UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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REDDIT, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No.: 25-cv-8736 (PAE)
v.	)	
	)	
SERPAPI LLC, OXYLABS UAB,	)	
AWMPROXY, and PERPLEXITY AI, INC.,	)	
	)	
Defendants.	)	
	)	

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**MEMORANDUM OF LAW IN SUPPORT OF
SERPAPI LLC'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT**

Nili T. Moghaddam
Jessica L. Falk
Sarah Ryu
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Jeff Homrig (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, TX 75201
Tel: (214) 746-7700
jeff.homrig@weil.com

Attorneys for Defendant SerpApi, LLC

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PRELIMINARY STATEMENT

Reddit's second attempt to plead viable claims against SerpApi fares no better than its first. Reddit's theory is unchanged: Google search engine result pages ("SERPs")—publicly available to anyone—sometimes display brief Reddit snippets, and SerpApi allegedly collected those publicly available SERPs. As a result, Reddit supposedly lost control over its users' content and now claims it should be the gatekeeper, and the toll collector, for user content that, as Reddit concedes, it does not even own. Reddit thus seeks to transform the Digital Millennium Copyright Act ("DMCA") into an anti-scraping statute. SerpApi's first motion to dismiss pointed out, among other things, that Reddit lacks DMCA standing to bring claims concerning user-generated content as a non-exclusive licensee with no control over the technical measures that SerpApi allegedly circumvented. And so, Reddit now claims to have authored some miniscule amount of content on its website (none of which might be copyrightable) and that its structuring of the Reddit website is somehow reflected in the snippets within Google SERPs. But neither these, nor any of Reddit's other new contentions save its case. The myriad deficiencies in its allegations persist, and the entire Amended Complaint should be dismissed with prejudice.

First, Reddit still lacks Article III standing. Its recycled claims of reputational harm and lost commercial opportunities—which only concern Reddit's claims about user-generated content—remain vague and speculative and do not amount to a cognizable Article III injury. As to content purportedly authored by Reddit, Reddit outright fails to allege any injury at all.

Second, Reddit still lacks statutory standing. Reddit is neither the owner nor the exclusive licensee of *any* copyright in its users' content, which comprises over 99.99% of all content on the Reddit website. Reddit also does not allege circumvention of any Reddit technological protection measures ("TPMs"). There is no court that has ever extended DMCA standing to a plaintiff like Reddit, and this Court should not be the first. To the extent Reddit claims to have authored certain

content, Reddit does not plead any injury resulting from SerpApi's purported access thereof. And to the extent Reddit attempts to invoke a copyright interest in its "selection and arrangement" of comments, there are no allegations that SerpApi scrapes the whole selection and arrangement, which is the only thing that could plausibly be copyright protected, if at all.

Third, Reddit still fails to allege the circumvention of any TPM that qualifies as an effective access control for DMCA Section 1201(a) or as a copying control for Section 1201(b). Reddit's new allegations about the purportedly at-issue Google TPMs only underscore that Google's SERPs are freely, publicly accessible in the ordinary course. Therefore, they are not effective access controls, and Reddit's Section 1201(a) claim cannot stand. Nor can its Section 1201(b) claim, in the absence of any allegations that the Google TPMs prevent copying.

Fourth, the snippets of text in question are not copyrightable, and this lack of any "work protected under [the Copyright Act]" and, by extension, any allegation that SerpApi's software infringed or facilitated infringement, is additionally fatal to Reddit's Section 1201 claims.

Fifth, all of Reddit's non-DMCA claims still fail. As a threshold matter, Reddit's new allegations do not change that each is preempted by the Copyright Act. Reddit's unfair competition claim also fails because Reddit (a social news content aggregator and social media platform) does not compete with SerpApi (a service provider that retrieves and provides information from various search engines). Am. Compl. ¶¶ 17, 44. Its unjust enrichment claim fails because it duplicates Reddit's other claims and, in any event, still fails to articulate any specific or direct benefit conferred upon SerpApi. And its civil conspiracy claim again falls together with its deficient DMCA claims, which serve as the necessary tortious conduct underlying the purported conspiracy.

Because Reddit has already had an opportunity to amend and still cannot plead viable claims against SerpApi, dismissal with prejudice is warranted.

STATEMENT OF FACTS

SerpApi is a well-established technology company with clients such as the United Nations, Morgan Stanley, KPMG, and Shopify. Am. Compl. ¶ 18. Founded in 2017 in Austin, Texas, SerpApi provides developers and businesses with structured access to publicly available data from Google's and other third-parties' SERPs.[1] SerpApi's activity that Reddit calls "scraping" is simply automated retrieval of the same Google search results any ordinary user can access by typing a query without signing in or obtaining authorization. *See* Am. Compl. ¶¶ 66–67. SerpApi supports many business use cases, including "build[ing] large dataset[s] for Machine Learning models[,]" analyzing news trends, "[o]ptimiz[ing] [] content for Generative Engine Optimization (GEO)[,]" utilizing maps for reliable local marketing statistics, and conducting background checks.[2] SerpApi enables users to collect many kinds of text-based data, including snippets of Reddit posts in SERPs. Am. Compl. ¶ 68. Per Reddit, there are "billions" of posts on the Reddit website, but it claims to have authored only a miniscule fraction of them. *Id.* ¶¶ 44, 47. Reddit's claims therefore admittedly target snippets appearing in SERPs in which Reddit owns no copyrights and only a non-exclusive license. Reddit User Agreement § 5.[3]

Critically, Reddit does not allege that SerpApi ever accessed Reddit's website. Nor does Reddit allege that SerpApi circumvented any of Reddit's TPMs. Reddit alleges only that SerpApi accessed Google's publicly available SERPs. Am. Compl. ¶ 63.

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[1] *See* S. Palazzolo, *Meet the Google-Scraping Startup Used by ChatGPT, Cursor and Perplexity,* The Information (Aug. 28, 2025) (cited at Am. Compl. ¶ 82 n.48). This Court may consider on a motion to dismiss "facts alleged in the complaint and documents attached to it or incorporated in it by reference" as well as "documents integral to the complaint and relied upon in it, even if not attached or incorporated by reference[.]" *Waiting Room Sols. v. Excelsior Ins. Co.*, 2020 WL 5505386, at *5 (S.D.N.Y. Sept. 9, 2020).

[2] *See SerpApi Use Cases*, SerpApi, https://serpapi.com/use-cases/ (last visited Mar. 5, 2026).

[3] *See Reddit User Agreement*, Reddit (May 29, 2025), https://redditinc.com/policies/user-agreement (cited at Am. Compl. ¶¶ 44 n.17, 54 n.28 and incorporated by reference).

LEGAL STANDARD

"A district court properly dismisses an action under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction if the court 'lacks the statutory or constitutional power to adjudicate it,' such as when . . . the plaintiff lacks constitutional standing to bring the action." *Cortlandt St. Recovery Corp. v. Hellas Telecomms, S.a.r.l*, 790 F.3d 411, 416–17 (2d Cir. 2015). A complaint also must be dismissed under Rule 12(b)(6) if it fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although the Court must "accept as true all factual allegations and draw from them all reasonable inferences," it is "not required to credit conclusory allegations or legal conclusions." *Dane v. UnitedHealthcare Ins. Co.*, 974 F.3d 183, 188 (2d Cir. 2020).

ARGUMENT

I.   Reddit Lacks Article III Standing

Reddit's amended narrative still cannot clear the constitutional bar. Strip away the rhetoric about "trust" and "stewardship," and what remains is speculation and self-inflicted costs—not a concrete, particularized injury fairly traceable to SerpApi and redressable by this Court.

To bring suit in federal court, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The injury in fact must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Here, despite additional allegations, Reddit's supposed injuries are still too vague, too speculative, and too attenuated from SerpApi's alleged conduct. Reddit, thus, ultimately fails to satisfy multiple elements of Article III standing. *See Raw Story Media v. OpenAI, Inc.*, 756 F. Supp. 3d 1, 5–6 (S.D.N.Y. 2024) (finding no standing for DMCA § 1202 violation without concrete injury-in-fact).

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A.   *Reddit's alleged injuries relating to Reddit user-generated content fail to satisfy the Article III requirements*

First, Reddit contends that its users put "great trust" in Reddit as "stewards of [user] content," and alleges that SerpApi has purportedly damaged Reddit's reputation and business relationships by depriving Reddit of the ability to control access to its users' data—which Reddit now claims also encompasses "respect[ing] Reddit users' deletions." Am. Compl. ¶¶ 102–108. The Amended Complaint waxes poetic about needing to "uphold its promises to users" under its website policies, *id.* ¶¶ 105–108, but Reddit then fails to state the "so what." There is no allegation that "any reputational harm actually materialized or was likely to materialize." *Miller v. James*, 751 F. Supp. 3d 21, 32–33 (N.D.N.Y. 2024) (collecting cases), *aff'd*, 2025 WL 1085815 (2d Cir. Apr. 9, 2025), *cert. denied,* 223 L. Ed. 2d 274 (2025). Reddit does not identify, for example, any single user that stopped using Reddit because of SerpApi's activities. Nor could it, since Reddit's own Privacy Policy notifies users that their "content and information may also be available in search results on internet search engines like Google or in responses provided by an AI chatbot," and that "[b]y using the Services, [users] are directing [Reddit] to share this information publicly and freely." Reddit Privacy Policy.[4] Because Reddit fails to allege "anything beyond conclusory assertions that [its] public reputation has been harmed," this assertion has no Article III merit. *Miller*, 751 F. Supp. 3d at 32; *see also Braver v. Diversified Adjustment Serv., Inc.*, 2023 WL 8435825, at *3 (S.D.N.Y. Dec. 5, 2023) (denying Article III standing where plaintiff failed to allege, *inter alia*, "specific evidence of reputational or monetary harm").

To the extent Reddit alleges that the loss of its "ability to control" user data itself constitutes an independent injury, that claim fails, too. Reddit asserts that "[t]he privacy protections in [its]

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[4] Reddit Privacy Policy, https://www.reddit.com/policies/privacy-policy (last revised Jan. 6, 2026) (cited at Am. Compl. ¶¶ 50, 109 and incorporated by reference).

Public Content Policy are material to Reddit's business model" and that "unauthorized access to Reddit content causes [it] concrete injury . . . by breaking the system of protections Reddit has in place to uphold its promises to users." Am. Comp. ¶¶ 105, 108. But simply stating in a conclusory manner that Reddit has suffered "concrete injury" does not make it so. Reddit has not identified any tangible harm, such as monetary loss. Nor has Reddit articulated any "close historical or common-law analogue" substantiating any claim of intangible harm, as required under *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021).

Moreover, Reddit users own their content; Reddit is merely a non-exclusive licensee. Reddit User Agreement § 5. Reddit does not, and cannot, allege any contractual right to enforce its users' content rights, if any. As a practical matter, if a platform's inability to control user content were enough for standing, any website could sue anyone for copying and pasting snippets—without alleging any actual harm. Such a result would be nonsensical.

Second, Reddit's claim that it has "lost licensing fees or other commercial opportunities it would obtain from these and new arrangements" is entirely speculative and wholly unsupported by any concrete facts. Am. Compl. ¶ 109. "[T]hreatened injury must be *certainly impending* to constitute injury in fact" for Article III purposes, and "'allegations of *possible* future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Reddit does not identify any specific lost commercial opportunity caused by SerpApi, and its claim that it would have secured opportunities from AI companies like Perplexity absent SerpApi's conduct is pure conjecture. In an attempt to embellish its unsupported contention that "the value associated with Reddit's licenses" has been "diminishe[d]," Reddit refers to Google's complaint in a separate litigation. Am. Compl. ¶ 109. But the quoted language is inapposite, since Google was referencing *its* relationship with *its own users*, not with Reddit.

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Third, Reddit's alleged injury stemming from having to invest in anti-scraping resources is specifically foreclosed by the Supreme Court's holding in *Clapper*. In *Clapper*, respondents could not establish standing by claiming they were forced to take "costly and burdensome measures to protect the confidentiality of their communications" in response to possible surveillance. 568 U.S. at 415–16. Likewise, Reddit "cannot manufacture standing merely by inflicting harm on [itself] based on [its] fears of hypothetical future harm that is not certainly impending." *Id.* at 416. Reddit has not alleged that SerpApi accessed Reddit's platform or that it intends to do so in the future. And even if Reddit could distinguish its injury from the one in *Clapper*, Reddit still cannot show how the harm allegedly suffered by purportedly expending resources to improve *its own* "anti-scraping efforts" is fairly traceable to SerpApi's alleged access of Reddit data on *Google* SERPs. *See* Am. Compl. ¶ 112. To the extent Reddit alleges harm based on what its partners are "force[d]" to do, *id.*, Reddit cannot claim that SerpApi has injured it because of the measures that Reddit, of its own volition, may require its partners to take.

B.   *Reddit fails to allege any Article III injury arising from the purportedly unauthorized access of Reddit-created content*

In an attempt to concoct *statutory* standing, Reddit's Amended Complaint now asserts that content created by Reddit, along with its "structured data," is scraped from Google SERPs along with Reddit user-generated content. *See id.* ¶ 71. However, Reddit fails to plead any commensurate Article III injury. Reddit newly claims to have been "harmed because Reddit data is being accessed without Reddit's permission" and "its own structured data has been accessed by Defendants without authorization." *Id.* ¶¶ 110–11. Put simply, Reddit alleges harm *solely* because SerpApi supposedly accessed Google SERPs containing Reddit-created snippets without authorization. This is conclusory, and a "bare procedural violation, divorced from any concrete harm" that does not "satisfy the injury-in-fact requirement of Article III." *Spokeo*, 578 U.S. at 341.

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Reddit's only allegations of harm that extend beyond a bare procedural violation relate exclusively to SerpApi's alleged scraping of Reddit *user* content. The allegations regarding purported loss of user trust and reputation, the purported licensing impact, even the alleged investments into anti-scraping mechanisms are all about protecting *user* content. Am. Compl. ¶¶ 54, 102, 104–109, 112. As discussed above, those allegations are also deficient, but importantly Reddit does not, and cannot, allege that any of those purported harms stem from access to Reddit-created content. Particularization is a required element of Article III standing, and "[f]or an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Spokeo*, 578 U.S. at 339. Because Reddit fails to identify any particularized injury resulting from SerpApi's access of *Reddit*-created content, Reddit further fails to establish Article III standing.

II.   Reddit Lacks Statutory Standing to Bring DMCA Claims

Reddit asserts DMCA standing pursuant to 17 U.S.C. § 1203(a), which states that "[a]ny person injured by a violation of section 1201 or 1202" may bring an action for such violation. But Section 1203(a) does not cover Reddit here. Where a cause of action is created expressly by an act of Congress, courts may only hear claims by plaintiffs who fall within the "zone of interests" protected by the law invoked. *See Lexmark Int'l. Inc. v. Static Control Components Inc.*, 572 U.S. 118, 128–30 (2014). But as evidenced by both the DMCA's plain text and legislative history, Reddit—as one that is not the copyright holder, an exclusive licensee, or the controller of the at-issue TPMs—falls outside the DMCA's zone of interests with respect to Reddit user content. With respect to content allegedly authored by Reddit, Reddit fails to allege any injury qualifying it as "person injured" by SerpApi's purported Section 1201 violations.

A.   Reddit is not within the "zone of interests" as to user-generated content

The DMCA's anti-circumvention provisions reflect a narrow zone of interests: protecting the *copyright owner's* rights. "Circumvention" is defined as an action "to descramble a scrambled

work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, *without the authority of the copyright owner*." 17 U.S.C. § 1201(a)(3)(A) (emphasis added). Indeed, the DMCA's legislative history confirms it was enacted to "protect the [copyright] owner" from internet piracy by barring circumvention of measures "*used by copyright owners* to protect their works." H.R. Rep. No. 105-551 (I), at 10 (1998) ("House Judiciary Committee Report") (emphasis added); S. Rep. No. 105-190, at 28 (1998) ("Senate Judiciary Committee Report") (stating § 1201(a) applies when "*the copyright owner* has put in place a technological measure that effectively controls access to his or her work") (emphasis added).

Consistent with the statute's plain text and legislative history, courts in the Second Circuit have held that only copyright owners are definitively within the DMCA's zone of interests. *See Sheldon v. Plot Com.*, 2016 WL 5107072, at *10 (E.D.N.Y. Aug. 26, 2016) (finding that the DMCA's zone of interests only extends to "owners" of copyrights), *report and recommendation adopted*, 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016); *see also Sanborn Libr. LLC v. ERIS Info. Inc.,* 2024 WL 1744630, at *20 (S.D.N.Y. Mar. 25, 2024) (stating in report and recommendation in case settled before adoption by district judge that plaintiff would have "clear standing to bring DMCA claims" if it "owns some quantity of enforceable copyrights," but "several genuine issues of material fact [existed] as to which copyrights [plaintiff] owns and may enforce").[5]

Here, Reddit does not—and cannot—claim ownership of the copyright (if any) in user-

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[5] Although *Sheldon* and *Sanborn* involved claims under Section 1202 of the DMCA, the zone of interests under Section 1202 and Section 1201 are the same. First, both sections explicitly mention "the authority of the copyright owner." *Compare* 17 U.S.C. § 1201(a)(3) (defining circumvention and effective control with reference to the authority of the copyright owner), *with* 17 U.S.C. § 1202(b) (proscribing, *inter alia*, the removal or alteration of copyright management information without the authority of the copyright owner). Second, Section 1203(a) confers statutory standing on both Section 1201 and Section 1202 plaintiffs. Accordingly, the statute's very text demonstrates that the "zone of interests" protected by each section is identical.

generated content, nor does Reddit claim to hold an exclusive license to it. This is by Reddit's own design. Reddit's User Agreement expressly states that *Reddit users* "retain any ownership rights you have in Your Content," while reserving for Reddit only a "*non-exclusive . . .* license" to such user-generated content. Reddit User Agreement § 5 (emphasis added). It is black-letter law that a non-exclusive license "conveys no ownership interest, and the holder of a nonexclusive license may not sue others for infringement." *John Wiley & Sons, Inc. v. DRK Photo*, 998 F. Supp. 2d 262, 277 (S.D.N.Y. 2014), *aff'd*, 882 F.3d 394 (2d Cir. 2018). Because Reddit does not have any copyright interest in its users' content (to the extent such content is even copyrightable), Reddit falls outside the DMCA's zone of interests and lacks statutory standing to assert its DMCA claims.

Importantly, Reddit also concedes that it does not control the alleged TPMs at issue in this case. *See* Am. Compl. ¶ 63. No court has *ever* extended standing to a putative DMCA plaintiff with interests as attenuated as Reddit. *See VidAngel LLC v. ClearPlay, Inc.*, 703 F. Supp. 3d 1329, 1335–36 (D. Utah 2023) ("The court is not aware of *any cases* extending the cause of action in Section 1203 beyond copyright owners and owners of an access control measure.") (emphasis added); *see also Squires v. Lancaster Cnty. Prison*, 2025 WL 3298948, at *3 (E.D. Pa. Nov. 26, 2025) ("In the DMCA context, the zone of interests does not include a party who alleges injury but who has no legal interest whatsoever in any of the material."). Indeed, the few courts outside of the Second Circuit that recognized DMCA standing for non-copyright owners encountered plaintiffs that either had a contractually-granted enforcement right or controlled the at-issue TPM. *See, e.g.*, *Viral DRM LLC v. Seven W. Media Ltd.*, 768 F. Supp. 3d 1025, 1031–32 (N.D. Cal. 2025) (plaintiff held contractually-granted "rights to enforce and protect the content holders['] copyrighted works from non-licensed users"); *Echostar Satellite, L.L.C. v. Viewtech, Inc.*, 543 F. Supp. 2d 1201, 1205–06 (S.D. Cal. 2008) (inferring plaintiff had authority to control the TPM);

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Comcast of Ill. X, LLC. v. Hightech Elecs., Inc., 2004 WL 1718522, at *6 (N.D. Ill. July 29, 2004) (plaintiff "control[led] access").

By contrast, the *VidAngel* court definitively foreclosed standing under the DMCA to a plaintiff that—much like Reddit—did not own the copyrighted material allegedly infringed, did not have authorization from a copyright owner to protect the copyrighted material, did not supply any TPM allegedly circumvented, and was not an agent or otherwise in privity with any such person or entity. *See* 703 F. Supp. 3d at 1335–36.

  B. *Reddit's attempts to manufacture standing as to user-generated content fail*

Reddit's attempts to bring itself within the DMCA's zone of interests for user-generated content are unavailing. *First*, Reddit attempts to associate its own TPMs with those of Google and imply that SerpApi circumvented *Reddit's* TPMs. *See, e.g.*, Am. Compl. ¶ 4 ("The problem for Defendants, however, is that Reddit is protected by technological control barriers . . . ."); *id.* ¶ 124 (alleging Defendants worked to "circumvent Reddit's and/or Google's technological control measures"). The Amended Complaint now even includes a footnote vaguely alleging, without proof or specifics, that "*one* of the Defendants may also be scraping Reddit data directly from its servers." *Id.* ¶ 63 n.31 (emphasis added). But this fails to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. It also impermissibly lumps SerpApi together with the other defendants, including two that have not even been served yet. *See Bardwill Indus. Inc. v. Kennedy*, 2020 WL 2748248, at *3 (S.D.N.Y. May 27, 2020) (dismissing allegations that failed to "specif[y] which defendant engaged in what misconduct"). And beyond such misleading and conclusory statements, Reddit has not alleged anywhere that SerpApi actually accessed Reddit's platform or otherwise circumvented Reddit's TPMs. Reddit's references to its own TPMs are thus irrelevant because Reddit concedes that SerpApi does not circumvent those measures.

Second, Reddit tries to manufacture a connection to Reddit user comments appearing in

Google SERPs by alleging that those reflect Reddit's unique "selection and arrangement" of content on its platform. Am. Compl. ¶¶ 69–70. But that allegation likewise fails. Copyright protection for a compilation applies only to the compilation "as a whole," 17 U.S.C. § 101, and "does not imply any exclusive right in the preexisting material" comprising the compilation, 17 U.S.C. § 103(b); *see Craft Smith, LLC v. EC Design, LLC*, 969 F.3d 1092, 1104 n.16 (10th Cir. 2020) (a compilation copyright "must be viewed '*as a whole*,' not broken up into protected/unprotected elements") (emphasis added). Reddit, however, only alleges that SerpApi accesses "snippets" of Reddit content in Google SERPs, not full-length posts. Am. Compl. ¶ 69. Therefore, it is impossible as a matter of law for SerpApi to have accessed the "whole" of Reddit's selection and arrangement of user comments, to the extent that is even copyrightable.

Third, Reddit alleges that its Privacy Policy "authorizes Reddit to take 'measures to help protect information about [users] from loss, theft, misuse and unauthorized access, disclosure, alteration, and destruction.'" *Id.* ¶ 50. But the referenced language does not refer to *copyright enforcement* at all, let alone grant an enforcement right to Reddit. In fact, the next sentence of the policy illustrates what Reddit actually means by "tak[ing] measures": "For example, we use HTTPS while information is being transmitted. We also enforce technical and administrative access controls to limit which of our employees have access to non-public personal information." Reddit Privacy Policy. Accordingly, unlike in the *Viral DRM* case, Reddit's Privacy Policy provides no basis for Reddit's statutory standing.

C.   *Reddit does not allege injury stemming from alleged scraping of its own content*

Because Reddit lacks standing as to user-generated content, it is left only with allegations that SerpApi accessed a miniscule amount of Reddit-authored content via Google SERPs. *See, e.g.*, Am. Compl. ¶ 66 (claiming scraping of its Public Content Policy). However, the DMCA expressly states that only persons "*injured* by a violation of section 1201 or 1202" may bring an

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action for that violation. 17 U.S.C. § 1203(a) (emphasis added). Because Reddit alleges no concrete injury from the purported scraping of Reddit-authored content, it lacks statutory standing and the Amended Complaint should be dismissed.

III.   Reddit Fails to Plead that Google's TPMs Are Effective Access Controls

On the merits, the Amended Complaint fails to state a DMCA Section 1201(a) claim because, notwithstanding the addition of further detail concerning the Google TPMs allegedly at issue, Reddit still fails to allege that such TPMs are "effective" access controls. "[T]he DMCA not only requires the technological measure to 'control[] access' but also requires the measure to control that access 'effectively[.]'" *Lexmark Int'l, Inc. v. Static Control Components*, 387 F.3d 522, 547 (6th Cir. 2004). That means that, "in the ordinary course of its operation," the measure must "require[] the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work." 17 U.S.C. § 1201(a)(3)(B). There is no DMCA violation if the measure does not control access "any more than a sign requesting that visitors 'keep off the grass' effectively controls access to a lawn." *In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *4 (S.D.N.Y. Dec. 15, 2025).

A.   Reddit admits that Google's TPMs do not limit public, human access to its SERPs

Congress and the Second Circuit have likened effective control measures to a "locked room," "digital walls," "a lock on a homeowner's door, a combination of a safe, or a security device attached to a store's products." *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 435, 453 (2d Cir. 2001); House Judiciary Committee Report at 17. Quintessential examples are "encryption codes or password protections." *Corley*, 273 F.3d at 435. And per the statutory definition of "effectively controls access," a DMCA-protected TPM must require, in the ordinary course of its operation, the "application of information, or a process or a treatment, with the

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authority of the copyright owner"—*i.e.*, the equivalent of a key to the lock—"to gain access" to

the work. *See* 17 U.S.C. § 1201(a)(3)(B).

To that end, the TPM must "actually work[] to prevent access to the protected work."

Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294, 317–18 (S.D.N.Y. 2000), *aff'd sub*

nom. Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001). If the TPM "restricts one

form of access but leaves another route wide open," that is not a measure that "effectively controls

access" under the DMCA. *Lexmark*, 387 F.3d at 546–47 ("Just as one would not say that a lock on

the back door of a house 'controls access' to a house whose front door does not contain a lock . . .

it does not make sense to say that [Section 1201] applies to otherwise-readily-accessible

copyrighted works."); *see also Couponcabin LLC v. Savings.com, Inc.*, 2016 WL 3181826, at *6

(N.D. Ind. June 8, 2016) (dismissing DMCA claim where website was accessible despite TPM);

Avaya, Inc. v. Telecom Labs., Inc., 2012 WL 13035096, at *8 (D.N.J. May 1, 2012) (finding TPMs

were not effective because they did not "protect all forms of access to the protected work").[6]

Here, Reddit does not allege that Google employs any TPMs that are akin to a "lock on a

homeowner's door" or that require any "application of information" like a password by the general

public in the ordinary course of Google's operations. To the extent Reddit refers to Google's

"machine-readable instructions on [Google's] web pages" such as robots.txt files (Am. Compl.

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[6] One court in the District of Connecticut has ruled that an access control "need not necessarily 'prevent access' in the way that a 'lock' . . . do[es] . . . to constitute a technological measure." *Yout, LLC v. Recording Indus. Ass'n of Am., Inc.*, 633 F. Supp. 3d 650, 665 (D. Conn. 2022). However, when making this statement, the *Yout* court was *not* discussing whether the TPM at issue was *effective*, as required by Section 1201(a); rather, it was addressing the alleged circumventer's argument that there was no "technological measure" in place at all. *Id.* at 662–65. In addition, the facts of *Yout* are distinguishable. There, YouTube's TPM was deemed effective because it prevented ordinary YouTube users from downloading YouTube content in the ordinary course. *Id.* at 670–672. Here, by contrast, Reddit does not allege that Google's TPMs prevent ordinary Google Search users from accessing public Google SERPs in the ordinary course.

¶¶ 55, 77), there are no allegations that such instructions are anything more than "mere[] requests." *OpenAI*, 2025 WL 3635559, at *4–5. As for Google's SearchGuard (the focus of Reddit's Amended Complaint), Reddit contends that it serves to block *automated* bot access to SERPs, but nevertheless admits that the same measure still "allow[s] individual users—*i.e.*, humans—access to Google's search results, including results that feature Reddit data." Am. Compl. ¶ 56. Indeed, while SearchGuard allegedly requires both bots and humans to solve certain JavaScript "challenge[s]" and CAPTCHAs before accessing Google SERPs, Reddit concedes that, in reality, human users "*seamlessly*" access Google SERPs while SearchGuard works in the background "*without disrupting the user experience.*" *Id.* ¶ 58 (emphasis added). That means, in Reddit's own words, at least one route of access to Google's SERPs is "wide open" and the featured content is readily accessible notwithstanding Google's TPM. *Lexmark*, 387 F.3d at 547. And as for SerpApi, Reddit's allegations at most accuse SerpApi's tool of "mimic[king] human behavior" (Am. Compl. ¶ 81)—which allows SerpApi "seamless[]" access to Google SERPs, but does not amount to "decrypting" an encrypted work, "descrambling" a password, or otherwise picking the proverbial lock on a door. Accordingly, the alleged TPMs do not "effectively control access" under the DMCA and any alleged circumvention thereof does not support a Section 1201 claim.

B.   *Reddit fails to allege Google's authorization from the alleged copyright owners*

An "effective[]" control measure under the DMCA also requires the "authority of the copyright owner[] to gain access to the work." 17 U.S.C. § 1201(a)(3)(B). Therefore, if a purported TPM does not require any authorization from the copyright owner to bypass it, then it does not "effectively control access." *See Echostar Satellite*, 543 F. Supp. 2d at 1205–06. In this case, to the extent Reddit comments are copyrightable at all, Reddit users own those copyrights, but Reddit fails to allege that Google received any authorization from any Reddit user to use the TPMs at issue to protect any such copyrights. *See* Reddit User Agreement § 5 (Reddit users maintain

copyright ownership); Am. Compl. ¶ 54 (describing Google's TPMs without reference to authority of copyright owners).[7] Reddit also fails to allege that *it* has given Google authorization to protect Reddit's own content. Therefore, Reddit's claims fail on this independent basis as well.

> C.   The "Reddit data" at issue are not "works protected under" the Copyright Act

Given the DMCA's focus on protecting copyright owners, as discussed above, a technological measure that does not control access to a *copyrighted* work is not protected by Section 1201. *See* 17 U.S.C. § 1201(a); *Lexmark*, 387 F.3d at 550 ("To the extent the Toner Loading Program is not a 'work protected under the copyright statute' . . . the DMCA necessarily would not protect it."); *Storage Tech. Corp. v. Custom Hardware Eng'g & Consulting, Ltd.*, 2006 WL 1766434, at *7–8 (D. Mass. June 28, 2006) (dismissing DMCA claim where plaintiff did not show that defendants accessed copyright-protected works).

Because Reddit alleges that SerpApi accessed "Reddit data" in Google SERPs, Am. Compl. ¶ 63, Reddit must sufficiently allege that such "Reddit data" is protected under the Copyright Act. Reddit does not—and cannot—do so. As Reddit admits, the "Reddit data" at issue consists of mere snippets of text gleaned by Google. Am. Compl. ¶¶ 66–71. Such snippets do not constitute works protected under the Copyright Act because they are comprised of unprotectable short phrases and basic, functional expressions. *See, e.g., Moody v. Morris*, 608 F. Supp. 2d 575, 579 (S.D.N.Y. 2009) ("[I]t is axiomatic that words, short phrases, titles, and slogans are not subject to copyright[.]"), *aff'd*, 407 F. App'x 434 (Fed. Cir. 2011); *see also Stern v. Does*, 978 F. Supp. 2d 1031, 1042 (C.D. Cal. 2011) (finding short listserv post uncopyrightable because it "display[ed] no creativity whatsoever" and was "dictated solely by functional considerations"), *aff'd sub nom.*

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[7] While Reddit generally refers to "partnership agreements" with AI companies that are willing to "abide by" its Public Content Policy, as to Google, Reddit merely alleges that their partnership grants "programmatic access by Google to Reddit content." *See* Am. Compl. ¶ 52. Reddit does not allege that it grants Google any authority to protect Reddit users' copyright interests, if any.

Stern v. Weinstein, 512 F. App'x 701 (9th Cir. 2013).

Reddit's Amended Complaint provides four examples of Google SERPs allegedly accessed using SerpApi's platform. Am. Compl. ¶¶ 66–71. None is copyrightable as a matter of law.

- The <u>first</u> example is: "Reddit may provide public content to others, but never private Redditor data. Private messages, private group chats, mod mail, and deleted posts . . . ." *Id*. ¶ 66. This boilerplate text lacks the originality required for copyright protection.

- The <u>second</u> example reads in full: "Inception, LotR trilogy, Fifth Element, The Princess bride, Blues Brothers, Mouse Hunt (another personal favourite, I'm biased), Michael Bay's . . . ." *Id*. ¶ 67. This text—not even a full sentence—is not protectable as it is merely a list of movie titles with a short statement that one is a personal favorite.

- The <u>third</u> example references two Reddit posts. One reads: "May 17, 2024." *Id*. ¶ 68. The second reads: "Jan 11, 2025 – Open is peak season- so there is no way to avoid that. But if yo." *Id.* This factual, function-driven text lacks the requisite originality.

- The <u>fourth</u> example reads: "The best intimate small group club in town is Mezzrow on West 10th and 7th Ave hands down. Get a ticket if you want to go Thur-Sun, Mon-Wed . . . ." *Id*. ¶ 70. This snippet is just an address and a factual ticket requirement.

These fragments of uncopyrightable text are not protected by the DMCA. Reddit never alleges SerpApi collected any snippet long or original enough to be copyrightable.

Reddit's new allegations do not cure its failure to plead copyrightable Reddit snippets in Google SERPs. It claims SerpApi accesses Reddit's "selection and arrangement of which comments to highlight," reflected in the JSON SerpApi users retrieve. *Id.* ¶¶ 70–71. Even assuming Reddit has a valid copyright interest in an alleged selection and arrangement (a dubious assumption), it would only be implicated if Google SERPs replicate the *entirety* of that purported compilation—which they do not. Reddit also states that SerpApi "explains that the text it retrieves from Google SERPs is not limited to truncated snippets" and that SerpApi advertises "how to use its service to collect a full snippet that would include longer portions of text." *Id*. ¶ 73. This statement is highly misleading. The cited blog post states that "SerpApi focuses on scraping search

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results," and that scraping more than Google SERPs requires "visit[ing] the page URL."[8] Notably, Reddit never alleges that SerpApi actually visited Reddit's page. Indeed, the gravamen of Reddit's case is SerpApi's alleged "end-run" around Reddit's website through the scraping of Google SERPs. Am. Compl. ¶ 63. Because Reddit fails to allege that any content at issue constitutes a copyrightable work, it further fails to show that the TPMs are DMCA-protected access controls.

D.   *Reddit's claims also fail because they lack an infringement nexus*

A Section 1201 plaintiff must allege that defendant's circumvention infringed a protected work or facilitated infringement (an "infringement nexus"). *Chamberlain Grp., Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1195 (Fed. Cir. 2004) ("Defendants whose circumvention devices do not facilitate infringement are not subject to § 1201 liability."). "17 U.S.C. § 1201 prohibits only forms of access that bear a reasonable relationship to the protections that the Copyright Act otherwise affords copyright owners." *Id.* at 1202; *see also Storage Tech. Corp. v. Custom Hardware Eng'g & Consulting, Inc.*, 421 F.3d 1307, 1319 (Fed. Cir. 2005) (§ 1201 claim unlikely to succeed because alleged harm resulted from breach of contract rather than copyright). Here, Reddit makes no claims of copyright infringement, nor can it, as SerpApi collects publicly accessible content that is not protected by the Copyright Act. *See generally* Am. Compl.

Consistent with the Federal Circuit's approach, other Circuit Courts—and at least one court in the Second Circuit—have agreed that a Section 1201 claim requires an infringement nexus. *See Point 4 Data Corp. v. Tri-State Surgical Supply & Equip., Ltd.*, 2013 WL 5502852, at *7 (E.D.N.Y. Oct. 1, 2013) (citing *Chamberlain* for proposition that DMCA plaintiff must prove valid copyright ownership), *report and recommendation adopted*, 2014 WL 12769275 (E.D.N.Y. Sept. 17, 2014);

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[8] Hilman Ramadhan, *Scraping the full snippet from Google search result*, SerpApi (Jan. 1, 2024), https://serpapi.com/blog/scraping-the-full-snippet-from-google-search-result/ (cited at Am. Compl. ¶ 73 n.34).

accord United States v. Reichert, 747 F.3d 445, 448 (6th Cir. 2014) ("[T]he DMCA gave copyright owners a remedy against those who . . . circumvented technological controls and thereby enabled others to infringe."); *Lexmark*, 387 F.3d at 547 (favorably citing *Chamberlain*); *Chambers v. Amazon.com Inc.*, 632 F. App'x 742, 744 (4th Cir. 2015) (endorsing Federal Circuit's approach).[9]

The absence of an infringement nexus requirement would undermine the balanced protections of the Copyright Act, creating a regime in which "the owners of a work protected by *both* copyright *and* a technological measure that effectively controls access to that work per § 1201(a) would possess *unlimited* rights to hold circumventors liable under § 1201(a) *merely for accessing that work*, even if that access enabled *only* rights that the Copyright Act grants to the public." *Chamberlain*, 381 F.3d at 1200. It would effectively assume Congress intended to let copyright owners slam the door on public access—even when that access causes no harm. *Id.* This proposition is not only irrational on its face, but also "hard to reconcile with the DMCA's statutory prescription that 'nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.'" *Id.* (citation modified). Thus, with no allegations supporting an infringement nexus, Reddit's DMCA claims must be dismissed.

IV.   Reddit's DMCA § 1201(b) Claim Fails Because Reddit Does Not Allege That Google's TPMs Are Copying Controls

The DMCA makes a distinction between *access controls*, discussed above, that are protected under § 1201(a), and *copying controls*, protected under § 1201(b). Section 1201(b) prohibits trafficking in technology that is "designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively *protects a right of a copyright owner* under this title in a work." 17 U.S.C. § 1201(b)(1)(A) (emphasis added). The referenced

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[9] In a departure from this consensus view, the Ninth Circuit has held that Section 1201 does not require an infringement nexus. *See MDY Indus., LLC v. Blizzard Ent., Inc.*, 629 F.3d 928, 950 (9th Cir. 2010). No other Circuit Court has adopted this rule.

rights are those provided by 17 U.S.C. § 106, including the exclusive right to reproduce the work. Accordingly, "the focus of subsection 1201(b)(1) is circumvention of technologies designed to *permit access* to a work but *prevent copying* of the work . . . ." *Corley*, 273 F.3d at 441.

Count III of Reddit's Complaint alleges a violation of DMCA Section 1201(b). However, the Google TPMs at issue allegedly control whether a bot can access Google's search pages—in other words, they are alleged to be *access* controls. *See* Am. Compl. ¶¶ 55, 81 (alleging circumvention of "measures Google has put in place to ward off automated *access* to search engine results") (emphasis added). Reddit does not allege that Google's TPMs prevent copying. *See* generally Am. Compl.[10] Although Reddit attempts to use Sections 1201(a) and 1201(b) interchangeably to try to plausibly state a claim under *some* provision of the DMCA, the DMCA's legislative history confirms that such attempts are futile. *See* Senate Judiciary Committee Report at 12 ("The two sections are not interchangeable . . . ."). Reddit's Section 1201(b) claim thus fails.

V.   Reddit's Unfair Competition Claim Fails

A.   *Reddit's claim for unfair competition is preempted by the Copyright Act*

The Copyright Act preempts Reddit's unfair competition claim. "A state cause of action is preempted . . . if the subject matter of the state-law right falls within the subject matter of the copyright laws and the state-law right asserted is equivalent to the exclusive rights protected by federal copyright law." *Kregos v. Associated Press*, 3 F.3d 656, 666 (2d Cir. 1993). While a state-law claim that "include[s] any extra elements that make it qualitatively different from a copyright infringement claim" will avoid preemption, courts take a "restrictive view" of what such extra elements qualify. *Briarpatch Ltd. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 305–06 (2d Cir. 2004).

Moreover, Reddit fails to allege extra elements in connection with its unfair competition

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[10] Notably, Google does not allege its TPMs as copying controls in the litigation Reddit cites.

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claim (based on a misappropriation theory) that are qualitatively different from its would-be copyright claims. "Courts in [the Second] Circuit have consistently held that claims for misappropriation of rights within the scope of copyright brought under New York unfair competition law are preempted." *Am. Movie Classics Co. v. Turner Ent. Co.*, 922 F. Supp. 926, 933 (S.D.N.Y. 1996) (collecting cases). A movant must allege conduct such as "breaches of confidential relationships, breaches of fiduciary duties and trade secrets" as extra elements of an unfair competition claim to avoid preemption by the Copyright Act. *Kregos*, 3 F.3d at 666. Reddit alleges none of this and merely repackages copyright-sounding claims, asserting SerpApi circumvented TPMs to "secure for [itself] an undue competitive advantage, or to damage Reddit's competitive position" regarding user content that Reddit does not own. Am. Compl. ¶ 141. The mere allegation of competition does not rescue Reddit's unfair competition claim from preemption. *See Gogo Apparel, Inc. v. True Destiny, LLC*, 2020 WL 5578336, at *4 (S.D.N.Y. Sept. 17, 2020).

> B.   *Reddit and SerpApi are not competitors*

Even if there were no preemption, Reddit's unfair competition claim fails because SerpApi and Reddit are not competitors. *See EMI Music Mktg. v. Avatar Recs., Inc.*, 317 F. Supp. 2d 412, 423 (S.D.N.Y. 2004) ("[W]here there is *no* competition, there can be no unfair competition.") (emphasis added); *see also Chartwell RX, LLC v. Inmar, Inc.*, 620 F. Supp. 3d 59, 78–79 (S.D.N.Y. 2022) (dismissing unfair competition claim where parties did not compete). Whereas Reddit is a platform that hosts user-generated "subreddit" communities where users engage in discussions, SerpApi is a service that allows users to retrieve structured data from SERPs. Am. Compl. ¶¶ 17, 44. Google SERPs may include Reddit snippets, and SerpApi users may use its software to collect and analyze those SERPs. However, Reddit fails to plausibly allege how this "remov[es] the need for [internet] users to access Reddit content directly through Reddit," *id.* ¶ 141, when SerpApi itself is not even alleged to *directly access* Reddit content—let alone to the point of displacing the

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need for Reddit. For the same reason, Reddit also fails to plausibly allege how SerpApi competes for Reddit's would-be licensing revenue from AI companies (*see id.* ¶¶ 109, 141).

Reddit's unfair competition claim also fails because Reddit does not plausibly allege that SerpApi misappropriated "'the skill, expenditures and labors' of a competitor." *Chartwell RX*, 620 F. Supp. 3d at 78. Reddit's conclusory assertions of bad faith and "undue competitive advantage," Am. Compl. ¶¶ 138, 141, do not cure the basic defect: SerpApi does not compete with Reddit and is alleged to retrieve data from *Google* SERPs, not Reddit's platform. Furthermore, because Reddit holds only a non-exclusive license to user content, Reddit User Agreement § 5, it lacks an exclusive "goodwill constituting property or a commercial advantage" in the snippets at issue required under New York law for a misappropriation theory of unfair competition to survive. *ITC Ltd. v. Punchgini, Inc.*, 9 N.Y.3d 467, 479 (2007); *see RBG Mgmt. Corp. v. Vill. Super Mkt., Inc.*, 692 F. Supp. 3d 135, 152–53 (S.D.N.Y. 2023) (dismissing claim where "the only property or commercial advantage at issue" was goodwill derived from plaintiff's non-exclusive association with a third party's intellectual property). For all of the above reasons, Reddit's unfair competition claim fails.

VI.   Reddit's Unjust Enrichment Claim Fails

Under New York law, an unjust enrichment claim "require[s] proof that (1) [the] defendant was enriched, (2) at plaintiff's expense, and (3) equity and good conscience militate against permitting defendant to retain what [the] plaintiff is seeking to recover." *Briarpatch*, 373 F.3d at 306. Defendant's alleged benefit must be "both specific and direct." *RBG Mgmt.*, 692 F. Supp. 3d at 154 (citation modified). "[U]njust enrichment is not a catchall cause of action to be used when others fail," but rather, "is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation" on the defendant's part. *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 (2012). Here, Reddit's unjust enrichment claim fails for three reasons. *First*, the Copyright Act preempts the claim.

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Second, Reddit's claim is duplicative of its other counts. And *third*, even if it were neither preempted nor duplicative, Reddit fails to allege any specific or direct benefit to SerpApi.

> ### A.   *Reddit's unjust enrichment claim is preempted by the Copyright Act*

"Courts have generally concluded that the theory of unjust enrichment protects rights that are essentially 'equivalent' to rights protected by the Copyright Act; thus, unjust enrichment claims related to the use of copyrighted material are generally preempted." *Ardis Health, LLC v. Nankivell*, 2012 WL 5290326, at *10 (S.D.N.Y. Oct. 23, 2012). Here, Reddit's unjust enrichment claim is just alleged "unauthorized" retrieval of "content," *see* Am. Compl. ¶¶ 148–49, making its "fundamental nature" "equivalent to a claim to enforce exclusive rights within the general scope of copyright." *OpenAI,* 2025 WL 3635559 at *4 (holding unjust enrichment claim preempted); *see also, e.g.*, *Rubio v. Barnes & Noble, Inc.*, 2014 WL 6769150, at *3 (S.D.N.Y. Nov. 12, 2014) (dismissing as preempted unjust enrichment claim based on "unauthorized and uncompensated production" of allegedly infringing materials). Thus, the Copyright Act preempts Reddit's claim.

> ### B.   *Reddit's unjust enrichment claim is duplicative and derivative of its other claims*

Even absent preemption, "claims for unjust enrichment will not survive a motion to dismiss where plaintiffs fail to explain how their unjust enrichment claim is not merely duplicative of their other causes of action." *Duchnik v. Tops Mkts., LLC*, 2023 WL 4827951, at *14 (W.D.N.Y. July 6, 2023), *report and recommendation adopted*, 2023 WL 4828141 (W.D.N.Y. July 26, 2023). "[T]wo claims are duplicative of one another if they 'arise from the same facts and do not allege distinct damages.'" *Cooper v. Anheuser-Busch, LLC*, 553 F. Supp. 3d 83, 115 (S.D.N.Y. 2021). Reddit's unjust enrichment and DMCA claims are based on the same alleged conduct: SerpApi's tool bypasses TPMs to scrape SERPs with Reddit snippets. Am. Compl. ¶ 9. And, "if [Reddit's] other claims are defective, an unjust enrichment claim cannot remedy the defects." *Corsello*, 18 N.Y.3d at 791. Because Reddit's DMCA and other claims fail, so does its unjust enrichment claim.

C.   *Reddit fails to allege a specific or direct benefit conferred upon SerpApi*

Even were the Court to find that Reddit's unjust enrichment claim is neither preempted nor duplicative, the claim still fails because Reddit fails to identify any "specific" and "direct" benefit to SerpApi. *See RBG Mgmt.*, 692 F. Supp. 3d at 154. Reddit only alleges in a conclusory manner that SerpApi has "been unjustly enriched at Reddit's expense." Am. Compl. ¶ 149. And Reddit's vague claims of lost "commercial opportunities" fail to allege that any such opportunities went to SerpApi. Reddit's bare-bones allegations are simply "too nebulous and speculative to plausibly allege that a 'specific' and 'direct' benefit was received by" SerpApi. *RBG Mgmt.*, 692 F. Supp. 3d at 155; *see also Regnante v. Sec. & Exch. Offs.*, 134 F. Supp. 3d 749, 773 (S.D.N.Y. 2015) ("An allegation premised on an unnamed benefit that may accrue in the future . . . is too slender a reed on which to premise a claim of unjust enrichment."). Thus, Reddit's claim must be dismissed.

VII.   Reddit's Civil Conspiracy Claim Fails

A.   *Reddit's civil conspiracy claim is preempted by the Copyright Act*

Reddit's claim for civil conspiracy is also preempted by the Copyright Act, which creates secondary liability for contributory and vicarious infringement. *Gym Door Repairs, Inc. v. Young Equip. Sales, Inc*., 206 F. Supp. 3d 869, 897 (S.D.N.Y. 2016). A conspiracy claim merely repackages conduct that "contributed to infringement," and therefore does not expand liability beyond what the Copyright Act already remedies. *Id.* at 916 (finding claims for conspiracy to violate Copyright Act preempted); *Irwin v. ZDF Enters. GmbH*, 2006 WL 374960, at *4 (S.D.N.Y. Feb. 16, 2006) (collecting cases). Analogously, the DMCA penalizes parties who do not directly circumvent access controls but facilitate circumvention by trafficking in devices that do. 17 U.S.C. § 1201(a)(2). Because Section 1201(a)(2) already imposes secondary liability on those who facilitate circumvention, the DMCA preempts a civil conspiracy claim to violate the DMCA, just as the Copyright Act preempts a civil conspiracy claim for copyright infringement.

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B.   *Reddit's claim also fails because the underlying DMCA claims fail*

Even if there were no copyright preemption, civil conspiracy is not an independent tort in New York. *Shared Commc'ns Servs. of ESR, Inc. v. Goldman Sachs & Co.*, 23 A.D.3d 162, 163 (1st Dep't 2005) (upholding dismissal of civil conspiracy claim); *Bell v. Alden Owners, Inc.*, 299 A.D.2d 207, 209 (1st Dep't 2002) (same). This is because "[t]he actionable wrong [in a conspiracy] lies in the commission of a tortious act . . . but never upon the agreement to commit the prohibited act standing alone." *Cuker Indus. v. William L. Crow Constr. Co.*, 6 A.D.2d 415, 417 (1st Dep't 1958). Thus, Reddit must successfully plead an intentional tort underlying the alleged conspiracy. *Payday Advance Plus, Inc. v. Findwhat.com, Inc.*, 478 F. Supp. 2d 496, 506 (S.D.N.Y. 2007). Here, Reddit's DMCA claims supply the tortious conduct for its conspiracy claim. *See* Am. Compl. ¶¶ 154–155. Because the underlying DMCA claims fail, so, too, does the civil conspiracy claim.

VIII.   Reddit's Claims Against SerpApi Should Be Dismissed With Prejudice

In cases where, as here, plaintiffs were given chances to replead and were unable to cure deficiencies despite the opportunity to do so, courts will dismiss the claims with prejudice. *See, e.g.*, *Hunt v. All. N. Am. Gov't Income Tr.*, 159 F.3d 723, 728 (2d Cir. 1998). Here, SerpApi's prior motion to dismiss identified numerous infirmities, including Reddit's failure to plead both constitutional and statutory standing and failure to state any DMCA or state law claim against SerpApi. Reddit has failed to address those infirmities—demonstrating that it simply is unable to do so. Allowing Reddit to amend again would prejudice SerpApi by requiring it to expend considerable resources to move to dismiss a third time. *Cohen v. Standard Bank Inv. Corp. (Jersey)*, 1998 WL 782024, at *7 (S.D.N.Y. Nov. 6, 1998). Dismissal with prejudice is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant SerpApi's Motion to Dismiss.

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Respectfully submitted,

/s/ *Nili T. Moghaddam*

Nili T. Moghaddam
Jessica L. Falk
Sarah Ryu
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Tel.: (212) 310-8000
Fax: (212) 310-8007
nili.moghaddam@weil.com
jessica.falk@weil.com
sarah.ryu@weil.com

Jeff Homrig (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, TX 75201
Tel: (214) 746-7700
jeff.homrig@weil.com

Attorneys for Defendant SerpApi, LLC

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