DISGORGEMENT & DESTRUCTION

Caprice L. Roberts[*]

INTRODUCTION

Legacy media is experiencing an existential crisis while social media influencer-style reporters continue to gain prominence.[1] More and more traditional, local print media outlets continue to shudder.[2] Readers lament bias,[3] paywalls,[4] and the increasing

[*] Interim Dean, Pan American Endowed Professor, and J.Y. Sanders Professor of Law, Louisiana State University Paul M. Hebert Law Center.

[1] Charlie Warzel, *Bad News*, THE ATLANTIC (Nov. 8, 2024), https://www.theatlantic.com/technology/archive/2024/11/you-are-the-media-now/680602/ [https://perma.cc/YWP4-W387] ("'You are the media now.' That's the message that began to cohere among right-wing influencers shortly after Donald Trump won the election . . . . Elon Musk first posted the phrase, and others followed. 'The legacy media is dead. Hollywood is done. Truth telling is in. No more complaining about the media,' the right-wing activist James O'Keefe posted shortly after. 'You are the media.'").

[2] *See, e.g.*, Corine Lesnes, *Disappearance of Local Newspapers Is Weighing on US Democracy*, LE MONDE, (Jan. 7, 2024, 04:27 GMT),

balkanization of content providers with exponential subscription fees.[5] Copyright infringement of news[6] and disinformation are on the rise.[7] Barriers to disinformation are crumbling.[8] Access to

https://www.lemonde.fr/en/economy/article/2024/01/07/the-disappearance-of-local-newspapers-in-the-united-states-impacts-the-functioning-of-democracy_6409178_19.html [https://perma.cc/S2VN-9GQ2] ("Local newspapers are quickly going extinct in the United States.").

[3] *See* Nic Newman & Richard Fletcher, *Bias, Bullshit and Lies: Audience Perspectives on Low Trust in the Media*, REUTERS INST. FOR THE STUDY OF JOURNALISM (2017), https://reutersinstitute.politics.ox.ac.uk/our-research/bias-bullshit-and-lies-audience-perspectives-low-trust-media#:~:text=Among%20those%20who%20do%20not,represent%20ordinary%20readers%20or%20viewers [https://perma.cc/DNN8-R9TP] ("Among those who do not trust the news media, the main reasons (67%) relate to bias, spin, and agendas. Simply put, a significant proportion of the public feels that powerful people are using the media to push their own political or economic interests, rather than represent ordinary readers or viewers.").

[4] *See* Jack Marshall, *Over Half of Readers Attempt to Circumvent Publishers' Paywalls*, A MEDIA OPERATOR (Nov. 16, 2023), https://www.amediaoperator.com/analysis/over-half-of-readers-attempt-to-circumvent-publishers-paywalls/ [https://perma.cc/M2D2-757G] ("Over half of digital publication readers say they regularly look for ways to access paywalled content without paying, and two-thirds say they avoid sites with paywalls entirely, according to new research by Toolkits and National Research Group.").

[5] *See* Sara Guaglione, *In Graphic Detail: Subscriptions Are Rising at Big News Publishers – Even as Traffic Shrinks*, DIGIDAY (Feb. 17, 2026), https://digiday.com/media/in-graphic-detail-subscriptions-are-rising-at-big-news-publishers-even-as-traffic-shrinks/ [https://perma.cc/Z49B-FP49] (describing fragmentation, bundling, and higher subscription revenues for news publishers).

[6] Aklovya Panwar, *Generative AI and Copyright Issues Globally: ANI Media v OpenAI*, TECH POL'Y PRESS (Jan. 8, 2025), https://www.techpolicy.press/generative-ai-and-copyright-issues-globally-ani-media-v-openai/ [https://perma.cc/N5F4-6HQC] ("Courts around the world are entertaining lawsuits related to copyright and AI. Two categories of litigation are prominent: those related to the copyright violation caused by generative AI and the granting of copyright to AI-generated work. . . . The main point of concern is the issues originating from the first category of cases."); *see also* Gretel Kahn, *How AI Is Reshaping Copyright Law and What It Means for the News Industry*, REUTERS INST. (Jan. 30, 2025), https://reutersinstitute.politics.ox.ac.uk/news/how-ai-reshaping-copyright-law-and-what-it-means-news-industry [https://perma.cc/RCC9-GR2G] (noting many journalists and industry allies expressed "discomfort with their intellectual property being scrapped by AI companies without any compensation, permission or credit").

[7] *See, e.g.*, *Fake News Is a REAL Problem!*, UNIV. OF VA. LIBR., https://guides.lib.virginia.edu/FakeNews [https://perma.cc/U5XR-XAW9] (last visited Feb. 25, 2026) ("With the rise of social media, fake news is spreading faster and further than ever before—with real consequences."); *The Real Impact of Fake News: The Rise of Political Misinformation—and How We Can Combat Its Influence*, COLUMBIA SCH. OF PRO. STUD. (Jan. 2, 2024), https://sps.columbia.edu/news/real-impact-fake-news-rise-political-misinformation-and-how-we-can-combat-its-influence [https://perma.cc/EJ8Z-

reliable news sources is integral to democracy and rule of law.[9] Governmental solutions addressing these threats through United States regulation remain elusive due to regulatory stagnation and changing executive prerogatives.[10] Further, the American government continues to undergo unprecedented downsizing.[11] The United States relies on self-regulation and market forces.[12] Meanwhile, threatened media outlets search for alternative routes to protect their interests.[13] Such alternatives include seeking more effective remedies to ensure significant recoveries for often intangible harms, halt perceived encroachments, and deter opportunism. Perhaps the goal is simply to force negotiations.

B59N] (noting the "problematic" influence of AI-created content) ("There's been content pushed out on social media inflaming things . . . [i]t's going to democratize disinformation even more than it already does. People will not know what to believe.").

[8] Ben Johansen, *Termination Notices Expected to Go Out to All Remaining Voice of America Employees This Week*, POLITICO (May 28, 2025, at 12:16 ET), https://www.politico.com/news/2025/05/28/voice-of-america-rif-terminations-trump-00372238 [https://perma.cc/9BVA-KTUG] ("All remaining staff at Voice of America are expected to receive reduction-in-force notices this week, likely closing the book on the network founded 80-plus years ago to combat Nazi disinformation during World War II.").

[9] *See* Ronald J. Krotoszynski, Jr. & Caprice L. Roberts, *Reimagining First Amendment Remedies*, 109 IOWA L. REV. 911, 932–33 (2024) (exploring ideal remedies to protect the relationship among democratic self-government, free speech, and freedom of the press; and to honor the public interest in receiving information).

[10] *See, e.g.*, David Siman-Tov, *The Trump Administration's Withdrawal from the Fight Against Foreign Interference—Strategic Implications*, INST. NAT'L SEC. STUD. (July 7, 2025), www.inss.org.il/publication/trump-influence/#:~:text= ("The Trump administration's policy shift—reducing government activity . . . had begun to take shape in recent years.").

[11] *See* Alex Nowrasteh & Krit Chanwong, *DOGE Produced the Largest Peacetime Workforce Cut on Record, but Spending Kept Rising*, CATO INST. (Dec. 17, 2025), https://www.cato.org/blog/doge-produced-largest-peacetime-workforce-cut-record-spending-kept-rising-0 [https://perma.cc/KVN4-DQS7] ("DOGE also aimed to reduce the size and scope of the administrative state, improve procurement process, reform regulations, eliminate certain small agencies, use technology to cut costs, and shrink the federal workforce.").

[12] *See* Brittany Doyle, Note, *Self-Regulation Is No Regulation—The Case for Government Oversight of Social Media Platform*, 32 IND. INT'L COMP. L. REV. 97 (2022) (lamenting the lack of U.S. regulation over social media communication platforms and the governmental surrendering to self-regulation by the industry).

[13] *See* Jonathan van Harmelen, *The Decay of American Journalism in a Disinformation Age*, NEW REPUBLIC (Mar. 17, 2026), https://newrepublic.com/article/207548/decay-american-journalism-disinformation-age [https://perma.cc/YN65-Q5WY] (describing, for example, California's effort to tax big tech giants to financially bolster local journalism).

Regardless, the strengths and weaknesses of potential remedies will shape the path forward.

Robust, gain-based unjust enrichment remedies like disgorgement of wrongful profits are increasingly appealing to plaintiffs.[14] Such relief is especially alluring where the plaintiff faces challenges demonstrating compensable losses.[15] Disgorgement of profits, with a history from the equitable accounting for profits,[16] has gained popularity in the United States in private and public law.[17]

With vast applications, plaintiffs seek to disgorge unjust profits for such actions as breach of fiduciary duty, opportunistic breach of contract, infringement of intellectual property rights, and other wrongs.[18] The federal government, often through administrative agencies such as the Securities and Exchange Commission ("SEC") or the Federal Trade Commission ("FTC"), has zealously sought to disgorge wrongful profits. These actions have resulted in awards for billions of dollars. For many plaintiffs, whether private or governmental enforcers, such recoveries are superior to actions for compensatory losses.

Another pressure valve is that the forms of knavery are ever complex and high-tech.[19] In the commission of wrongs, defendants use artificial intelligence ("AI") that incorporates algorithmic

---

[14] *See, e.g.*, Caprice L. Roberts, *Supreme Disgorgement*, 68 FLA. L. REV 1414, 1415–17 (2016) (describing the rise and expansion of the disgorgement remedy as a plaintiff preferred remedy over expectation damages for opportunistic breach of contract claims).

[15] Brief of Remedies and Restitution Scholars Douglas Laycock, Colleen P. Murphy, Caprice L. Roberts, Chaim Saiman, and Michael Traynor as Amici Curiae in Support of Respondent at 20, Sripetch v. SEC, No. 25-466 (U.S. Apr. 1, 2026) (describing examples where the disgorgement remedy overcomes challenges of proving compensatory harm).

[16] Liu v. SEC, 591 U.S. 71, 79 (2020) ("Equity courts have routinely deprived wrongdoers of their net profits from unlawful activity, even though that remedy may have gone by different names.").

[17] Caprice L. Roberts, *The Restitution Revival and the Ghosts of Equity*, 68 WASH. & LEE L. REV. 1027 (2011) (examining a revival of interest in the unjust enrichment and the disgorgement remedy).

[18] DAN B. DOBBS & CAPRICE L. ROBERTS, LAW OF REMEDIES: DAMAGES, EQUITY, RESTITUTION §§ 4.1(1), 4.3, at 382, 435 (3d ed. 2018) (exploring the versatility and advantages of the disgorgement remedy for various claims including trademark infringement, fiduciary duty, and breach of contract).

[19] *Id.* § 4.1(2), at 383 (describing the suitability of unjust enrichment remedies as sufficiently flexible to capture novel forms of knavery); Sylvia Lu, *Regulating AI Harms*, 77 FLA. L. REV. (forthcoming 2026) (manuscript at 3) (available on SSRN).

learning models.[20] Adoption of such technologies during the commission of wrongs can exacerbate harm in intangible ways.[21] As the harm exponentially increases, plaintiffs may often be unable to prove losses, though the wrong is undeniable. This mismatch makes disgorgement of unjust profits appealing. Even still, disgorgement of the defendant's profits may not be sufficient. With greater frequency, public and private plaintiffs seek something more powerful to correct the wrong.[22] They adopt the language of unjust enrichment, seeking to undo unjust gains with a remedy often described as "algorithmic disgorgement."[23]

This Article focuses on pending litigation that pits legacy media against AI. *The New York Times* filed suit against OpenAI for willful copyright infringement allegedly accomplished via its generative AI tool ChatGPT.[24] The underlying principle is the unjust gain monetarily and algorithmically earned from the wrongful conduct of infringement. The asserted wrongdoing is the unlawful use, and often verbatim copying, of substantial swaths of the newspaper's article content.[25] *The Times* seeks a host of remedies, including disgorgement of profits and the destruction of generative AI.[26]

The Times asserts that, as the creator, it has exclusive rights over its work as protected by the United States Constitution and the Copyright Act.[27] It declares that OpenAI violated those

---

[20] *See, e.g.*, Sylvia Lu, Note, *Data Privacy, Human Rights, and Algorithmic Opacity*, 110 CALIF. L. REV. 2087, 2099–100 (2022) (exploring how AI and algorithmic opacity contribute to massive scale privacy harms).

[21] *Id.*

[22] *See, e.g.*, Kathryn Buggs, Note, *Gotta Get Those Ill-Gotten Gains: Improving the FTC's Authority to Seek Disgorgement in Antitrust Cases*, 121 MICH. L. REV. 1235, 1237–38, 1243 (2023).

[23] *See, e.g.*, Christina Lee, *Beyond Algorithmic Disgorgement: Remedying Algorithmic Harms*, 16 U.C. IRVINE L. REV. 17 (forthcoming 2026) (exploring the impact of the rise of algorithmic disgorgement remedy requests).

[24] Complaint, N.Y. Times Co. v. Microsoft Corp., 800 F. Supp. 3d 602 (S.D.N.Y. 2023) (No. 1:23-cv-11195) (naming as defendants "Microsoft Corporation ('Microsoft') and OpenAI, Inc., Open AI LP, OpenAI GP LLC, OpenAI LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, LLC, OpenAI Holdings, LLC, (collectively 'OpenAI' and, with Microsoft, 'Defendants'")).

[25] *Id.* ¶ 2.

[26] *Id.* at 67–68.

[27] *Id.* ¶ 3; *see also* U.S. CONST. art. I, § 8, cl. 8 ("To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive

rights.[28] According to the *New York Times*, the company used "generative artificial intelligence ('GenAI') tools" implementing "large-language models ('LLMs') that were built by copying and using *millions* of *The Times*'s copyrighted news articles, in-depth investigations, opinion pieces, reviews, how-to guides, and more."[29] The unjust nature of this freeriding behavior is the conscious advantage-taking of the labor, research, investment, and work product of the legacy media company.[30] *The Times* alleges that OpenAI converted the newspaper's exact content, and substantially similar but sometimes mistaken content, to deliver the news to the masses, resulting in massive monetary profits and algorithmic strides at the expense of *The Times*.

OpenAI asserts a fair use defense.[31] It is aggressively fighting the litigation while pursuing other lawsuits as a plaintiff. For example, OpenAI is countersuing Elon Musk, claiming that Musk engaged in unfair competition by using "nonstop" efforts to slow down OpenAI's business for Musk's own benefit, along with "bad-faith tactics" designed to injure OpenAI and render control over groundbreaking AI technology to Musk.[32] In *The Times* litigation, and more generally, OpenAI maintains that training its language models on more and more articles and books is transformative and, accordingly, essential and lawful.[33]

Algorithmic harms are decidedly difficult to measure.[34] The incalculable and partially intangible nature of the harm make the case an ideal moment to test bold restitutionary-based remedies such as disgorgement of unjust profits and algorithmic forfeiture.

Right to their respective Writings and Discoveries[.]"). *See generally* Copyright Act of 1976, 17 U.S.C. §§ 101–1332 (2012).

[28] Complaint, *supra* note 24, ¶ 3.

[29] Complaint ¶ 2, N.Y. Times Co. v. Microsoft Corp., 777 F. Supp. 3d 283 (S.D.N.Y. 2025) (No. 1:23-cv-11195).

[30] *Id.* ("Through Microsoft's Bing Chat (recently rebranded as 'Copilot') and OpenAI's ChatGPT, Defendants seek to free-ride on The Times's massive investment in its journalism by using it to build substitutive products without permission or payment.").

[31] Defendant's Answer, N.Y. Times Co. v. Microsoft Corp., 777 F. Supp. 3d 283 (S.D.N.Y. 2025) (No. 1:23-cv-11195).

[32] Complaint, Musk v. Altman, No. 4:24-cv-04722 (N.D. Cal. Aug. 5, 2024).

[33] Defendant's Motion to Dismiss at 1-2, N.Y. Times Co. v. Microsoft Corp., 800 F. Supp. 3d 283 (S.D.N.Y. 2025) (No. 1:23-cv-11195).

[34] *See* Lu, *supra* note 19, at 17 ("Because these intangible harms often take the form of indiscernible dignitary harms, their aggregate effect is difficult to measure.").

The Times seeks, among other remedies, those that pale in comparison. If *The Times* can prove the underlying substantive wrong, should the court order disgorgement of profits and algorithmic destruction? If so, how should the court resolve vexing questions such as how to determine which profits are unjust and how to dismantle tainted algorithms that may be commingled with lawful AI learning?

I. RISE OF DISGORGEMENT OF PROFITS

Several opinions of the United States Supreme Court have contributed to the development of the disgorgement of profits remedy rooted in unjust enrichment.[35] The Court has yet to address remedies that seek to erase algorithms. One Supreme Court case that is essential, though imperfectly reasoned, is *Snepp v. United States*.[36] There, an ex-CIA officer, Frank W. Snepp, published a book, *Decent Interval*, exploring his CIA experience.[37] Snepp published the book without seeking the contractually required prepublication clearance from the CIA.[38] An express condition of Snepp's employment with the CIA in 1968 was to not publish any materials related to the CIA or his intelligence activities "without specific prior approval by the Agency."[39] His obligation was "not to divulge *classified* information and not to publish *any* information without prepublication clearance."[40] The federal government initially sought, but did not ultimately pursue, a tortious breach for punitive damages—perhaps not wanting to reveal whether Snepp had truly published classified materials.[41] Nor did the government wish to prove any actual harm to itself because that would require admitting that Snepp's manuscript contained classified materials and that their publication damaged

[35] *See, e.g.*, Liu v. SEC, 591 U.S. 71 (2020); Kansas v. Nebraska, 574 U.S. 445 (2015); Snepp v. United States, 444 U.S. 507 (1980).

[36] *Snepp*, 444 U.S. 507.

[37] *Id.* at 511.

[38] *Id.* at 511–12.

[39] *Id.* at 508.

[40] *Id.*

[41] *See id.* at 514 ("Proof of the tortious conduct necessary to sustain an award of punitive damages might force the Government to disclose some of the very confidences that Snepp promised to protect.").

the United States government.[42] Further, the Court recognized the lack of fit of a punitive remedy given that any remedies would be "speculative and unusual."[43] Yet, the irony of compensatory harm in this case is that the government would have never published such a book.[44] This challenge also creates a remedy conundrum according to the Court: "When the Government cannot secure its remedy without unacceptable risks, it has no remedy at all."[45]

Instead, the government claimed irreparable harm to intelligence work integral to the national security of the United States.[46] The government, however, did not assert that the book contained classified information;[47] instead, it asserted that Snepp had breached "trust" with the government.[48] The Court did not hear oral argument on the case—framed as a First Amendment freedom issue about Snepp's First Amendment rights and the prohibition against prior restraints on speech.[49] The Court, speaking *per curiam*, found no First Amendment violation and granted a "constructive trust" remedy over continuing royalties on Snepp's book based on an asserted breach of fiduciary duty.[50] According to the Court, "[a] constructive trust . . . protects both the Government and the former agent from unwarranted

[42] *See id.* at 514 (noting "the Government's concession—for the purposes of this litigation—that Snepp's book divulged no classified intelligence"); *id.* at 516 (Stevens, J., dissenting) ("[T]he Government has conceded that the book contains no classified, nonpublic material.").

[43] *Id.* at 514 (majority opinion) ("The punitive damages recoverable after a jury trial are speculative and unusual. Even if recovered, they may bear no relation to either the Government's irreparable loss or Snepp's unjust gain.").

[44] *Cf. id.* ("No one disputes that the actual damages attributable to a publication such as Snepp's generally are unquantifiable.").

[45] *Id.* at 515.

[46] *Id.* at 511–13.

[47] *Id.* at 514; *id.* at 516 (Stevens, J., dissenting).

[48] *See id.* at 510–11 (majority opinion) ("Snepp's employment with the CIA involved an extremely high degree of trust. In the opening sentence of the agreement that he signed, Snepp explicitly recognized that he was entering a trust relationship. The trust agreement specifically imposed the obligation not to publish any information relating to the Agency without submitting the information for clearance. . . . He deliberately and surreptitiously violated his obligation to submit all material for prepublication review. Thus, he exposed the classified information with which he had been entrusted to the risk of disclosure.").

[49] *Id.* at 516 n.3.

[50] *Id.* at 515–16.

risks."[51] The Court did not clarify any tracing or a guide on how to allocate any profits Snepp may have rightfully earned but assured that the remedy would "reach[] only funds attributable to the breach, it cannot saddle the former agent with exemplary damages out of all proportion to this gain."[52] Instead, the Court asserted that "the trust remedy simply requires him to disgorge the benefits of his faithlessness."[53] As the dissenting opinion explained, the fiduciary duty should have covered only any publication of classified information, and the government failed to prove that "the interest in confidentiality that Snepp's contract was designed to protect has not been compromised."[54] Rather, according to the dissent, the remedy is unprecedented, drastic, and unauthorized by any relevant law.[55]

Snepp is not without critics.[56] A more defensible rationale for *Snepp* is to classify it as an opportunistic breach of contract (violating the covenant to obtain prepublication clearance) with the remedy of disgorgement of unjust profits from the publication. *Snepp* precedes the *Restatement (Third) of Restitution and Unjust Enrichment*, which operationalized and streamlined the blackletter law for pursuing restitutionary disgorgement of defendant's profits for opportunistic breach of contract.[57] The *Restatement* recategorizes and rationalizes *Snepp* under this approach.[58] Though a novel approach compared to conventional

---

[51] *Id.* at 515.

[52] *Id.* at 515–16.

[53] *Id.* at 515.

[54] *Id.* at 516–17 (Stevens, J., dissenting); *see also id.* at 518 ("But neither of these branches of the common law supports the imposition of a constructive trust under the circumstances of this case.").

[55] *Id.* at 517 (Stevens, J., dissenting).

[56] *See, e.g.*, Caprice Roberts, *Statutory Interpretation and Agency Disgorgement Power*, 96 ST. JOHN'S L. REV. 243, 248–49, 248–49 n.23 (2022).

[57] RESTATEMENT (THIRD) OF RESTITUTION & UNJUST ENRICHMENT § 39 (A.L.I. 2020) (enabling a disgorgement of profits award where the breach of contract is deliberate and profitable if defendant also took advantage of plaintiff's otherwise inadequate protection from standard contract remedies); *see also* Caprice L. Roberts, *Restitutionary Disgorgement as a Moral Compass for Breach of Contract*, 77 U. CIN. L. REV. 991 (2009) (examining the Restatement's endorsement of a novel disgorgement of profits model for rare opportunistic breaches of contract).

[58] RESTATEMENT (THIRD) OF RESTITUTION & UNJUST ENRICHMENT § 39 cmt. d, illus. 4, Reporter's Note d. (A.L.I. 2020) (reframing *Snepp* as a restitutionary disgorgement of profits based on an opportunistic breach of contract). For the leading English contracts case approving a restitutionary disgorgement of profits award against a British MI6

contract remedies, the Supreme Court endorsed a $1.8 million partial disgorgement award for opportunistic breach of an interstate water compact dispute in which Nebraska consciously took advantage of Kansas's otherwise inadequate remedial substitutes.[59]

Several federal government agencies frequently preferred, sought, and attained disgorgement of profit remedies. These efforts captured national attention when the Supreme Court granted certiorari to determine the proper scope of disgorgement remedies in three agency enforcement cases. The first two involved the SEC. In *Kokesh v. SEC*, the Court considered a narrow question of whether the SEC's use of disgorgement functioned like a penalty for statute of limitations purposes.[60] The Court unanimously answered yes.[61] Despite disgorgement's restitutionary roots, the SEC's historical use of disgorgement to deter and protect the investing public rendered the remedy more of a penalty for statute of limitations.[62] The second SEC case, *Liu v. SEC*,[63] focused on the SEC's use of disgorgement to seek $26 million of gross profits.[64] In *Liu*, the Court, by a vote of 8-1, approved the SEC's disgorgement power and endorsed its use beyond breaches of fiduciary duty and trust,[65] but the Court articulated boundaries on the scope of such agency relief.[66] For example, the Court declared that the SEC's disgorgement of wrongful gains should be limited to net profits.[67] Justice Thomas dissented on the ground that the SEC lacked the power to pursue disgorgement because disgorgement of profits is not a "traditional equitable remedy."[68]

---

double agent who published an autobiography about his clandestine experiences, see Att'y Gen. v. Blake [2000] UKHL 45, [2001] 1 AC (HL) 268 (appeal taken from Eng.).

[59] Kansas v. Nebraska, 574 U.S. 445, 474–75 (2015).

[60] Kokesh v. SEC, 581 U.S. 455, 459 (2017).

[61] *Id.*

[62] *Id.* at 463–65.

[63] Liu v. SEC, 591 U.S. 71 (2020).

[64] *Id.* at 71, 99.

[65] *Id.* at 81.

[66] *Id.* at 72–92.

[67] *Id.*

[68] *Id.* at 93–94 (Thomas, J., dissenting) ("Disgorgement is not a traditional form of equitable relief. Rather, cases, legal dictionaries, and treatises establish that it is a 20th-century invention.").

In the other case, *AMG Capital Management v. FTC*, the Supreme Court rebuked the FTC's efforts to disgorge wrongful profits.[69] The FTC maintained that it had successfully sought, and the Supreme Court had previously sanctioned, disgorgement of unjust profits for many decades.[70] Further, the United States Court of Appeals for the Ninth Circuit agreed, reasoning that the FTC had the power to seek disgorgement as an equitable remedy ancillary to its statutory power to seek injunctions.[71] The Supreme Court rejected these arguments and narrowly interpreted the statutory term of injunction not to include restitution or disgorgement power.[72] The Court's reasoning is flawed and contrary to principles of equity, given the historical roots of disgorgement of profits in the equitable accounting for profits ancillary to injunction power, as well as the Court's long acquiescence in the agency's use of restitution remedies.[73]

II. FROM DISGORGEMENT OF PROFITS TO "DISGORGEMENT OF ALGORITHMS"

After the adverse Supreme Court ruling curtailing the FTC's remedial flexibility, the FTC had to reconsider its strategy. Still, up to that point, the FTC played a key role in the advancement of restitutionary disgorgement of profits as a formidable form of relief.[74] For example, before the rebuke, the FTC had garnered

---

69 AMG Cap. Mgmt., LLC v. FTC, 593 U.S. 67, 70 (2021).

70 *Id.* at 73–74; *see also* Brief for the FTC, *AMG*, 593 U.S. 67 (No. 19-508) (citing Porter v. Warner Holding Co., 328 U.S. 395, 399 (1946)) (viewing the FTC's broad equitable powers to include the ability to seek equitable restitution in monetary forms); *see also* Brief of Amici Curiae of Remedies, Restitution, Antitrust, and Intellectual Property Law Scholars in Support of Respondent, *AMG*, 593 U.S. 67 (No. 19-508) (drafted by Phillip Malone & Caprice Roberts) (arguing that the longstanding history of injunctive power necessarily includes the ancillary court authority to order restitutionary disgorgement of a wrongdoer's unjust gains, among other forms of equitable monetary relief).

71 *AMG*, 593 U.S. at 71.

72 *Id.* at 81–82.

73 *See* Roberts, *supra* note 56, at 264–67, 275–76 (critiquing *AMG v. FTC* and suggesting legislative reforms); *see also* Caprice L. Roberts, *Algorithmic Erasure in the Shadow of Statutes*, 85 LA. L. REV. 955 (2025) (critiquing the Supreme Court's narrow interpretation of the FTC's equitable remedial power).

74 *The Supreme Court's Decision in* AMG Capital Management v. FTC – *What Does It Mean for FDA Enforcement?*, ROPES & GRAY (May 3, 2021),

$11.2 billion from defrauders and routed much of these disgorgement awards to recompense consumers.[75] Without a route to disgorge profits, the FTC began to explore its remedial arsenal, along with other strategies, as part of settlement discussions.[76]

One such strategy included efforts to dismantle algorithms to disgorge ill-gotten algorithmic gains. A favored modern remedial tool for the FTC is to seek "algorithmic disgorgement."[77] The FTC pursued this type of remedy in a 2019 enforcement action against Cambridge Analytica for deceptive collection of Facebook users' data.[78] It ordered the deletion of wrongfully acquired data and derivative algorithms and equations related to such data.[79] The remedy adopts unjust enrichment phrasing but, in execution, may more closely resemble a forfeiture or destruction of tainted algorithmic learning models.

III. THE POTENTIAL OF THE ALGORITHMIC DESTRUCTION REMEDY

The potential power of an algorithmic destruction remedy is attractive to plaintiffs. Assuming plaintiffs prove the underlying wrongs with requisite intent levels, such remedies may play a vital role in ensuring containment of wrongs and deterrence of future incursions.

Two key factors caused the FTC to transition from disgorgement of wrongdoer profits to the desire to disgorge algorithms: the increase in the use of AI technology to accomplish the harm and the inadequacy of other remedial paths. A quintessential example is the FTC's pursuit of what it described

---

www.ropesgray.com/en/insights/alerts/2021/05/the-supreme-courts-decision-in-amg-capital-management-v-ftc-what-does-it-mean-for-fda-enforcement.

[75] *Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter on the U.S. Supreme Court Ruling in* AMG Capital Management LLC v. FTC, FED. TRADE COMM'N (Apr. 22, 2021), https://www.ftc.gov/news-events/press-releases/2021/04/statement-ftc-acting-chairwoman-rebecca-kelly-slaughter-us [https://perma.cc/R7CE-NVQN].

[76] ROPES & GRAY, *supra* note 74.

[77] Kate Kaye, *The FTC's New Enforcement Weapon Spells Death for Algorithms*, PROTOCOL (Mar. 14, 2022), https://www.protocol.com/policy/ftc-algorithm-destroy-data-privacy [https://perma.cc/Z6AC-PQJ8].

[78] *In re* Cambridge Analytica, LLC, 2019 F.T.C. 81015, 2019 WL 6724446 (opinion of the Commission).

[79] *In re* Cambridge Analytica, LLC, 2019 F.T.C. 81015, 2019 WL 6724447 (final order).

as algorithmic disgorgement against Weight Watchers for violating the privacy rights of children in its weight loss app.[80] The FTC alleged egregious wrongs centering on the Weight Watchers App solicitation and further use of confidential information about children users, including names, sex, phone numbers, food consumption, birth months and years, weight, height, and other information to calculate children's body mass index.[81] Yet, the FTC faced insurmountable obstacles to proving compensable harm to the children. The reality is that the children likely suffered no provable economic losses from the wrongs. This lack of compensable loss occurs no matter how profitable the commission of the invasion of rights is to the wrongdoer. This imbalance made disgorgement of defendant's profits particularly well-suited to remedy the wrong. The FTC, however, could no longer seek the disgorgement remedy in the wake of the Supreme Court's curtailment of its remedial authority in *AMG v. FTC*.[82] Accordingly, the FTC pursued other remedies with its primary sights set on ordering Weight Watchers to forfeit its tainted algorithm and any AI learning that benefited from any tainted information.[83]

Pursuit of algorithmic erasure has extended beyond agency enforcement cases. Other litigants, including states, have added this remedy to their remedial arsenal. For example, Texas sought algorithmic destruction against Meta, formerly known as Facebook, for deceptively extracting personal biometric data and unlawfully employing facial recognition software.[84] The case ended in a $1.4 billion settlement without an algorithmic remedy, but the pursuit demonstrates the appeal of the potential relief in

---

[80] Complaint at 15–16, United States v. Kurbo Inc. (N.D. Cal. Feb. 16, 2022) (No. 3:22-cv-00946) (describing broad judicial and agency relief power and listing general equitable remedies that the FTC would ultimately use to seek destruction of algorithms).

[81] *Id.* at 9–10.

[82] AMG Cap. Mgmt., LLC v. FTC, 593 U.S. 67, 82 (2021).

[83] *FTC Takes Action Against Company Formerly Known as Weight Watchers for Illegally Collecting Kids' Sensitive Health Data*, FED. TRADE COMM'N (Mar. 4, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive [https://perma.cc/C2TC-472S].

[84] Plaintiff's Petition at 1–2, State v. Meta Platforms, Inc., No. 22-0121 (D. Tex. Feb. 14, 2022); *see also* Lee, *supra* note 23, at 17.

litigation strategy. The remedy is gaining traction in other data abuse cases domestically and in Europe, with the aim of ordering the destruction of language models that use unlawfully procured data.[85]

The evolution to an algorithmic erasure remedy is logical, given the nature of the harm and the frequent obstacles in proving losses. In application, it will no doubt encounter significant obstacles.[86] Still, such relief raises serious concerns, including technological feasibility,[87] risk of punitive sanctions without proper procedural protections,[88] and the potential misfit of the remedy and the relevant harms.[89]

IV. THE TIMES'S EFFORT TO DISGORGE AND DESTROY OPENAI

The New York Times, already confronting an existential threat as a legacy media company, has focused on bold remedies to address alleged infringements of its exclusive content by OpenAI. *The Times*'s Complaint reads like a eulogy for legacy media. It opens by emphasizing that "[i]ndependent journalism is vital to our democracy."[90] According to *The Times*, its product is "increasingly rare and valuable"—it has provided "the world deeply reported, expert, independent journalism."[91] *The Times* maintains that the modern "information ecosystem" is "damaged" and "awash in unreliable content," which intensifies the need and reliance on *The Times* to provide "trustworthy information, news

[85] Lee, *supra* note 2384, at 18 (citing Garcia v. Character Techs., Inc., 785 F. Supp. 3d 1157 (M.D. Fla. Nov. 9, 2024); EUR. DATA PROT. BD., OPINION OF THE BOARD (ART. 64): OPINION 28/2024 ON CERTAIN DATA PROTECTION ASPECTS RELATED TO THE PROCESSING OF PERSONAL DATA IN THE CONTEXT OF AI MODELS 32 (2024).

[86] *See* Roberts, *supra* note 73, at 957 (raising a host of concerns for the execution of an algorithmic erasure remedy as pursued by the FTC against Weight Watchers).

[87] Tiffany C. Li, *Algorithmic Destruction*, 75 SMU L. REV. 479, 479 (2022) (raising concerns about the ability to delete data given the "algorithmic shadow," but noting that algorithmic destruction remedies are worth greater study).

[88] Roberts, *supra* note 73, at 956.

[89] Lee, *supra* note 23, at 55–57 (criticizing the remedy's fit to the harm and the unfair effects on innocent parties throughout the supply chain, but ultimately advancing the case for diverse algorithmic relief).

[90] Complaint ¶ 1, N.Y. Times Co. v. Microsoft Corp., 777 F. Supp. 3d 283 (S.D.N.Y. 2025) (No. 1:23-cv-11195).

[91] *Id.* ¶ 1.

analysis, and commentary."[92] OpenAI wrongfully fed itself on *The Times*'s exclusive, copyright-protected content to train the large-language models of its AI products to compete and threaten *The Times*'s ability to supply its vital service to the public.[93] According to *The Times*, OpenAI copied and relied on "*millions* of *The Times*'s copyrighted news articles, in-depth investigations, opinion pieces, reviews, how-to guides, and more."[94]

Though arguing copyright, the complaint bears all the earmarks of an unjust enrichment wrong. *The Times* asserts that from the nation's founding, "strong copyright protection has empowered those who gather and report news to secure the fruits of their labor and investment."[95] *The Times* asserts that OpenAI has learned, copied, and, at times, distorted *The Times*'s content.[96] Ultimately, OpenAI is freeriding on the work and investment of *The Times* "without permission or payment."[97] All the while, OpenAI has experienced massive profits, with valuations of some of the AI products, such as ChatGPT, reaching up to $90 billion.[98] It is a classic case of unjust enrichment with conscious advantage-taking that *The Times* believes warrants disgorgement of the wrongful profits and erasure of the tainted algorithms, especially given that OpenAI has refused to negotiate or reach a resolution.[99] Defendants assert fair use, especially given the "transformative" nature of training its GenAI models.[100] The litigation remains in discovery but has the potential to determine whether defendant's behavior constitutes "systematic and competitive infringement"[101] warranting bold relief to right the wrong. Disgorgement-based remedies are alluring given the intangible nature of algorithmic harms and the less compelling nature of compensatory relief in addressing the full extent of the wrong.

---

[92] *Id.*
[93] *Id.* ¶ 2.
[94] *Id.*
[95] *Id.* ¶ 3.
[96] *Id.*
[97] *Id.* ¶ 2.
[98] *Id.* ¶ 6.
[99] *Id.* ¶ 7–8.
[100] *Id.* ¶ 8.
[101] *Id.* ¶ 9.

V. SITUATING DISGORGEMENT & DESTRUCTION WITHIN COPYRIGHT LIABILITY

Regarding any allegations of AI infringement of news content, disgorgement of profits and erasure of unlawful algorithms must be analyzed within the relevant regulatory framework of Europe and the United States, respectively. The European Union ("EU") pioneered the first legislation attempting to regulate artificial intelligence, the Artificial Intelligence Act ("the EU AI Act").[102] The legislation is comprehensive in scope.[103] One provision of the EU AI Act addresses copyright.[104] Notably, if a company deploys or uses AI technology, the company must comply with EU copyright laws, regardless of the location of AI-training or of the company's base.[105] Accompanying the EU AI Act is an amendable code of practice that will provide necessary details in a more dynamic way.[106] The act also includes various relief, such as recall and withdrawal of non-compliant AI systems.[107] Further, the European Data Protection Board has spoken approvingly of erasure of unlawful AI models.[108]

Of course, each country's copyright laws apply within its own borders, including the United States, which means that an inconsistent patchwork of copyright protection may result.[109] This splintering increases costs of enforcement, which often means that news organizations from more robust economies are better equipped to litigate and negotiate to protect their investment, work product, and intellectual property.[110]

---

[102] *See generally* Commission Regulation 2024/1689, 2024 O.J. (L 1689) (embodying the first comprehensive, horizontal legislative framework regulating AI systems across the EU).

[103] *EU AI Act: First Regulation on Artificial Intelligence*, EUR. PARLIAMENT (Feb. 19, 2025), https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence#ai-regulation-in-europe-the-first-comprehensive-framework-4 [https://perma.cc/C8BJ-HCJ7].

[104] Commission Regulation 2024/1689, *supra* note 102, art. 53(1)(c).

[105] Kahn, *supra* note 6.

[106] *Id.*

[107] Commission Regulation 2024/1689, *supra* note 102, art. 20.

[108] EUR. DATA PROT. BD., *supra* note 85, at 32. *See generally In re* Cambridge Analytica, LLC, 2019 F.T.C. 81015, 2019 WL 6724447.

[109] Kahn, *supra* note 6.

[110] *See id.*

Several lawsuits, filed by news organizations in the United States, assert that AI companies are infringing their copyrighted work to train language models.[111] Some cases have failed to survive motions to dismiss on grounds that the plaintiffs lack standing for want of actual injury.[112] The most salient litigation is a lawsuit by *The Times* against OpenAI and Microsoft.[113] According to *The Times*, its earnings and integrity hang in the balance.[114]

Liability is not an automatic conclusion in such cases. Though some spectators appear to presume copyright infringement, the issue is complex. Literal copying of entire news articles is one thing. Even paraphrasing with substantial parallels to copyrighted text raises red flags.[115] But how should we differentiate news content in the digital world?[116] In those instances, infringement may depend on what kinds of data and representations constitute copyrighted content.[117] Resolution of the legal issue also often depends on resolution of the fair use defense.[118] For example, an AI company may be able to use copyrighted materials without permission for certain limited uses such as critique, news reporting, researching, or teaching. Given the complexity of AI-generated content, it matters "how each individual system works, what kind of copies are retained, for how long, [and] what is actually there in these AI models and in the training data they use."[119]

When liability exists for copyright infringement in the United States, a host of civil remedial options exist under the Copyright

---

[111] *Id.*

[112] *See* Raw Story Media, Inc. v. OpenAI, Inc., 756 F. Supp. 3d 1, 3 (S.D.N.Y. 2024) (finding plaintiffs lacked a cognizable injury for injunctive relief where the complaint failed to allege facts showing the risk of ChatGPT reproducing plaintiffs' work was substantial).

[113] N.Y. Times Co. v. Microsoft Corp., 777 F. Supp. 3d 283 (S.D.N.Y. 2025).

[114] Complaint at 58–59, *N.Y. Times Co.*, 777 F. Supp. 3d 283 (No. 1:23-cv-11195).

[115] Kahn, *supra* note 6 (emphasizing that "under both US and EU law copying content verbatim is not a requirement for a copyright violation" and that "[p]araphrasing may also constitute copyright infringement if there is substantial similarity").

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

Act.[120] Those include injunctions;[121] destruction of copies;[122] plaintiff's actual damages[123] and infringer profits;[124] statutory damages;[125] and costs and attorney fees.[126] *The Times* litigation seeks several such remedies in the alternative.[127] For example, the complaint requests injunctive relief as well as "statutory damages, compensatory damages, restitution, disgorgement, and any other relief that may be permitted by law or equity."[128] It also requests an order destroying "all GPT or other LLM models and training sets that incorporate *Times* Works."[129] Lastly, the complaints seeks costs and attorney fees,[130] as well as any other "appropriate, just, and equitable" relief deemed proper by the court.[131] The most provocative for the potential severity and concerns are disgorgement of profits and erasure of tainted algorithms.

VI. A NORMATIVE APPROACH WITH A CRITICAL LENS

Common rationales for pursuing disgorgement of unjust profits and algorithmic destruction are the inadequacy of traditional remedies, the intangible nature of algorithmic harm, and the desire to deter and undo ill-gotten gains—monetarily and algorithmically.[132] Such justifications are reasonable and may be

---

[120] Copyright Act of 1976, 17 U.S.C. §§ 501–513.

[121] *Id.* § 502.

[122] *Id.* § 503(b).

[123] *Id.* § 504. Notably, the Supreme Court recently interpreted the discovery rule to broaden the statute of limitations for copyright damages to acts occurring outside the three-year limitations' period if plaintiff filed the suit without three years of discovering the infringement. Warner Chappell Music Inc. v. Nealy, 601 U.S. 366, 367, 374 (2024). The Court also granted certiorari in RADesign, Inc. v. Michael Grecco Prods., 112 F.4th 114 (2d Cir. 2024) (challenging the discovery rule).

[124] Copyright Act of 1976, 17 U.S.C. § 504.

[125] *Id.*

[126] *Id.* § 505.

[127] Complaint at 61, N.Y. Times Co. v. Microsoft Corp., 777 F. Supp. 3d 283 (S.D.N.Y. 2025) (No. 1:23-cv-11195).

[128] *Id.*; Prayer for Relief ¶¶ 1, 2, *N.Y. Times Co.*, 777 F. Supp. 3d 283 (No. 1:23-cv-11195).

[129] Complaint, *supra* note 127, at 61; Prayer for Relief, *supra* note 128, ¶ 3.

[130] Complaint, *supra* note 127, at 61; Prayer for Relief, *supra* note 128, ¶ 4.

[131] Complaint, *supra* note 127, at 61; Prayer for Relief, *supra* note 128, ¶ 5.

[132] Li, *supra* note 87, at 482 ("Various proposals for algorithmic destruction have emerged as an alternative, or perhaps a supplement, to data deletion. Algorithmic disgorgement has so far been used as an enforcement tool requiring organizations to delete machine learning models and algorithms developed with misbegotten data.").

justified on sufficient proof of intentional wrongdoing. Yet, the temptation for overreach is real. It is imperative that courts tailor such relief to meet the underlying goals of the wrongs.

Any disgorgement of OpenAI's profits must be net profits.[133] Significant evidence would be necessary to establish what portion of net profits are attributable to infringing on *The Times*'s copyrighted content. If disgorgement is classified as equitable, proper balancing must occur.[134] OpenAI will insist that its transformative goals far outweigh any harm to publishing companies. This argument may persuade judges given historic offers to license certain encroachments—this admitted monetization of the harm belies irreparability. In the *Restatement (Third) of Restitution and Unjust Enrichment*, the American Law Institute ("ALI") maintains that antiquated obstacles to relief are no longer required.[135] For example, the *Restatement* eliminates proving inadequacy of legal remedies before obtaining restitutionary remedies like constructive trust or disgorgement of wrongful gain.[136] One exception, however, is disgorgement opportunistic breach of contract—intended to be rare.[137] For this path, the ALI offers that a wrongdoer must take conscious advantage of plaintiff's inadequate substitutes for performance.[138] Where disgorgement is pursued pursuant to a statutory framework, Congress could require such a showing to narrow disgorgement in certain settings. Without the prerequisite of inadequacy and irreparability, disgorgement will continue to serve as a ready remedy for copyright infringement and a popular option for data breach and privacy harms.

---

[133] Brief of Remedies and Restitution Scholars as Amici Curiae in Support of Neither Side at 9–12, Liu v. SEC, 591 U.S. 71 (2020) (arguing for net profits as proper for disgorgement of unjust gain relief to fit the restitution interest).

[134] DOBBS & ROBERTS, *supra* note 18, § 4.4, at 454 ("After careful, but flexible analysis, the court has a range of disgorgement options to balance unjust enrichment goals with fairness to defendants.").

[135] RESTATEMENT (THIRD) OF RESTITUTION & UNJUST ENRICHMENT § 4(2) (A.L.I. 2011).

[136] *Id.* ("A claimant otherwise entitled to a remedy for unjust enrichment, including a remedy originating in equity, need not demonstrate the inadequacy of available remedies at law."); *id.* § 3, cmt. c ("It follows that 'inadequacy of a remedy at law' is not a requirement of a claim in restitution to disgorgement of wrongful gain.").

[137] *Id.* § 39.

[138] *Id.*

It is an error to assume that disgorgement must match the plaintiff's losses. Proper disgorgement need not correlate precisely with the plaintiff's harm but instead requires showing unjust enrichment and conscious wrongdoing.[139] This point is especially important when standing poses a problem in federal court. Plaintiffs would be wise to include an alternative claim for unjust enrichment to seek disgorgement of profits where the elements key to the defendant's gain rather than the plaintiff's loss. This amendment should increase the chances, but not guarantee, that the complaint survives challenges to Article III standing.[140]

Erasure of tainted algorithms is even riskier. The dynamic, exponential nature of AI-learning through its large language models is complex. Complete destruction is attainable but, in most cases, would exceed the taint. Any requested erasure should be causally linked to the unlawfully obtained data or infringed material. The systems are complex with proper and improper learning likely intermingled. The risk of overreaching and veering beyond unjust enrichment goals, copyright aims, and statutory bounds are high. Both disgorgement of profits and erasure of tainted algorithms should not punish. To punish constitutes misalignment with the civil causes of action and would require providing a host of criminal procedural protections.[141] Algorithmic erasure also brings compliance problems, especially if attained via court order versus a detailed, well-negotiated settlement agreement.

As for *The Times* against OpenAI, it may be a wise time to negotiate in good faith towards mutually beneficial licensing with boundaries and proper acknowledgment. If bargaining continues

---

[139] Brief of Remedies and Restitution Scholars Douglas Laycock, Colleen P. Murphy, Caprice L. Roberts, Chaim Saiman, and Michael Traynor as Amici Curiae in Support of Respondent, Sripetch v. SEC, No. 25-466 (U.S. Apr. 1, 2026) (cataloguing that disgorgement has never required proof of plaintiff's loss, but instead defendant's unjust gain).

[140] Brief for Restitution and Remedies Scholars as Amici Curiae in Support of Respondent at 4–6, Spokeo, Inc. v. Robins, 578 U.S. 330 (2015) (No. 13-1339) (arguing that standing depends on the relief plaintiff seeks and emphasizing that restitution and unjust enrichment is based on defendant's gain rather than plaintiff's loss).

[141] *See* DOBBS & ROBERTS, *supra* note 18, § 2.8, at 133 (explaining that any remedy, such as contempt when deemed a punishment, require constitutional criminal protections).

to fail,[142] robust remedies with proper limits may be warranted to deter conscious opportunism. Where boundary-pushing behavior continues[143] in hopes of taking advantage of poor remedial alternatives, disgorgement and destruction will be essential for threatened rightsholders.

CONCLUSION

Free speech and free press are vital to democracy. OpenAI holds enormous potential for rapid advancement of knowledge and societal goals. It also poses genuine competition across countless industries and may eliminate various lines of human work. Certain news organizations, including *The New York Times*, claim that OpenAI is freeriding on *The Times*'s exclusive, copyrighted content without payment or permission. *The Times* also claims disinformation is diluting their reputation and damaging democratic deliberations. Accordingly, *The Times* seeks to undo the unjust gains and deter further opportunism.

OpenAI retorts that it is not a wrongdoer, instead, maintaining it operates lawfully through transformative use of the information absorbed in the steady diet of its AI models. If *The Times* can prove liability including the requisite conscious wrongdoing, restitutionary based disgorgement of the defendant's profits may well accomplish the underlying goals of the alleged wrongs. Assuming OpenAI engaged in unlawful uses of *The Times*'s content in AI language learning models, such models are tainted and may warrant partial destruction to the extent feasible. The aggressive assertion of remedies may also reopen negotiations or force licensure. Settlements with private solutions may strike a nice balance and provide courts with more time to percolate on how best to calibrate forceful remedies such disgorgement and destruction.

Stripping wrongdoer's profits and erasing tainted algorithms are fast becoming powerful remedies to undo unjust enrichment as well as deter opportunism and other infringing behavior. The promise of both remedies poses challenges and risks. If properly tailored, both disgorgement of unjust profits and algorithmic

---

142 Kahn, *supra* note 6.
143 *Id.*

erasure will prove to be potent weapons in the remedial arsenal of news organizations against OpenAI.