact our DPO team at:

**DeviantArt, Inc.**

7111 Santa Monica Blvd, Ste B, PO Box 230

West Hollywood, CA 90046

Email: [help@deviantart.com](mailto:help@deviantart.com)

**For the purposes of GDPR (Article 27), you may contact our EU representative at:**

Wix Online Platforms Limited

1 Grant's Row

Dublin 2 D02HX96, Ireland

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SARAH ANDERSEN, an individual; KELLY MCKERMAN, an individual; KARLA ORTIZ, an individual,

(b) County of Residence of First Listed Plaintiff Multnomah County, Oregon (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

DEFENDANTS

STABILITY AI LTD., a UK corporation; STABILITY AI, INC., a Delaware corporation; MIDJOURNEY, INC., a Delaware corporation; DEVIANTART, INC., a Delaware corporation,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 U.S.C. § 504; 17 U.S.C. §§ 1201 et seq.; 15 U.S.C. § 1125

Brief description of cause:

Copyright Infringement, DMCA violations, Breach of Contract, Right of Publicity violations, and related claims.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 1,000,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/13/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joseph R. Saveri

**ATTACHMENT TO CIVIL COVER SHEET**

**I.(c) Attorneys (Firm Name, Address, and Telephone Number)**

Joseph R. Saveri (State Bar No. 130064)  
Cadio Zirpoli (State Bar No. 179108)  
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