

No. 20-503

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IN THE  
*Supreme Court of the United States*

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TOFIG KURBANOV,  
*Petitioner,*

v.

UMG RECORDINGS, INC., ET AL.,  
*Respondents.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit

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BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Petitioner runs two of the world's most popular online piracy websites, using a technology called "stream-ripping" to illegally distribute copyrighted music to hundreds of millions of users. Petitioner's third-largest market is the United States, with over 30 million U.S. users illegally receiving nearly 100 million copies of copyrighted materials annually. Petitioner's websites have over half a million users in Virginia who collectively receive more than 1.3 million copyrighted songs annually. Petitioner requires all of his users to enter into a contract authorizing him to collect information about their location. Petitioner then uses this information *not* to limit or block access in these jurisdictions, but rather to target location-specific advertising directly at them. Petitioner also maintains an agent at the U.S. Copyright Office for the express purpose of seeking safe harbor protections under U.S. copyright law.

The question presented is: Did the Fourth Circuit correctly conclude that Petitioner purposefully availed himself of the privilege of doing business in the forum such that jurisdiction was appropriate in Respondents' action brought in the U.S. District Court for the Eastern District of Virginia?

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## INTRODUCTION

This action seeks redress for Petitioner Tofig Kurbanov's massive copyright infringement through his popular music piracy websites, FLVTO.biz and 2conv.com. Respondents, U.S. record companies that collectively own the copyrights to the vast majority of sound recordings licensed and sold in the United States, sued Petitioner, a Russian national, in the Eastern District of Virginia. Petitioner contended the exercise of personal jurisdiction, not just in Virginia but anywhere in the United States, would "offend traditional notions of fair play and substantial justice," *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted), that are designed to ensure a defendant is not "haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated,' contacts," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (citation omitted). The Fourth Circuit disagreed in a unanimous opinion that Petitioner now asks this Court to review.

The decision below did not break new ground or create a circuit split. It reached the unremarkable conclusion that Respondents satisfied their prima facie burden for the first two prongs of the "three-prong test" for asserting specific personal jurisdiction consistent with due process. That conclusion was amply supported by the record. Petitioner's websites are wildly popular in Virginia and across the United States. Through a process called "stream-ripping," the websites enable users to isolate the audio portion of a music video and convert it into a downloadable file, without permission from, or compensation to, copyright holders like



Respondents. In 2018, Petitioner’s websites had almost 32 million U.S. users. Collectively, those users conducted over 96 million stream-ripping sessions, and Petitioner’s websites transmitted hundreds of millions of songs from his servers to users in the United States. That makes the United States one of Petitioner’s most important global markets, ranked third both by number of users and number of sessions.

This massive U.S. customer base is no surprise to Petitioner, who is well aware of the location and extent of his piracy. Indeed, Petitioner collects information about his users’ locations. But rather than using that information to block access in certain jurisdictions, Petitioner capitalizes on his customer base to profit handsomely through advertisements targeted at the user’s location. Given these factors, together with several others demonstrating that Petitioner conducted business here and invoked the protection of U.S. law while doing so, the Fourth Circuit rejected Petitioner’s claim that he lacked fair warning he might be sued in Virginia.

This Court should deny certiorari. *First*, Petitioner’s principal argument for certiorari is a supposed split among the circuits about “the continuing viability” of *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). In that decision, issued when the Internet was in its infancy, a district court offered a framework that looked to a website’s level of “interactivity” to help determine whether to exercise personal jurisdiction. Today, contrary to Petitioner’s contentions, no circuit court treats *Zippo*’s approach as dispositive, and all circuits agree that *Zippo* is

instructive only insofar as it sheds light on the traditional jurisdictional principles established by this Court. Regardless, even if a split on *Zippo* existed, this case is not a suitable vehicle because *Zippo* was not determinative for the outcome: the Fourth Circuit conducted a holistic inquiry that is consistent with this Court's precedent and at the same time precisely what *Zippo* would require for websites like Petitioner's that involve at least some degree of interactivity.

*Second*, focusing on the particular facts the Fourth Circuit relied on to support its jurisdictional analysis, Petitioner claims the decision below effects a "sea change" and a "deep circuit split." But that is wrong. In each cited decision, the circuit court applied the framework set forth in *International Shoe*—the same framework the Fourth Circuit applied here—to the totality of the circumstances it confronted. Petitioner identifies no circuit that would have reached a different result on the facts of this case, and tellingly none of those courts has identified a circuit split with any other. Indeed, Petitioner's entire approach to identifying circuit splits is fundamentally misguided. He isolates each of his extensive contacts and claims a conflict with some other case in which that contact alone was insufficient in light of the entire record to justify the assertion of jurisdiction. But personal jurisdiction is a holistic analysis, as the Fourth Circuit correctly recognized. Merely citing cases in which a particular factor in isolation failed to justify jurisdiction does not demonstrate a split on the probity of that factor.

*Third*, review here is in any event premature. Neither the Fourth Circuit nor the District Court has

conclusively determined that the exercise of jurisdiction comports with due process. After addressing purposeful availment and determining that Respondents' claims arise out of Petitioner's forum-related contacts, the Fourth Circuit remanded for the District Court to consider the third prong of the analysis: whether the exercise of jurisdiction here would be "constitutionally reasonable." The District Court has not conducted that analysis.

*Fourth*, Petitioner vastly overstates the scope and impact of the decision below in his request for immediate intervention. Petitioner's dire forecasts of disastrous consequences for foreign and domestic defendants cannot be squared with the ruling, which was narrow and fact-bound and (as just noted) did not even decide the constitutionality of exercising personal jurisdiction here. If by some chance the consequences Petitioner fears materialize in some future case, the Court can address the issue then.

*Finally*, the decision below is correct. As the Fourth Circuit understood, Petitioner can claim no surprise at being haled into court here. The United States is Petitioner's third-largest global market and Virginia is one of his biggest U.S. markets; the U.S. and Virginia markets are massive in terms of the number of users, visits, and files transmitted; Petitioner earns substantial revenues from advertisements targeted to these markets; those revenues are earned precisely because Petitioner entices users with the availability of Respondents' popular sound recordings; Petitioner has designed his websites and operations so they are attractive to U.S. users in particular; and Petitioner has

registered an agent with the U.S. Copyright Office, the purpose of which is to invoke the protections of U.S. copyright law in U.S. courts. The contacts that make Petitioner amenable to suit here are by no means “random, fortuitous, or attenuated.”

That result makes good sense. If Petitioner were making hefty profits by shipping millions of copyrighted physical record albums into Virginia, there would be no doubt that Petitioner purposefully availed himself of the privilege of doing business there; the result is no different simply because those record albums are electronic rather than vinyl. Indeed, any other result would be disastrous for U.S. copyright holders: pirate websites would get a roadmap for how to target millions of U.S. users and profit from the massive infringement of U.S. copyrights, all the while remaining beyond the reach of U.S. courts. As the Fourth Circuit correctly realized, nothing in the Due Process Clause compels that perverse result.

### **STATEMENT**

Respondents are twelve record companies that produce, distribute, and license approximately 85% of all legitimate commercial sound recordings in the United States. Pet. App. 3-4; *see also* Pet. ii (listing companies). Petitioner is a Russian national who owns and operates two of the world’s most notorious music piracy websites, FLVTO.biz and 2conv.com (“FLVTO” and “2conv” or, together, the “websites”). Pet. App. 4. This action seeks redress for Petitioner’s violations of the Copyright Act.

### A. Stream-Ripping

Respondents license the rights to perform their copyrighted works to Internet-based streaming services such as Apple Music, Pandora, Spotify, and, most relevant here, YouTube. JA15.<sup>1</sup> These services allow users to listen to sound recordings online but do not give users access to a permanent digital copy. JA10, 14-15.

YouTube and other streaming services employ sophisticated technology to prevent users from downloading or copying the videos available on their websites. But Internet pirates, including Petitioner, have found illegal ways to circumvent these safeguards. Once the control measures are circumvented, pirates can gain access to the audiovisual files, make unauthorized copies of the audio portions, and distribute those copies over the Internet. Pet. App. 4; *see* JA15-24. This process is known as “stream-ripping.” Pet. App. 4. It deprives record companies like Respondents of substantial revenues by allowing users to obtain permanent copies of songs without purchasing them. JA17-18.

The scale and scope of the problem is staggering. Stream-ripping has quickly become the most popular form of music piracy in the world. JA9, 17. Nearly half of all Internet users between the ages of 16 and 24 regularly use stream-ripping to acquire music, and stream-ripping services illegally copy and distribute tens of millions—or even hundreds of millions—of tracks every month. JA9, 17-18.

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<sup>1</sup> “JA” refers to the Joint Appendix in the Fourth Circuit.

## B. Petitioner's Websites

FLVTO and 2conv are two of the most popular stream-ripping websites worldwide; indeed, they are among the most popular websites of any kind on the Internet. Pet. App. 6; *see* JA144-56.

The websites are enormously popular in the United States and elsewhere because they facilitate the illegal stream-ripping of popular music. Pet. App. 6; *see, e.g.*, JA19-20, 22-23 (2conv advertises how to get “favourite [sic] tracks ... for free”). The tutorials on the websites feature sound recordings by artists such as Michael Jackson, Justin Bieber, and Madonna. JA24. As Respondents have alleged, a substantial portion of that music is protected by their copyrights, and the websites thus inflict substantial injury on their businesses. JA10-11. The United States government agrees, identifying Flvto.biz and 2Conv.com as “examples of the stream-ripping phenomenon that continues to threaten legitimate streaming audio and video services, music performers, and composers.” *See* Office of United States Trade Representative, *2018 Out-of-Cycle Review of Notorious Markets*, at 18 (2019), [https://ustr.gov/sites/default/files/2018\\_Notorious\\_Markets\\_List.pdf](https://ustr.gov/sites/default/files/2018_Notorious_Markets_List.pdf).

Petitioner's websites make online piracy as easy as the click of a button. To begin, a user enters a publicly available web address for a YouTube video at the FLVTO homepage or on the FLVTO mobile app. JA18-23, 76. The user then chooses the desired file format and clicks “Convert.” *Ibid.* In a matter of seconds, FLVTO illegally circumvents YouTube's safeguards and copies the content; it then converts the audio track into the type of file selected by the user. JA21-22, 76. The result

is a permanent and unauthorized copy of the sound recording found in the video. JA22. FLVTO then presents the user with a “download” link, and, when the user clicks on that link, FLVTO transmits the resulting copy directly from its servers to the user’s phone or computer. JA21-22, 76; Pet. App. 4. 2conv uses the same basic process. JA20, 22.

### **C. Petitioner’s Contacts With Virginia And The United States**

Petitioner’s websites operate on a massive scale in Virginia and the United States as a whole, and Petitioner takes steps to exploit these markets.

#### **1. Number of users and quantity of files**

According to Petitioner’s own data, FLVTO had 26.3 million users in the United States between October 2017 and September 2018. Pet. App. 26. That included 448,426 users in Virginia. JA88. During the same period, 2conv had 5.37 million users in the United States and 94,342 users in Virginia. JA78-79. Collectively, Petitioner’s websites had nearly 32 million users in the United States (nearly 10% of the country’s population) and more than half a million users in Virginia (over 6% of Virginia’s population). JA78-79, 87-88; *see* Pet. App. 6. The United States was the third-largest market for Petitioner’s websites by total number of users and total number of visits. Pet. App. 6. Within the United States, Virginia was FLVTO’s 13th largest market and 2conv’s 11th largest market. Pet. App. 6-7.

Users visit frequently and spend significant time during each visit. *See* JA87-88 (FLVTO data on number of visits); JA78-79 (same for 2conv); *see also* JA149

(discussing amount of time users spend per visit). The scale of infringement the websites accomplish is mind-boggling. In 2018, Petitioner’s websites transmitted over 96 million files into the United States, including more than 1.35 million into Virginia. *See* JA78-79, 87-88, 149, 154. Respondents have alleged that all or substantially all of these file transfers involve infringing copies of copyrighted sound recordings. JA10, 17, 23-24.

## **2. Terms of Use**

Before users can download any audio files, they must agree to Terms of Use. Pet. App. 5. The websites explain that the Terms of Use “constitute a contractual agreement between you [the user] and us [the website].” *Ibid.* (quoting JA158). The Terms of Use give Petitioner “the right to take appropriate action against any user ... including civil, criminal, and injunctive redress.” *Ibid.* (quoting JA158, 168). Users further agree that “[f]or any claim brought by us against you, you agree to submit and consent to personal jurisdiction in and the venue of the courts in the Russian Federation and anywhere else you can be found.” JA166, 174 (capitalization omitted); *see* Pet. App. 5. In other words, Petitioner reserves the right to file suit against his users in Virginia courts and in the courts of the United States.

## **3. Geo-targeted advertising**

Although users do not pay money for Petitioner’s stream-ripping services, FLVTO and 2conv are very much commercial enterprises. Like many websites, they derive their revenue from the advertisements they host. Pet. App. 5. Based on their investigation, Respondents alleged the websites featured advertisements that



targeted users according to their specific location, including the United States and Virginia. *Ibid.* This form of advertising, known as “geo-targeting,” is intended to maximize the number of visitors who click on an advertisement appearing on Petitioner’s websites (the “click-through rate”). *Ibid.* The theory is that Virginians (for example) are more likely to click on advertisements that are specifically targeted to a Virginia audience. The higher the click-through rate, the more valuable the advertising space on Petitioner’s websites and the greater his revenues. JA11.

Petitioner concedes that third-party advertisers may be targeting specific advertisements to users in specific locations. JA70. Although Petitioner insists he has no role in selecting the particular advertisements on his websites, the record indicates that Petitioner plays an instrumental role in geo-targeting by collecting the location data from visitors. In the privacy policies that appear on FLVTO and 2conv, Petitioner advises users that he may collect “your IP address, country of origin and other non-personal information about your computer or device” and that the information may be used “to provide targeted advertising based on your country of origin and other personal information.” JA176, 178; *see* Pet. App. 6. In other words, the privacy policies indicate that Petitioner himself collects location data about his users and then passes that information to advertisers so they can geo-target. Petitioner thus has full knowledge of where his users are located. JA78-94.

#### **4. Other business contacts**

To facilitate his U.S. operations, Petitioner has specifically invoked the protections of U.S. law.

Petitioner has, for example, registered a Digital Millennium Copyright Act (DMCA) agent with the U.S. Copyright Office. Pet. App. 7. The sole purpose of this registration is to seek shelter within the DMCA’s safe harbor if Petitioner is sued for copyright infringement under U.S. law in U.S. courts. *See* 17 U.S.C. § 512(c).

Petitioner has several additional contacts in the United States and Virginia to facilitate his online piracy operations. He does business with at least one American advertising broker to sell space on his websites for geo-targeted advertisements—Advertise.com, based in Sherman Oaks, California. JA118, 185. He registered the domain names “FLVTO” and “2conv” through GoDaddy.com, an American domain-name registrar. Pet. App. 7. He selected top-level domains (the suffixes “.com” and “.biz”) that are administered by companies headquartered in Virginia. *Ibid.* And, until recently, Petitioner contracted with Amazon Web Services to host his websites on front-end servers in the United States. *Ibid.* For a significant period of time, including within the three-year limitations period that applies to Respondents’ claims, those front-end servers were located in Ashburn, Virginia. *Ibid.*

#### **D. District Court Proceedings**

On August 3, 2018, Respondents filed suit in the U.S. District Court for the Eastern District of Virginia, alleging five separate violations of the Copyright Act. *See* Pet. App. 28. Respondents alleged specific jurisdiction under Federal Rule of Civil Procedure 4(k)(1) because of Petitioner’s contacts with Virginia, or, alternatively, under Rule 4(k)(2) because of Petitioner’s contacts with the United States as a whole. Pet. App. 8.

Petitioner appeared through counsel and filed a motion to dismiss for lack of personal jurisdiction.

The District Court granted Petitioner's motion. Pet. App. 37. As the District Court saw it, Petitioner "took no action through the Websites that would demonstrate purposeful targeting of Virginia or the United States." Pet. App. 35. In so holding, the District Court dismissed the transmission of hundreds of millions of infringing files from Petitioner's servers to his U.S. users as "in the unilateral control of the users as they initiate the contacts." Pet. App. 36. The District Court likewise deemed irrelevant the handsome profits Petitioner makes from geo-targeted advertisements. Pet. App. 35. Having concluded that Petitioner "did not purposefully avail himself of the benefits and protections of either Virginia or the United States," the District Court declined to consider whether an exercise of personal jurisdiction over Petitioner would be constitutionally reasonable. Pet. App. 36.

#### **E. Decision Below**

The Fourth Circuit unanimously reversed. It considered de novo whether Respondents made a prima facie showing of specific personal jurisdiction over Petitioner. Pet. App. 9. Consistent with the applicable standard, the court construed all allegations in favor of Respondents and drew all inferences in favor of the existence of jurisdiction. Pet. App. 9-10.

The court began its analysis with Rule 4(k)(1), which provides for the exercise of personal jurisdiction where the defendant is "subject to the jurisdiction of a court of general jurisdiction in the state where the district court

is located.” Pet. App. 10 (quoting Fed. R. Civ. P. 4(k)(1)). The court explained that because Virginia’s long-arm statute is coterminous with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, the statutory and constitutional inquiries merged into a single analysis. Pet. App. 10-11. The court also noted that under Rule 4(k)(2), the alternative basis that Respondents invoked for jurisdiction, “the same due process analysis” was necessary, “only the analysis is applied to the entirety of the United States, as opposed to Virginia.” Pet. App. 11. For both rules, the analysis had three prongs: “(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs’ claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” Pet. App. 13 (quotation marks omitted).

Starting with purposeful availment, the court emphasized the need to examine “the *quality* and *nature* of the defendant’s connections, not merely the number of contacts between the defendant and the forum state.” Pet. App. 14 (emphasis in original) (citation omitted). In addition, the court recognized “the need to adapt traditional notions of personal jurisdiction[]” where the contacts involve online activities, but confirmed that the “touchstone” of its inquiry remained whether Petitioner engaged in activity purposefully directed at the forum state. Pet. App. 15 (citation omitted).

The court answered that question in the affirmative. Pet. App. 15-19. Although noting that the websites are “interactive to a degree,” Pet. App. 15-16, the court

found it irrelevant whether the websites qualified as “highly interactive” or “semi-interactive” on *Zippo*’s sliding scale, a distinction that was “not determinative for purposes of personal jurisdiction,” Pet. App. 16. Rather, the court focused on several additional factors showing that Petitioner had purposefully availed himself of the privilege of doing business in the forum—including the volume of unique visitors and visits, the commercial nature of the relationship between the websites and their visitors, the geo-targeting of advertisements based on user location, the registration of a DMCA agent with the Copyright Office, and other contacts with U.S.-based businesses. Pet. App. 16-19.

The court flatly rejected Petitioner’s “attempt to distance himself from th[e] commercial arrangement” through which he benefits from his business. Pet. App. 17. While acknowledging that the websites are free to use, the court noted “[i]t is hardly unusual for websites to be free to use in today’s Internet because many corporations ‘make money selling advertising space, by directing ads to the screens of computers employing their software.’” *Ibid.* (quoting *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 926-27 (2005)). Consistent with that practice, Petitioner “has made a calculated business choice not to directly charge visitors in order to lure them to his Websites.” *Ibid.* But, once visitors are there, he requires them to accept various contractual terms giving him the right to collect their IP address and country of origin, and he “ultimately profits from visitors by selling directed advertising space and data collected to third-party brokers, thus purposefully availing himself of the

privilege of conducting business within Virginia.” *Ibid.* Notwithstanding that Petitioner uses brokers, he still “facilitates targeted advertising by collecting and selling visitors’ data,” and so “the fact remains that he earns revenues precisely because the advertising is targeted to visitors in Virginia.” Pet. App. 18 (citing *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011); *uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 428 (7th Cir. 2010)).

The court then considered whether the claims arose from Petitioner’s activities directed at the forum. Pet. App. 19. Again, it answered yes. Petitioner “made two globally accessible websites and Virginia visitors used them for alleged music piracy,” plus Petitioner “knew the Websites were serving Virginian visitors and yet took no actions to limit or block access, all while profiting from the data harvested from the same visitors.” Pet. App. 19-20. The court disagreed with Petitioner that Respondents were “elevat[ing] the significance of non-claim related contacts” by focusing on the raw number of visitors; it was precisely the large audience in Virginia and the United States that allowed Petitioner to “actively facilitate[] the alleged music piracy through a complex web involving Virginia visitors, advertising brokers, advertisers, and location-based advertising.” Pet. App. 20-21.

Finally, the court turned to the third prong: constitutional reasonableness. Pet. App. 21. Because the District Court never reached that question, the court declined to address it on appeal and instead remanded for the District Court to perform the reasonability analysis in the first instance. Pet. App. 21-22.

Petitioner subsequently petitioned for en banc rehearing. No judge requested a poll, and the Fourth Circuit denied the petition. Pet. App. 40.

### **REASONS FOR DENYING THE PETITION**

#### **I. The Question Presented Does Not Warrant Review.**

The Fourth Circuit rendered a straightforward decision, correctly applying settled law on specific personal jurisdiction over foreign defendants. Petitioner claims nonetheless that this Court's review is urgently needed, first, to address "the continuing viability" of *Zippo*, and second, to provide Internet-specific guidance to reconcile circuit court decisions that are in disarray. Petitioner is wrong on both counts: there is no circuit split on *Zippo*, and there is no disagreement among the circuits regarding the application of personal jurisdiction to Internet-based activities.

#### **A. *Zippo* Has Not "Deeply Split" The Circuits And Does Not Merit Review Here.**

Petitioner is wrong that the circuits have split over whether and how to apply *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Pet. 32-35. Regardless, a dispute over *Zippo* provides no basis for review, since the application of *Zippo* had no impact on the result the Fourth Circuit reached below.

*Zippo* is a district court decision from 1997, a time when both the Internet and the case law applying principles of personal jurisdiction to the Internet remained in their "infant stages." 952 F. Supp. at 1123.

Because the authority in this context was “scant,” the district court in *Zippo* developed a “sliding scale” approach to jurisdiction that placed “interactive” websites on one end of the spectrum and “passive” websites on the other. *Id.* at 1124. The district court found that jurisdiction was proper for the former but not for the latter. *Ibid.* Between those extremes, the district court placed “semi-interactive” websites for which “the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs.” *Ibid.* In other words, websites in the middle of the spectrum required a fact-intensive inquiry.

Petitioner claims a circuit split over *Zippo*. According to Petitioner, the Fourth Circuit has joined the Fifth, Eighth, and Ninth Circuits in embracing *Zippo*, deepening a conflict with the Seventh and Tenth Circuits, which purportedly reject it. Pet. 10-11. But Petitioner misreads the cases he cites as expressing a disagreement that does not exist.

For starters, Petitioner relies on stale cases. To support his claim that four circuits embrace the sliding scale, he points to decisions issued close in time to *Zippo*, see Pet. 10, while ignoring more recent opinions clarifying the courts’ latest thinking. For example, while Petitioner cites *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002), for the proposition that the Fourth Circuit has adopted *Zippo*, Petitioner fails to acknowledge a decision issued earlier this year (almost two decades after *ALS Scan*) cautioning against overreliance on the sliding scale. *Fidrych v. Marriott International, Inc.* described the



substantial technological changes since *Zippo*, explaining that on the Internet today, “[i]t is an extraordinarily rare website that is not interactive at some level.” 952 F.3d 124, 141 n.5 (4th Cir. 2020) (internal quotation marks omitted). Thus, the Fourth Circuit found, placing “too much significance on the mere fact of interactivity [risks] losing sight of the key issue in a specific jurisdiction case—whether the defendant has purposefully directed [his] activities at residents in the forum.” *Id.* at 142 (internal quotation marks omitted).

The decision below is cut from the same cloth. The court recognized “the need to adapt traditional notions of personal jurisdiction” where, as here, a case involves “online activities and websites,” and it noted that the sliding scale in *Zippo* can “help determine when a defendant’s online activities are sufficient to justify the exercise of personal jurisdiction.” Pet. App. 15 & n.8. But, echoing *Fidrych*, the court recognized the limited role that *Zippo* plays today, stating that the level of interactivity “is not determinative for purposes of personal jurisdiction.” Pet. App. 16. “Regardless of where on the sliding scale a defendant’s web-based activity may fall,” the court explained, “the touchstone remains that an out-of-state person have engaged in some activity purposefully directed toward the forum state ... creat[ing] a substantial connection with the forum state.” Pet. App. 15 (quotation marks omitted) (alterations in original); *see also* Pet. App. 16 (quoting *Fidrych* for same point).

Each circuit on this side of Petitioner’s supposed split has refined its analysis in a similar way. For example,

since *Mink v. AAAA Development LLC*, 190 F.3d 333, 336 (5th Cir. 1999), the Fifth Circuit has clarified that *Zippo* is not determinative: “internet-based jurisdictional claims must continue to be evaluated on a case-by-case basis, focusing on the nature and quality of online and offline contacts to demonstrate the requisite purposeful conduct that establishes personal jurisdiction.” *Pervasive Software Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 227 n.7 (5th Cir. 2012). Likewise, years after *Lakin v. Prudential Securities, Inc.*, 348 F.3d 704, 711 (8th Cir. 2003), the Eighth Circuit explained that *Zippo* is “instructive”—not binding. *Johnson v. Arden*, 614 F.3d 785, 796 (8th Cir. 2010). And while Petitioner cites *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997), as evidence that the Ninth Circuit relies on *Zippo*, he disregards the fact that the court’s more recent decisions about specific personal jurisdiction have disregarded it. *E.g.*, *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1220 n.2 (9th Cir. 2020) (“[R]egardless of whether the site is passive, interactive, or semiinteractive, jurisdiction is proper here.”).

The “other side” of Petitioner’s split reveals exactly the same position. The Seventh Circuit, for example, has at times used *Zippo*’s interactivity paradigm, *see, e.g.*, *Jennings v. AC Hydraulic A/S*, 383 F.3d 546, 549-50 (7th Cir. 2004) (rejecting exercise of personal jurisdiction over “passive” website), yet has recognized that “*Zippo*’s sliding scale was always just short-hand for determining whether a defendant had established sufficient minimum contacts with a forum to justify exercising personal jurisdiction over him in the forum

state,” *Illinois v. Hemi Grp. LLC*, 622 F.3d 754, 759 (7th Cir. 2010). Thus, the Seventh Circuit has declined “to adopt or to reject” the sliding scale, holding that “the interactivity of that website is relevant to, but not dispositive of, the sufficiency of th[e defendant’s] contacts.” *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 431 n.3 (7th Cir. 2010). As the Tenth Circuit aptly summarized, even those courts that consider *Zippo* “tend to employ it more as a heuristic adjunct to, rather than a substitute for, traditional jurisdictional analysis.” *Shrader v. Biddinger*, 633 F.3d 1235, 1242 n.5 (10th Cir. 2011).

In short, the case law reveals consensus, not conflict, on the key point: *Zippo* is not dispositive, and to the extent it remains useful, it is only in aid of applying the foundational principles that drive this jurisdictional analysis.

Regardless, this case would be a poor vehicle to address the *Zippo* framework. As noted, the Fourth Circuit cited *Zippo*’s sliding scale, but it had no impact on the result the Fourth Circuit reached. Pet. App. 16 (explaining that level of interactivity was “not determinative”). To the contrary, the court made clear that “attach[ing] too much significance on the mere fact of interactivity” would “risk losing sight of the key issue in a specific jurisdiction case—whether the defendant has purposefully directed [his] activities at residents of the forum.” *Ibid.* (quotation marks omitted) (alteration in original). And on that “key issue” the court conducted a full analysis, unhindered by *Zippo*. Pet. App. 16-19. Thus, if this Court were to grant certiorari and reject *Zippo*’s sliding scale, it would make no difference here.

**B. There Is No Other Conflict Of Authority  
Requiring This Court’s Review.**

Petitioner also contends that the decision below effects a “sea change” in personal jurisdiction law and creates a “deep circuit split.” Pet. 13. Nonsense. There is no conflict of authority for this Court to resolve. In each of the cited decisions, the circuit court faithfully applied traditional notions of personal jurisdiction to situations in which a defendant’s contacts with a forum involved electronic activity directed via the Internet. Using the fact-intensive “nature and circumstances” standard set forth in *International Shoe Co. v. State of Washington*, *Office of Unemployment Compensation & Placement*, 326 U.S. 310 (1945), each court applied that test to the totality of the circumstances it confronted. And in no circuit would this case have been decided differently.

1. Petitioner’s first argument for a split relies on the D.C. Circuit’s decision in *Triple Up Ltd. v. Youku Tudou Inc.*, No. 17-7033, 2018 WL 4440459 (D.C. Cir. July 17, 2018), and the Ninth Circuit’s decision in *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201 (9th Cir. 2020). But the former is an *unpublished* per curiam judgment easily distinguishable on its facts, and the latter *expressly disclaimed* any disagreement with the decision in this case. Hardly the stuff of a “deep circuit split.”

Start with the D.C. Circuit’s decision in *Triple Up*. At the outset, splits with unpublished decisions are not generally the basis for review. Regardless, nothing in *Triple Up* remotely conflicts with the decision below. *Contra* Pet. 14-15, 16, 18. In *Triple Up*, a Seychelles

corporation that owned the exclusive right to broadcast three Taiwanese movies in the U.S. sued Youku, a Chinese corporation, in federal court. For Youku, “less than one quarter of one percent of its monthly viewers c[ame] from the United States.” 2018 WL 4440459, at \*1. The *only* person alleged to have viewed the three movies here was the plaintiff’s lawyer, and when Youku learned that the videos were available in the United States, it removed all versions within 24 hours. *Ibid.* The D.C. Circuit found there was no “plausible allegation that Youku designed its websites even to make them generally usable by viewers in the United States, let alone to purposefully target them. The text on its websites is entirely in Mandarin Chinese.” *Id.* at \*2. Moreover, Youku had not registered an agent with the Copyright Office. *Ibid.* Unsurprisingly, the D.C. Circuit found no personal jurisdiction.

To be sure, against that backdrop, the D.C. Circuit concluded that the existence of geo-targeted advertising on the website could not by itself justify the exercise of personal jurisdiction—particularly where “the advertisements accompanying two of the three films were in Mandarin for Chinese video games.” *Id.* at \*3. But *Triple Up* does not stand for the extraordinary proposition that geo-targeted advertising is irrelevant. *See* Pet. 16-20. Rather, it stands for the unremarkable proposition that geo-targeting advertising is but one factor to be considered in the holistic analysis of a defendant’s contacts with a forum. In that holistic analysis, Petitioner could not be more differently situated from Youku. Instead of having less than 0.25% of his users come from the United States, it is his third-

largest market, constituting almost 9% of his user base. Instead of having three infringing movies viewed only by a plaintiff's lawyer and taken down immediately, Petitioner's websites continue to facilitate tens of millions of stream-ripping sessions that infringe Respondents' copyrights. Instead of not having registered with the Copyright Office, Petitioner has designated a DMCA agent and invokes the statute in his Terms of Use. And instead of a website in Mandarin Chinese, Petitioner's websites appear in English in the United States, and the advertisements are likewise in English and targeted at U.S. (and Virginia) users.<sup>2</sup>

Petitioner's reliance on *AMA* fares no better in manufacturing a split. In *AMA*, a Nevada-based company brought copyright and trademark infringement claims against Marcin Wanat, a Polish

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<sup>2</sup> Petitioner alleges a circuit split based on the Fourth Circuit's discussion of Petitioner's failure to geo-block as one factor supporting jurisdiction. But the lone case on the other side of the "split" is a decision by a *district court*, Pet. 13-14 (relying on *Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15, 25 (D.D.C. 2017)), whose extended discussion of geo-blocking was not endorsed by the D.C. Circuit in its unpublished affirmance. Indeed, the only other court of appeals with an extended discussion of geo-blocking reached the same result as the Fourth Circuit here. *See Plexier Int'l, Inc. v. Scrutinizer GmbH*, 905 F.3d 1, 9 (1st Cir. 2018) (holding that defendant's "failure to implement [geo-blocking] restrictions, coupled with its substantial U.S. business, provides an objective measure of its intent to serve customers in the U.S. market and thereby profit"). Petitioner is not subject to "universal personal jurisdiction" based solely on his failure to implement geo-blocking, Pet. 15, but his argument against purposeful availment is all the more implausible given that Petitioner employs location data not to avoid this jurisdiction but to target it.

citizen and a partner in the company that owned the website accused of infringement. AMA pointed to certain evidence of express aiming that also exists in this case—such as Wanat’s use of geo-targeted advertisements, his website’s substantial U.S.-viewer base, and his website’s terms of service. 970 F.3d at 1210. But AMA failed to adduce evidence of other contacts that is present here. Indeed, the Ninth Circuit expressly *addressed and distinguished* the Fourth Circuit’s decision below. *Id.* at 1212 n.8. In particular, the Ninth Circuit emphasized that Petitioner registered a DMCA agent, contracted with a U.S.-based advertising broker, and used U.S.-based servers. *Ibid.* The same could not be said for Wanat: “None of those specific actions aimed at the United States, including taking advantage of U.S. laws ‘for certain safe harbor defenses to copyright infringement claims,’ are present here.” *Ibid.* (quoting Pet. App. 18-19). Having expressly *disclaimed* any conflict with the decision below, AMA provides no basis for review.

Nor, again, can Petitioner accurately portray AMA as adopting a bright-line rule that geo-targeted advertising is irrelevant to the jurisdictional inquiry. AMA itself notes that such advertising may be relevant in combination with “other indicia of [defendant’s] personal direction.” 970 F.3d at 1211. And in *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, the Ninth Circuit found a California court had specific jurisdiction over Brand, an Ohio corporation that ran a website publishing allegedly infringing photographs, relying in substantial part on the purposeful targeting of California through advertisements directed to Californians. 647

F.3d 1218, 1230 (9th Cir. 2011) (“The fact that the advertisements targeted California residents indicates that Brand knows—either actually or constructively—about its California user base, and that it exploits that base for commercial gain by selling space on its website for advertisements.”).

2. Petitioner next claims a direct conflict between the decision below and decisions of this Court such as *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), holding that only “claim-related contacts” are relevant to the jurisdictional analysis. This argument entirely misunderstands what renders a contact “non-claim related” and what relationship between the claims and the forum is necessary to satisfy due process. All of the contacts that Respondents have alleged relate directly to Petitioner’s business of making money from users’ unlawful downloading of audio files (many of which are Respondents’ copyrighted sound recordings). It is precisely the alleged illegality of those downloads that is at issue here.

The very case upon which Petitioner relies is instructive. In *Bristol-Myers*, non-resident plaintiffs sought to bring suit in California against a non-resident defendant. The non-resident plaintiffs alleged that one of the defendant’s pharmaceuticals, Plavix, violated various provisions of California law. In rejecting specific jurisdiction over the defendant, the Court explained: “What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.” 137 S. Ct. at 1781. The non-resident plaintiffs failed to establish that connection because they “were



not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California.” *Ibid.*

The difference here is obvious. Unlike the non-resident plaintiffs in *Bristol-Myers*, Respondents focus their allegations on the conduct that connects “the forum and the specific claims at issue”—*i.e.*, almost one hundred million stream-ripping sessions that Petitioner’s websites facilitated in 2018 with users in the United States, including more than half a million in Virginia. This is plainly not a case where “all the conduct giving rise to the [underlying] claims occurred elsewhere.” *Id.* at 1781-82. To the contrary, the Copyright Act claims in this case arise from precisely the contacts that establish Petitioner’s purposeful availment, and so there is no real dispute about “an affiliation between the forum,” be it Virginia or the United States, “and the underlying controversy.” *Id.* at 1780 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

Nor does Petitioner gain by suggesting that many of these downloads are non-infringing. No one could seriously believe that Petitioner’s websites are among the most popular in the world because, as Petitioner claims, they provide students the ability to capture “the audio portion of video lectures” or permit parents to isolate “the audio portion of a school concert that they recorded.” Pet. 3. Regardless, at this stage, Respondents’ allegations control. Petitioner simply cannot escape the massive infringement his websites accomplish.

3. Petitioner does not advance his case by alleging a “circuit split” in connection with the Fourth Circuit’s invocation of what Petitioner derisively terms “minor Internet-initiated contacts.” Pet. 28.

Petitioner contends that the Fourth Circuit’s reliance on his DMCA registration conflicts with cases holding that “appointment of an agent for service of process is irrelevant.” Pet. 28-29. But Petitioner misunderstands the relevance of the DMCA registration. That registration is *not* merely a procedural device to ensure service of process, as is true in Petitioner’s cited cases. It is part of a statutory bargain that allows a registrant like Petitioner to qualify for the substantive DMCA safe harbor affirmative defense to claims of copyright infringement under U.S. law. 17 U.S.C. § 512(c). The purpose of registering an agent with the Copyright Office is to seek legal protection under Section 512 if the registrant is haled into a U.S. court. *See* Pet. App. 18-19; *Burger King*, 471 U.S. at 475 (purposeful availment established when defendant “invok[es] the benefits and protections of [the forum’s] laws”). Petitioner cites no court of appeals decision holding a DMCA registration irrelevant, and indeed the existence of the registration is among the reasons the Ninth Circuit in *AMA* distinguished the decision below. *See supra* 24.

Nor is there any substance to Petitioner’s more general contention that the Fourth Circuit “improperly elevated the importance of certain insignificant internet-related factors” in the jurisdictional analysis. Pet. 29-32. The Fourth Circuit put those facts in their proper place, conceding that they “might not be *individually*

sufficient to confer specific personal jurisdiction,” but that “*when viewed in the context of other jurisdictionally relevant facts*,” they “contradicted [Petitioner’s] contention that he could not have anticipated being haled into court in Virginia.” Pet. App. 19.

4. In a final effort to muster a conflict of authority, Petitioner argues that the Fourth Circuit’s decision below cannot be squared with a different Fourth Circuit decision, *Fidrych v. Marriott International, Inc.* See Pet. 24, 26, 29. This Court does not stand in review of intra-circuit conflicts, and at any rate, no such conflict exists. *Fidrych* (which the decision below acknowledged and cited, see Pet. App. 16) held that two U.S. residents who were injured at a Marriott-affiliated hotel in Italy could not establish personal jurisdiction over the hotel chain in South Carolina. The mere fact that Marriott operated a website accessible within the state was insufficient, particularly where the website did not transmit files to visitors, where there was no evidence that reservations were even made by anyone in South Carolina, and where activity on the website was not the basis for the claims at issue. 952 F.3d at 141-43. Here, by contrast, the claims against Petitioner arise directly from his forum-related contacts, and his websites involve the direct transmission of files found absent in *Fidrych*.

#### **C. There Is No Justification For Immediate Review.**

Just as Petitioner fails to identify a split worthy of this Court’s attention, he fails to justify the need for intervention now.

*First*, review of Petitioner’s case is premature. The jurisdictional analysis has three prongs. *See* Pet. App. 13. However, the Fourth Circuit addressed only two prongs before remanding for the District Court to “perform a reasonability analysis in the first instance.” Pet. App. 21. This Court ought not grant review to address the constitutionality of exercising personal jurisdiction over Petitioner when no court has yet determined that the exercise of personal jurisdiction here would be constitutional.

*Second*, nothing in the decision below requires immediate intervention. Petitioner contends otherwise, suggesting that the decision will lead to universal, Internet-based personal jurisdiction, will upset international comity, and will enable default judgments against foreign defendants unlikely or unable to defend themselves. Pet. 35-39. But Petitioner vastly overstates the scope and impact of the decision, which held only that a foreign website that directly targeted a forum and engaged in substantial and repeated contacts there could face suit in that forum arising directly from those contacts—and even then only if the District Court determined that the exercise of jurisdiction would be constitutionally reasonable. Petitioner also feigns concern for American companies, suggesting that the Fourth Circuit’s reasoning would subject them to jurisdiction everywhere in the world. Pet. 14-15. Yet not a single amicus, foreign or domestic, has filed a brief in support of the petition. That silence speaks volumes.

*Third*, Petitioner is wrong to suggest that this Court’s immediate intervention is needed to provide clear jurisdictional lines. Indeed, Petitioner’s own

sources demonstrate the peril of fashioning the Internet-specific rules he seeks. The basic premise of the petition is that lower courts need something more than the due process principles articulated in decisions like *International Shoe* and *Burger King* to adjudge specific personal jurisdiction in the context of the Internet. But this Court has repeatedly resisted bright-line rules, and there are significant risks to articulating special standards or detailed guidance in this context. Technology grows by leaps and bounds, and it transforms the ways that websites target audiences and generate revenues. These changes could quickly render obsolete the Internet-specific rules that Petitioner asks this Court to establish. Caution, not intervention, is called for here.

## **II. The Decision Below Is Correct.**

The Fourth Circuit's decision makes eminent sense given the facts and circumstances of this case. There is no reason for this Court to review or disturb the holdings below.

### **A. Petitioner Purposefully Availed Himself Of The Privilege Of Doing Business In The Forum.**

Petitioner attempts to downplay his contacts with Virginia and the United States. He does so by disaggregating each of his activities and connections to the forum and arguing that each, by itself, is insufficient to demonstrate purposeful availment. Pet. 13-32. Settled law forecloses that approach. A court must assess the sum total of a defendant's business contacts with a forum to determine whether he has "fair warning that a particular activity may subject [him] to the

jurisdiction of a foreign sovereign.” *Burger King*, 471 U.S. at 472 (quotation marks omitted). All “jurisdictionally relevant facts” must be considered. Pet. App. 19. Under that standard, Petitioner cannot viably claim he was “haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.” *Burger King*, 471 U.S. at 475 (internal quotation marks and citations omitted).

*First*, in 2018 alone, Petitioner’s websites had nearly 32 million users in the United States, 542,768 of whom were in Virginia. To be sure, the number of users is not determinative. But the fact that the United States is Petitioner’s third-largest market and that the websites have tens of millions of U.S. users and are transmitting (conservatively) nearly a hundred million music files to U.S. users annually—all of which is well known to Petitioner—makes his claim of surprise at being sued in the U.S. hard to take seriously.

This Court’s precedent demonstrates the importance of these numbers. In *Keeton v. Hustler Magazine, Inc.*, for example, the Court held that regular monthly sales of thousands of magazines in New Hampshire sufficed to render a nationwide magazine subject to specific jurisdiction in that state. 465 U.S. 770, 773-74 (1984). As the Court explained, “[t]here is no unfairness in calling [a defendant] to answer for the contents of [its national] publication wherever a substantial number of copies are regularly sold and distributed.” *Id.* at 781. Multiple courts have applied *Keeton* to find personal jurisdiction in circumstances similar to those presented here. *E.g.*, *Plixer*, 905 F.3d at 4-5 (holding that Maine courts could exercise jurisdiction over German website that sold its

software to 156 U.S. residents). *Keeton* also refutes Petitioner’s contention that because his websites are available and popular everywhere, he can be sued nowhere. 465 U.S. at 780-81 (holding that national publisher with national audience must reasonably anticipate being haled into court to answer for its contents “wherever a substantial number of copies are regularly sold and distributed”); *accord Mavrix*, 647 F.3d at 1231 (“[W]here, as here, a website with national viewership and scope appeals to, and profits from, an audience in a particular state, the site’s operators can be said to have ‘expressly aimed’ at that state.”).

*Second*, the nature of users’ contacts with the websites confirms that the exercise of jurisdiction is proper. The websites are anything but passive. Users come to the sites repeatedly not just to access information, but to accomplish the transmission of computer files over the Internet from Petitioner’s servers to the user’s device. While visiting the sites, users often view multiple pages and download multiple files. *See, e.g.*, JA149, 154. Those visits, moreover, are the subject of a formal legal relationship: the websites require that prior to engaging in a stream-ripping session, users assent to “a contractual agreement” setting forth the respective rights and obligations of the websites and their users. *See supra* 9. These factors demonstrate the type of active and ongoing relationship between Petitioner and users in the forum that constitutes purposeful availment.

*Third*, the websites and their U.S. and Virginia users have a quintessential Internet-based commercial relationship. No cash changes hands, but that is the

norm for many of the Internet’s most popular websites (like Google, Facebook, and CNN), which generate revenue by enticing millions of users with “free” content and then sell advertising space to entities wishing to target this captive audience. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 926-27, 939-40 (2005) (describing business model). That is exactly how Petitioner’s websites operate. Moreover, for purposes of jurisdiction, it is critical that the advertising at issue here is targeted to users based on (among other things) their location. Users must agree to geo-targeting through Terms of Use authorizing Petitioner’s websites to collect “your IP address, country of origin and other non-personal information about your computer or device” for the purpose of “targeted advertising based on your country of origin and other personal information.” *See supra* 10. Petitioner profits handsomely from this arrangement. JA11; *cf. Grokster*, 545 U.S. at 940-41 (relying on links between infringing acts of users and increased ad revenues for defendant to reject efforts of software maker to separate itself from infringement). There, as here, it is immaterial that the defendant used intermediaries to place the advertisements.

*Fourth*, Petitioner has structured his websites to encourage, rather than discourage, their use in the United States. Website operators who truly wish to avoid availing themselves of the U.S. market can tailor their websites accordingly. Thus, for example, geo-tracking technology can be used to block access from certain jurisdictions. *See Plixer*, 905 F.3d at 9 (“If a defendant tries to limit U.S. users’ ability to access the



website ... that is surely relevant to the intent not to serve the United States.”); *cf. Grokster*, 545 U.S. at 926-27, 939 (holding that file-sharing service’s intention to induce copyright infringement was evidenced by the fact that it “never blocked anyone from continuing to use its software” and never “attempted to develop filtering tools or other mechanisms to diminish the infringing activity using their software”). Similarly, courts have found a lack of purposeful availment in the United States when the website was not in English. *See, e.g., Triple Up Ltd.*, 2018 WL 4440459, at \*2 (website entirely in Mandarin Chinese); *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 450 (3d Cir. 2003) (website in Spanish and listing prices in Spanish denominations, with goods only permitted to be shipped to Spain).

Here, Petitioner makes his websites available in English when users access them in the United States, and he has not taken any steps to limit access from the United States. Directly to the contrary, he uses the available technology to target the U.S. market. Having done so, he cannot claim surprise when he is forced to defend his facilitation of massive online piracy in U.S. courts. *See GoDaddy*, 623 F.3d at 428-29 (“GoDaddy is aware that it earns many millions of dollars annually from Illinois customers, and it cannot be unhappy to have had such success in the state. Its contacts cannot fairly be described as random, fortuitous, or attenuated.”).

*Fifth*, Petitioner’s surprise at being sued here is even more implausible given his decision to invoke the protection of U.S. laws by registering a DMCA agent with the Copyright Office. This decision simply cannot

be reconciled with his claim that he had no notion his actions might subject him to suit within the United States. *See supra* 10-11.

*Sixth*, as set forth in detail above, *see supra* 11, Petitioner has contracted with forum-based businesses to operate his websites. *See Mavrix*, 647 F.3d at 1222 (finding personal jurisdiction in California where Ohio website did business with advertising agency, wireless provider, and web-designer in California).

*Finally*, Petitioner has attempted to avail himself not merely of U.S. consumers and businesses, but of U.S. courts as well. Petitioner's Terms of Use, which he deems a "contractual agreement between you and us," require that "[f]or any claim brought by us against you, you agree to submit and consent to personal jurisdiction in and the venue of the courts in the Russian Federation *and anywhere else you can be found*." *See supra* 9 (emphasis added). Thus, in 2018 alone, almost 32 million Americans agreed to be sued by Petitioner in U.S. courts, and over 542,000 Virginians agreed to be sued by Petitioner in Virginia courts. Having by "contract" attempted to secure the right to hale his users into U.S. and Virginia courts, Petitioner cannot claim surprise when the owners of the copyrights pirated through his websites seek to confront him in those very same courts.

Indeed, it could hardly be otherwise. Petitioner's approach would provide a roadmap for piracy websites, allowing them to transmit with impunity mountains of copyrighted content to U.S. users in violation of U.S. copyright law simply by locating their operations overseas. Nothing in the Due Process Clause requires that result.

**B. The Claims In This Case Arise Out Of  
Petitioner's Activities Directed At The Forum.**

As in his briefing below, Petitioner does not directly address the second prong of the jurisdictional analysis. *See* Pet. App. 20. Instead, Petitioner appears to argue that because some of his business activities directed at the forum may have involved non-infringing uses, he has “non-claim related contacts” that defeat jurisdiction. That contention is based on a plain misreading of *Bristol-Myers*. *See supra* 25-26. As the Fourth Circuit correctly observed, there is no serious doubt that Respondents’ claims arise from Petitioner’s forum-related contacts—it is precisely “the Websites’ large audience in Virginia for alleged music piracy and the sale of visitors’ data” that “gave rise to [Respondents’] copyright infringement claims.” Pet. App. 20.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

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