

A usage policy is now a procurement liability

On 25 September a divided D.C. Circuit denied Anthropic's petition for review and upheld the Pentagon's exclusion of Claude from its supply chain. The majority held that a vendor's openly stated limits on how its model may be used can count as a supply-chain risk under federal procurement law, whatever the motive. The direct revenue at stake is small next to Anthropic's size; the precedent is not. For any AI vendor selling into defence, the acceptable-use policy has become a term the buyer can price, and exclude on.

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2–1 D.C. CIRCUIT VOTE DENYING ANTHROPIC'S PETITION · NO. 26-1049, 25 SEP 2026	180 days OUTER LIMIT TO REMOVE CLAUDE FROM DEFENSE SYSTEMS · D.C. CIR. OPINION, 25 SEP 2026	\$200M CEILING OF ANTHROPIC'S 2025 PENTAGON FRONTIER-AI AWARD · DEFENSESCOOP, 14 JUL 2025
\$150M+ DEFENCE-LINKED RECURRING REVENUE ANTHROPIC SAID WAS AT RISK · COURT FILING, MAR 2026	\$65B ANTHROPIC ANNUALISED REVENUE RUN RATE, AS REPORTED · BLOOMBERG VIA FORTUNE, 18 AUG 2026	2 courts OPPOSITE RESULTS: § 3252 STRUCK IN CALIFORNIA, § 4713 UPHELD IN D.C. · AUG-SEP 2026

I. The court ruled on the merits, and the merits went to the Pentagon

On 25 September 2026 the U.S. Court of Appeals for the D.C. Circuit decided *Anthropic PBC v. Department of War*, No. 26-1049, on a petition for review. It denied the petition and held the exclusion of Claude lawful under the Federal Acquisition Supply Chain Security Act, 41 U.S.C. § 4713. That is a merits ruling. The interim step came earlier: the same court had refused to pause the designation in April, according to Herbert Smith Freehills Kramer. Reports describing the court as merely declining to block the label understate what it did.

Judges Gregory Katsas and Neomi Rao formed the majority; Judge Karen LeCraft Henderson dissented, ABC News reported. The exclusion lets the Defense Department remove Claude from its systems, with 180 days as the outer bound, and bars contractors from using Anthropic products on Department work. The opinion addresses the Department only. It says nothing about civilian agencies, and contract lawyers read it as leaving them outside its scope.

The dispute began in February, when Anthropic refused to drop two limits on Claude: no fully autonomous lethal weapons and no mass domestic surveillance. President Trump then directed every federal agency to stop using Anthropic's technology. Anthropic sued in two courts. **It won one and lost the other, under two different statutes.**

II. Acceptable-use terms became a procurement variable

The core of the ruling is one word. Section 4713 defines supply-chain risk as the risk that any person may sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate a covered system so as to deny or disrupt its function. The majority read manipulate in its ordinary sense and held that Anthropic's model training and contractual restrictions qualify, with no bad motive required. As one analysis of the opinion summarised it, the case turns on what Anthropic does, not why.

In California the result went the other way. Judge Rita Lin of the Northern District ruled in August that the parallel designation under 10 U.S.C. § 3252 was unlawful, finding First Amendment retaliation and a due-process failure.

Section 3252 speaks of an adversary; section 4713 of any person. That difference lets both outcomes stand.

Meanwhile the competitive field reorganised. OpenAI, Google and xAI agreed to all-lawful-use terms. Google extended classified-network access in April with language against surveillance and autonomous weapons that may not be binding. The four labs had each received Pentagon awards worth up to \$200 million in July 2025. Three now hold their place; one is excluded.

III. The honest read: narrower than the headlines, sharper than the facts

The skeptic case is strong. The majority did not rule that safety restrictions are illegitimate. On the First Amendment claim it found that the Department acted because Anthropic refused a contract term the Department deemed essential, not because of Anthropic's advocacy. Even Judge Lin, ruling for Anthropic, wrote that the Department is free to choose its AI vendor. On this reading the case is about a customer's right to walk away, plus a statute that lets it do so loudly.

The skeptic case also cuts against the idea that safety carried a heavy price. In April the D.C. Circuit noted record evidence that Anthropic had financially benefited from its refusal. Anthropic's run rate reportedly reached \$65 billion by August, seven times its end-2025 level, after the blacklist took effect.

Now the other side. Henderson's dissent argued that the verbs around manipulate all describe hostile, covert acts, and that Congress wrote the 2018 law against foreign infiltration. On her reading, honest and upfront enforcement of restrictions the Department itself once accepted is not a supply-chain risk. The Computer & Communications Industry Association warned on 2 October that the majority's reading lets agencies use exclusion as leverage over ordinary licensing terms.

Both things are true at once. The ruling's reach is limited to one department. Its reasoning is not limited at all: nearly every frontier model ships with usage restrictions, and the majority's test does not ask why they exist.

IV. The direct cost is small; the contractor channel is not

Revenue. In March declarations, Anthropic's head of public sector said more than \$150 million in expected recurring revenue tied to the Department was at risk, against a public-sector book projected above half a billion dollars for 2026. Set against the reported \$65 billion run rate, the defence line is roughly 0.2% of revenue. That is our arithmetic on figures from different months, and it is an order-of-magnitude estimate only.

FIG. 1: DEFENCE EXPOSURE AGAINST THE WHOLE BUSINESS



BARS SCALED TO THE LARGEST VALUE. DATES DIFFER: DEFENCE AND PUBLIC-SECTOR FIGURES ARE ANTHROPIC'S MARCH 2026 COURT DECLARATIONS (PUBLIC SECTOR IS A 2026 PROJECTION); RUN RATE IS BLOOMBERG REPORTING, AUGUST 2026. SOURCES: REUTERS VIA YAHOO FINANCE, 9 MAR 2026; FORTUNE, 18 AUG 2026.

Market structure. The larger channel is indirect. The same declarations described a partner moving a deployment worth more than \$100 million to a rival, about \$180 million of disrupted negotiations with financial institutions, and a contract cut from \$10 million to \$5 million. Contractors that serve the Pentagon must now certify they keep Claude out of Department work, typically through FAR 52.204-30 clauses and contract modifications. Where one firm serves both defence and commercial clients, the cheapest compliance answer is often a single approved vendor. That shifts share toward labs on all-lawful-use terms, not by price or quality but by eligibility.

Prices and compliance cost. Contract counsel flag an unresolved question: whether back-office tools or third-party software with Claude embedded fall within contract performance. Until that is settled, contractors are advised to appoint a single point of contact for Anthropic certifications. Ambiguity is a tax, and it falls on every mid-sized integrator, not on the labs.

Capital and labour. Investors appear to have absorbed the exclusion; the revenue trajectory reported since March shows no visible dent. Labour effects are negligible in the near term. The effect worth watching is on terms: vendors with defence ambitions now have a documented reason to keep acceptable-use policies loose or to offer a separate government tier.

FIG. 2: COMMERCIAL DAMAGE ANTHROPIC DECLARED IN COURT



BARS SCALED TO THE LARGEST VALUE. FIGURES ARE ANTHROPIC EXECUTIVES' SWORN CLAIMS IN SUPPORT OF ITS LAWSUIT, NOT INDEPENDENTLY VERIFIED, AND CATEGORIES MAY OVERLAP. SOURCE: REUTERS VIA YAHOO FINANCE, 9 MARCH 2026.

The ruling did not put a price on safety. It put a price on telling the largest buyer in the room that some uses are off the table.

ANALYTICAL JUDGMENT. THE MAJORITY FOUND THE DEPARTMENT ACTED OVER A REFUSED CONTRACT TERM, NOT ANTHROPIC'S ADVOCACY; THE DISSENT FOUND THAT REFUSAL WAS HONEST ENFORCEMENT OF TERMS THE DEPARTMENT HAD ACCEPTED.

V. Second-order: every acceptable-use policy just acquired a defence reading

The first spillover is to other vendors. Under the majority's test, the question is whether a supplier can deny or disrupt functions the Department considers authorised. Model providers, open-weight licensors with use restrictions, and software firms with export or human-rights carve-outs all fit that description in principle. Whether the government uses the power again is a policy choice; the court has confirmed it exists.

The second is to non-US firms in defence supply chains. A European startup that embeds a model in tools sold to a US prime now inherits the prime's certification burden. Our judgment is that selling into US defence work will increasingly require a clean answer to two questions: which models sit underneath, and whose usage terms govern them.

The third is to the legal system itself. Two federal courts have reached opposite results on parallel designations. Anthropic said it is considering all options, including further review. A full-court rehearing, a Ninth Circuit appeal of the California ruling, or Supreme Court review could each change the map.

VI. Precedent: a statute written for adversaries, applied to a domestic lab

The dissent traced the 2018 Act to warnings from the intelligence community about hostile states and companies beholden to foreign governments infiltrating federal systems. The statute's language, she argued, tracks the vocabulary of covert breaches. The majority answered that Congress chose broad words, and courts apply the words chosen.

Whatever the merits, the trajectory is clear. A tool built to keep compromised foreign hardware out of federal networks now reaches a US company's published terms of service. That migration from foreign-threat statute to commercial-dispute instrument is the precedent that will outlast this case.

VII. How it plays out: three scenarios

Probabilities are our analytical judgment, not forecasts from a model, and they sum to 100%.

1 · Baseline: the exclusion holds, confined to defence ~55%

6-18 MONTHS ·
STEADY

Rehearing is denied or not sought, the exclusion stays within Department work, and civilian agencies and commercial clients keep buying Claude. Defence AI spend consolidates around labs on all-lawful-use terms. Watch for an en banc denial, steady Defense contract modifications naming Anthropic as excluded, and continued civilian purchases of Claude.

2 · Acceleration: § 4713 becomes a general lever ~20%

6-12 MONTHS ·
FAST

The government uses the majority's reading against a second vendor or beyond the Department, and other labs loosen government-tier usage terms pre-emptively. Watch for an exclusion order naming another supplier, government-wide action citing this opinion, and usage policies dropping weapons or surveillance carve-outs for government customers.

3 · Stall: courts or Congress narrow the reading ~25%

9-24 MONTHS ·
ABRUPT

The full D.C. Circuit or the Supreme Court adopts the dissent's hostile-intent reading, a settlement restores Anthropic to defence work, or Congress amends the Act. Watch for a grant of rehearing en banc, a petition for certiorari drawing amicus support from industry, and draft amendments to 41 U.S.C. § 4713 defining manipulation by intent.

WHAT WOULD FALSIFY THIS THESIS

The claim is that a vendor's usage policy has become a priced term in US defence procurement. It fails if the full D.C. Circuit or the Supreme Court adopts Henderson's reading and requires hostile intent under § 4713, restoring the line between restriction and sabotage. It also fails if no other vendor loosens its terms or faces exclusion over the next year and defence contractors keep using Claude on non-Department work without friction, in which case this was a one-off contract dispute with a dramatic label, not a market signal.

WHAT TO WATCH, IN ORDER

1. **By late October 2026** — whether the government appeals Judge Lin's August ruling under § 3252 to the Ninth Circuit; the usual window for a federal party is 60 days from judgment.
2. **By 9 November 2026** — whether Anthropic petitions for rehearing en banc, on our reading of a 45-day window when a federal agency is a party.
3. **Q4 2026** — Defense contract modifications and FAR 52.204-30 notices naming Anthropic, and whether they reach back-office and embedded uses.
4. **Anthropic's IPO filing, expected late 2026** — risk-factor disclosure quantifying lost defence and contractor revenue for the first time.
5. **By 24 December 2026** — the 90-day deadline for a certiorari petition if no rehearing is sought, the cleanest signal of whether the split goes to the Supreme Court.

SOURCES

1. U.S. Court of Appeals for the D.C. Circuit, *Anthropic PBC v. Department of War*, No. 26-1049, 25 Sep 2026 · cadc.uscourts.gov
2. ABC News, "Appeals court declines to block Pentagon blacklisting of Anthropic," 25 Sep 2026 · abcnews.com
3. Volokh Conspiracy, "Anthropic's Claims Over Its Supply Chain Risk Exclusion by Department of War Rejected," 25 Sep 2026 · reason.com
4. Defense One, "Anthropic loses legal fight to shed DOD's designation as a supply-chain risk," Sep 2026 · defenseone.com
5. Gautam Parab, "Why the D.C. Circuit Upheld the Pentagon's Anthropic Supply-Chain-Risk Exclusion," 26 Sep 2026 · gautamparab.com
6. Government Contracts Navigator, "D.C. Circuit Upholds the Anthropic Ban: What It Means for Federal Contractors," 28 Sep 2026 · governmentcontractsnavigator.com
7. CCIA, "D.C. Circuit's Anthropic Decision Expands the Range of Activities Constituting a Supply Chain Risk," 2 Oct 2026 · ccianet.org
8. Nextgov/FCW, "Judge rules Anthropic supply chain risk designation was illegal and baseless," Aug 2026 · nextgov.com
9. HSF Kramer, "Same prompt, different responses," 13 Apr 2026 · hsfkramer.com
10. Reuters via Yahoo Finance, "Anthropic executives say Pentagon blacklisting could hit billions in sales, harm reputation," 9 Mar 2026 · finance.yahoo.com
11. Fortune, "Anthropic's annual revenue run rate reportedly hits \$65 billion," 18 Aug 2026 · fortune.com
12. NPR, "OpenAI announces Pentagon deal after Trump bans Anthropic," 27 Feb 2026 · npr.org
13. TechCrunch, "Google expands Pentagon's access to its AI after Anthropic's refusal," 28 Apr 2026 · techcrunch.com
14. DefenseScoop, "Pentagon awards mega contracts to Musk-owned company, other firms for new frontier AI projects," 14 Jul 2025 · defensescoop.com

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