NO. 15-849

In the Supreme Court of the United States

THE AUTHORS GUILD, ET AL.,

Petitioners,

v.

GOOGLE, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* THE COPYRIGHT ALLIANCE IN SUPPORT OF PETITIONERS

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I.
STATEMENT OF IDENTITY AND INTERESTS OF *AMICUS CURIAE*[1]

The Copyright Alliance is a non-profit, public interest and educational organization that counts as its members over 15,000 individual creators and organizations across the spectrum of copyright disciplines. The Copyright Alliance represents the interests of authors, photographers, performers, artists, software developers, musicians, journalists, directors, songwriters, game designers and many other independent creators. The Alliance also represents the interests of book publishers, motion picture studios, software companies, music publishers, sound recording companies, sports leagues, broadcasters, guilds, and newspaper and magazine publishers and many more organizations.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or their counsel, made a monetary contribution intended to fund its preparation or submission. Pursuant to Supreme Court Rule 37.2(a), *amicus* provided at least ten days' notice of its intent to file this brief, to counsel of record for all parties. On January 14, 2016, both the petitioners and the respondent, Google Inc., filed blanket consents to the filing of *amicus curiae* briefs in support of either or neither party. Although the Association of American Publishers, Inc. ("AAP") is a member of the Copyright Alliance, AAP—which was an original party to the Google Books litigation—has not participated in the preparation or submission of this *amicus curiae* brief. Websites cited in this brief were last visited on January 28, 2016.

What unites these individuals and organizations is their reliance on the copyright law to protect their freedom to pursue a livelihood and career based on creativity and innovation and to protect their investment in the creation and dissemination of copyrighted works for the public to enjoy. This requires a predictable and appropriately refined fair use analysis that furthers the purposes of copyright law, including the rights of authors to control the reproduction and use of their works. They believe that the copyright law is critical not only to their success and prosperity, but also the short and long-term success of the U.S. economy.

II.
INTRODUCTION AND SUMMARY OF ARGUMENT

More than 20 years have passed since this Court articulated the transformative use test in *Campbell v. Acuff-Rose Music Inc.*, 510 U.S. 569 (1994). The intervening period has seen an unprecedented and dramatic shift in the ways in which copyrighted works can be created, copied, used, and distributed. Addressing this evolution, the Second Circuit in *Authors Guild v. Google Inc.*, 804 F.3d 202 (2d Cir. 2015) (hereinafter, "*Google Books*"), blessed Google's creation, for its own economic benefit, of a massive digital archive of 20 million books without the rightsholders' consent, and in doing so, employed a fair use analysis that is far removed from *Campbell*'s carefully calibrated approach.

In *Campbell*, the Court articulated the transformative use analysis in the context of a classic example of fair use—one that uses the original work to create a new expressive work, thereby "promot[ing] the progress of Science and the Useful Arts." *Campbell*, 510 U.S. at 575-76 (quoting U.S. Const. art. I, § 8, cl. 8). As both Supreme Court precedent and the legislative history underlying Section 107 recognize, the fair use doctrine was intended to permit the use of an author's work for such purposes as criticism, commentary, scholarship, or news reporting -- uses listed in the preamble to Section 107. *See* Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq*., at § 107; *Campbell*, 510 U.S. at 576-77; *Stewart v. Abend*, 495 U.S. 207, 236-37 (1990). *Campbell* makes clear that the inquiry into the transformative nature of the work should be "guided by" the preamble to § 107. *Id.* While the list of fair uses included in the preamble of section 107 is only "illustrative," "the illustrative nature of the categories should not be ignored." *Infinity Broadcast Corp. v. Kirkwood,* 150 F.3d 104, 107 (2d Cir. 1998) (citation omitted). Members of the Copyright Alliance look to *Campbell*'s careful construction of fair use, not only to protect the works they create, but also for their fair use of other's works. Their interests lie on both sides and for that reason have a particularly clear view on the issues.

In recent cases, however, the transformative use analysis has been wrenched from the context of new expressive works and broadly applied in a strikingly different context—cases in which commercial companies have made large systematic, often industry-wide uses of an enormous body of

copyrighted works. In these cases, alleged infringers have justified their actions not on the basis of any critical commentary on the original or any other new expression, but instead on the justification that they are serving a new functional use—for example, by acting as an electronic pointer to the original or by providing users with "information" about the works—without adding ***any*** new critical expression (hereinafter "functional use" cases). Yet, this "information" is being conveyed by making verbatim copies of the copyrighted works and then displaying the author's protected expression to users. These cases are a far cry from the facts and interests presented by *Campbell*.

As the circuit courts, including the Second Circuit in *Google Books*, have attempted to apply *Campbell*'s transformative use analysis to these "functional use" cases, the fair use analysis has often come unmoored from both the core principles of *Campbell* and from the goals underlying the Copyright Act. In this new guise, transformative use has become the most critical element of the fair use analysis, often overwhelming the other factors. Indeed, the Seventh Circuit has suggested that the Second Circuit's approach makes the finding of a "transformative" use determinative of the fair use analysis. *Kienetz v. Sconnie Nation LLC*, 766 F.3d 756, 758 (7th Cir. 2014). Equally troubling, this approach disregards this Court's observation that the fourth factor—which assesses the harm that the secondary use, if widespread, could cause to the market for the original—"is undoubtedly the single most important element of fair use." *Harper & Row*

Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 566 (1985) (citing Melville B. Nimmer, 3 Nimmer on Copyright § 13.05[A] at 13-76 (1984)).

Google Books is a striking development in copyright law. Here, the Second Circuit decreed that Google, without the consent of the copyright holders, could digitize 20 million books to create a database to serve its commercial interests, including greatly enhancing its core search engine. As a practical matter, the Second Circuit's decision eviscerates the copyright holders' right of reproduction, finding the making and use of verbatim copies to be justified because Google Books conveys "information" about the works to users. *Google Books*, 804 F.3d at 216. By evaluating the complex issues of mass digitization using an analysis intended for a case-by-case review of new expressive works, *Google Books* necessarily ignored numerous important interests and considerations, many of which were reflected in the U.S. Copyright Office study of mass digitization. *See* U.S. Copyright Office, *Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document* (Oct. 2011) ("Mass Digitization Report" or "MDR"). The result is a far-reaching decision on a massive scale that is more akin to legislation than to the cases-by-case analysis envisioned by *Campbell*.

The *Google Books* decision and others of its ilk ignore the Supreme Court's clear guidance that, "[r]epeatedly, as new developments have occurred in this country, it has been the Congress that has fashioned the new rules that new technology made necessary." *Sony Corp. of America v. Universal City*

Studios, Inc., 464 U.S. 417, 430-31 (1984). The *Sony* court noted with approval that prior cases regarding new technologies exhibited "[t]he judiciary's reluctance to expand the protections afforded by the copyright without explicit legislative guidance" as "a recurring theme." *Id.* at 431. The Second and Ninth Circuit have thrown that caution to the wind, forgetting that "Congress has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology." *Id.*

It is incumbent upon the Supreme Court to give the federal courts appropriate direction, recognizing both the proper limited role of the courts in addressing new technology and the fact that functional use cases present new and different interests and issues not contemplated by *Campbell*. The issues surrounding the proper legal analysis in functional use cases impact not only books, but virtually every type and form of copyrightable work, as the existing jurisprudence from district and circuit courts quickly illustrates. *Perfect 10 v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007) (photographic images); *Associated Press v. Meltwater,* 931 F. Supp. 2d 537, 552-53 (S.D.N.Y. 2013) (news articles); *Fox News Network, LLC v. TVEyes, Inc.*, Case No. 13-cv-05315-AKH, --- F. Supp. 3d ---, 2015 WL 5025274 (S.D.N.Y. Aug. 25, 2015) (television clips); *Fox News Network, LLC v. TVEyes, Inc.*, 43 F. Supp. 3d 379, 42 Media L. Rep. 2315 (S.D.N.Y. 2014) (same); *Infinity Broadcast Corp.,* 150 F.3d 104 (radio clips); *Video Pipeline, Inc. v. Buena Vista Home Entertainment,*

Inc., 342 F.3d 191 (3d Cir. 2003) (movie clips). If fair use is to continue to serve the goals underlying the Copyright Act, it must be refined and recalibrated for functional use cases to ensure that it remains sufficiently protective of copyright owners.

In developing this more refined analysis, it is critical to understand that the potential adverse impact of a new functional use is far greater than that of an expressive use. A classic fair use of a work to create a new expressive work—whether a parody, biography, book or movie review or even appropriation art—generally has only the most limited, if any, market impact on the original work and its licensing stream. In stark contrast, cases such as the Ninth Circuit's decisions in *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2002), and *Perfect 10,* 508 F.3d 1146, fundamentally transformed the market for photographic works by making search engines like Google Images the destination of choice for many consumers, rather than newspaper or photography websites that funded or licensed the photographs—thus depriving them of traffic and ad revenue. Further Google Images has led to rampant unauthorized and harmful mass copying of photographs from that site. It is these far greater impacts that require a fundamentally different and more sophisticated approach. For all these reasons, the Court should grant certiorari.

III.
ARGUMENT

A. The Second Circuit's "Transformative Use" Analysis in the *Google Books* Case is Inconsistent with the Purposes of the Copyright Act and the Basic Principles Set Forth by this Court in *Campbell v. Acuff-Rose*

In its *Google Books* decision, the Second Circuit initially paid lip service to the notion that "copyright is a commercial right, intended to protect the ability of authors to profit from the exclusive right to merchandise their own work," thereby incentivizing the creation of new works for the public gain. 804 F.3d at 213-14. The remainder of its analysis, however, is driven by its view that "the ultimate, primary intended beneficiary [of copyright law] is the public." *Id.* at 212. Through this lens, the Second Circuit's first factor analysis focuses almost entirely on the public benefit—a highly-subjective concept—unmoored from the other factors or the interests in fostering the creation of creative works that copyright is actually intended to protect. As this Court has instructed:

> The central purpose of [the fair use] investigation is to see, in Justice Story's words, whether the new work merely 'supercede[s] the objects' of the original creation . . . or instead adds something new, with a further purpose or different character, ***altering the first with new***

> ***expression, meaning or message***; it asks, in other words, whether and to what extent the new work is 'transformative.'"

Campbell, 510 U.S. at 579 (emphasis added, internal citations omitted).

Campbell arose in the context of a one-time use of an original song to create a parody—not, as here, a commercial business built on the systematic exploitation of copyrighted works created by others. In finding that the first factor favored fair use, this Court went to great lengths to emphasize the fact that parody, by definition, provides critical commentary on the original, thus distinguishing parody from satire. *Campbell*, 510 U.S. at 580-81, 592-94. In other words, in order to be considered transformative, the parody needed to provide critical commentary on the original song, rather than the larger society. *Id*. at 579-83, 588; *see also id*. at 597 (Kennedy, J., concurring). The *Campbell* Court likewise made clear that new uses that largely re-package the original are not transformative, observing that a work "composed primarily of an original, particularly its heart, with little added or changed" "reveal[s] a dearth of transformative character or purpose under the first factor" and "is more likely to be a merely superseding use, fulfilling demand for the original." *Id.* at 587-88.

The transformative use analysis articulated by the Supreme Court in *Campbell* drew heavily on a law review article written by Judge Pierre N. Leval titled "*Commentaries: Toward a Fair Use Standard*." 103

Harv. L. Rev. 1105 (1990). As his influential article made plain, the core aim of fair use is to advance expressive uses of a prior author's works: "First, all intellectual creative activity is in part derivative. … Each advance stands on building blocks fashioned by prior thinkers. Second, important areas of intellectual activity are explicitly referential. Philosophy, criticism, history, and even the natural sciences require the continuous reexamination of yesterday's theses." 103 Harv. L. Rev. at 1109; *see also Campbell*, 510 U.S. at 575 (quoting Justice Story).[2]

Contrary to the instant decision, Second Circuit cases decided soon after *Campbell* recognized that new functional uses that serve a different purpose and provide a social benefit are not necessarily transformative. *Infinity Broadcast. Corp.,* 150 F.3d 104, for example, concerned a service that recorded and retransmitted free radio broadcasts for purposes such as verifying the broadcast of advertisements, auditioning on-air talent, and enforcing copyrights. The Second Circuit aptly observed that even though the service was intended to serve a different purpose than the original and a useful one, "difference in purpose is not quite the same thing as transformation,

[2] Leval's examples are telling: "Transformative uses may include criticizing a quoted work, exposing the character of the original author, proving a fact, or summarizing an idea argued in the original in order to defend or rebut it. They also may include parody, symbolism, aesthetic declaration, and innumerable other uses." *Id.* at 1111.

and *Campbell* instructs that transformation is the critical inquiry under this factor." *Id.* at 108.

Yet in *Google Books* and several other "functional use" cases, particularly in the Second, Fourth and Ninth Circuits, the federal courts have seemingly abandoned the long-standing principle that the new work must "alter the first with new expression, meaning or message." *See A.V. ex rel Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 639 (4th Cir. 2009) ("The use of a copyrighted work need not alter or augment the work to be transformative in nature. Rather, it can be transformative in function or purpose without altering or actually adding to the original work."); *Perfect 10, Inc.*, 508 F.3d at 116 (finding search engine's indexing, search function and display of "thumbnail" copies of images "highly transformative" because "a search engine transforms the image into a pointer directing a user to a source of information," which source is not necessarily affiliated with the copyright holder). The original, intended inquiry has been replaced with a far more subjective measure: does the secondary use serve the public good or expand public knowledge?

Strikingly, the Second Circuit in *Google Books* omitted the key phrase "altering the first with new expression, meaning or message" in its recitation of the transformative use test. Under its *Google Books* analysis, any use that "expands [the original work's] utility," "make[s] available significant information about those books" or provides helpful or "otherwise unavailable" information about the work is a protected transformative use, even if it does so by

copying entire works and then doing nothing more than displaying verbatim excerpts of the original. *See Google Books*, 804 F.3d at 214-217; *see also id.* at 214 ("a transformative use is one that communicates something new and different from the original ***or expands its utility***, thus servicing copyright's overall objective of contributing to public knowledge" (emphasis added)). This approach ignores the fact that the "information" being provided—what an author had to say about a particular subject—is comprised entirely of the original author's protected expression, unaltered by any new expression or critical commentary. *Campbell*, 510 U.S. at 579.

Moreover, the Second Circuit focused almost entirely on whether the *Google Books* "snippets" provided useful information to the end user and largely ignored the mass digitization of 20 million books. It is undisputed that Google created a massive database of the vast majority of published works in this century by making unauthorized copies; that it did so for its own commercial ends in order to enhance its core search engine; and that its future uses of that data remain completely unknown and are in no way limited to the "snippets" displayed in response to user searches. *Google Books*, 804 F.3d at 215-220. At a minimum, the end result is the evisceration of the copyright holder's exclusive right of reproduction—contrary to the Copyright Act's intent to vest that right in the copyright owner.[3]

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[3] The Authors Guild also argued forcefully that Google deprived them of their exclusive right to create derivative works. *Google Books,* 804 F.3d at 207, 225-27. As the Second Circuit noted,

Further, the Second Circuit focused myopically on the public's interest in obtaining information about books without thinking about the fact that the research and writing upon which Google relies for its public interest argument was not performed by Google, but rather by the authors. While the search function in Google Books may make it easier to find books, there is likewise a strong countervailing public interest in preventing commercial corporations from depriving authors of the just reward that funds their work.

> Paraphrasing James Madison, the world is indebted to the press for triumphs which have been gained by reason and humanity over error and oppression. … Permitting [Defendant] to take the fruit of [Plaintiff's] labor for its own profit, without compensating [Plaintiff,] injures [Plaintiff's] ability to perform [its] essential function of democracy.

Associated Press, 931 F. Supp. 2d at 552-53. Further, the Second Circuit set up a false dichotomy by presuming that imposing a requirement on Google to

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there is a confusing tension between the transformative use doctrine and the copyright holder's exclusive right to create derivative works, which are defined as ". . . a work based upon one or more preexisting works, such as a[n] . . . abridgment, condensation, or any other form in which a work may be recast, transformed or adapted." 17 U.S.C. §101; *Google Books*, 804 F.3d at 215-216. This confusion has been exacerbated by recent functional use cases. The Second Circuit made an unsuccessful attempt at resolving this tension, which also calls out for Supreme Court review. 804 F.3d at 225-27.

enter into license agreements with authors or their publishers would preclude it from advancing the public interest through the creation of Google Books, a presumption unsupported by the record.

The Second Circuit's troubling expansion of the law is further exacerbated by the fact that, in *Google Books* (and several other functional use cases), a finding that the defendant's use is "transformative" is essentially outcome determinative. It is far too easy for a defendant to claim that its secondary use serves a "new function" or provides "useful information" about a work or "expands its utility." As this Court aptly observed, "[a]ny copyright infringer may claim to benefit the public by increasing public access to the copyrighted work." *Harper & Row,* 471 U.S. at 547 (citing *Pacific & Southern Co. v. Duncan*, 744 F.2d 1490, 1499-1500 (11th Cir. 1984)); *Video Pipeline*, 342 F.3d at 198-99 n.5 (citing and quoting *Harper & Row v. Nation*). Databases, by definition, provide potentially useful information. By logical extension, *Google Books* gives commercial companies *carte blanche* to reproduce entire corpuses of copyrighted works to create databases and profit off the backs of their original creators without paying a license fee, because end users may find them "useful." *See, e.g., Fox News Network, LLC*, 43 F. Supp. 3d 379 (finding subscription-access database of third-party television news broadcasts recorded without permission to be a transformative use). These issues cry out for Supreme Court review.

B. The Fourth Factor Analysis in the *Google Books* Case is Inconsistent with the Purposes of the Copyright Act and this Court's Precedent

In light of the purposes underlying the Copyright Act, this Court has stated that the fourth factor—the effect of the use upon the potential market for or value of the copyrighted work—is "undoubtedly the single most important element of fair use." *Harper & Row,* 471 U.S. at 566 (citation omitted). Further, the Supreme Court has instructed courts "to consider not only the extent of market harm caused by the particular actions of the alleged infringer, but also whether unrestricted and widespread conduct of the sort engaged in by the defendant . . . would result in a substantially adverse impact on the potential market for the original." *Campbell*, 510 U.S. at 590; *see also American Geophysical Union v. Texaco*, 60 F.3d 913, 927 n. 12 (2d Cir. 1994) ("[T]he fourth factor is concerned with the category of a defendant's conduct, not merely the specific instances of copying."). "The limited monopoly granted to the artist [or other copyright holder] is intended to provide the necessary bargaining capital to garner a fair price for the value of the works passing into public use." *Stewart v. Abend*, 495 U.S. at 229.

The Second Circuit's fourth factor analysis is inconsistent with this Court's guidance in numerous respects. The result is a decision that reduces, rather than protects, the incentive to create new works.

First, the Second Circuit essentially ignored the market harm arising from the authors' lost opportunity to license their works for inclusion in a database, focusing only on the display of snippets. While *amicus* respectfully submits (and the Second Circuit acknowledged) that snippets can, and indeed do, act as a substitute for the original, the Second Circuit's failure to consider any other type of harm is particularly problematic. *Google Books*, 804 F.3d 223-25.

Certainly, there can be no question that a potential market existed for the digitization of the entire corpus of books published in the United States. *Google Books* thus presents a classic example of market harm because Google did not "pay[ ] the customary price" to acquire digital versions of the books it copied wholesale. *Harper & Row*, 471 U.S. at 562; *see also American Geophysical Union,* 60 F. 3d at 929-30 (recognizing that the loss of potential licensing revenues in traditional, reasonable or likely to be developed markets represents market harm under the fourth factor). Although the Second Circuit pretended that no such potential market existed, Microsoft had already begun negotiations with publishers for a book database at the time that Google started its scanning project.[4] Moreover, Google itself has obtained licenses from certain publishers. (Pet. App. 56a-57a, 68a-69a.) Further, as a practical

[4] *See* Miguel Helft, *Microsoft Will Shut Down Book Search Program*, N.Y. Times, May 24, 2008 http://www.nytimes.com/2008/05/24/technology/24soft.html (shutdown decision came "in the face of competition from Google, the industry leader").

matter, Google's massive, unlicensed, unrestricted library supplants the creation of a licensed digital library governed by the terms that the books' rightsholders would have desired. Thus, the harm to rightsholders includes not only lost licensing fees, but also the ability to control the terms and conditions of any such license, including data security measures.

Second, the Second Circuit concluded that the fourth factor favored fair use because Google's actions did not "deprive the rights holder of significant revenues." 804 F.3d at 223. This heightened requirement—which inappropriately places the burden on the copyright holder to show harm to an existing, and "significant," revenue stream—is not supported by this Court's copyright jurisprudence. While *Harper & Row* stated that fair uses are those "which do[] not materially impair the marketability of a work," it did not require the loss of a significant revenue stream and emphasized that "a use that supplants ***any part*** of the normal market for a copyrighted work would ordinarily be considered an infringement." 471 U.S. at 566, 568 (emphasis added). As this Court also made clear, "to negate fair use one need only show that if the challenged use should become widespread, it would adversely affect the *potential* market for the copyrighted work." *Id.* at 568 (emphasis in original) (citation omitted).

In applying this precedent, there is no place for the courts to make subjective judgments about whether a revenue stream is "significant" enough to be deserving of protection; all income is desirable for copyright holders. Requiring the revenue stream to

be "significant" has the undesirable effect of under-valuing works created by small, independent authors who are unlikely to garner high fees for the use of their works, and may also penalize large entities if the revenue stream associated with the secondary use is considered "insignificant" in relation to their entire revenue stream. *See, e.g., Fox News Network, LLC,* 43 F. Supp. 3d at 396 (finding that the fourth factor favored fair use where Fox's revenues from licensing clips of its programming accounted for a small fraction of its overall revenues). In fact, prior cases have recognized that the fourth factor favors the copyright holder even where there was no evidence of current licensing income/economic harm, in recognition of the copyright holders' right to control dissemination of his or her work. *See, e.g., Salinger v. Random House*, 811 F.2d 90, 99 (2d Cir. 1987) ("Salinger … is entitled to protect his *opportunity* to sell his letters …"); *cf. Stewart,* 495 U.S. at 228-29 ("[N]othing in the copyright statutes would prevent an author from hoarding all of his works during the term of copyright. In fact, this Court has held that a copyright owner has the capacity arbitrarily to refuse to license one who seeks to exploit the work"). Thus, the Second Circuit's analysis in *Google Books* also deprives the copyright holder of the right to decide when and if to license its works for use and reproduction, and on what terms.

Lastly, and again contrary to *Harper & Row,* the Second Circuit failed to consider the harm that would result if Google's actions in reproducing and displaying works without permission became widespread. 471 U.S. at 568. Effectively, the book

publishing community would lose—and in reality has essentially lost—the ability to enter into licenses with parties digitizing its works so long as one of their uses serves the public's interest in gaining useful information.

If anything, due consideration of the potential market harm is all the more critical in functional use cases—especially those, like Google Books, that make systematic uses of a broad array of works. Indeed, such a setting calls for a sophisticated fourth factor analysis that accounts for the potential for the functional use to alter the fundamental market for the entire genre of work. Courts adjudicating cases in this context further must focus carefully on whether the new use is depriving the copyright holder of its ability to recoup its costs, or interfering with the incentive to create new works. The creation of copyrighted works—whether newspapers, books, movies or other expressive works—requires considerable expense and often broad staffing. Finally, courts must employ a sophisticated understanding of how copyright holders obtain a fair return for their labors in the digital age, including by licensing works for reproduction in electronic databases. These concerns are all the more important given the issues facing traditional media industries in a digital world. As but one example, a search engine or other service that keeps users within in own platform may deprive the original publisher of user traffic on its website and therefore advertising revenues. "The rights conferred by copyright are designed to assure contributors to the store of

knowledge a fair return for their labors." *Harper & Row*, 471 U.S. at 546.

CONCLUSION

Amicus respectfully requests that the Authors Guild's petition for a writ of certiorari be granted.

Respectfully submitted,

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