No. 22-1078

IN THE

Supreme Court of the United States

WARNER CHAPPELL MUSIC, INC. AND ARTIST PUBLISHING GROUP, LLC,

Petitioners,

v.

SHERMAN NEALY AND MUSIC SPECIALIST, INC.,

Respondents.

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

Brief of the Recording Industry Association of America and National Music Publishers' Association as *Amici Curiae* in Support of Petition for a Writ of Certiorari

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

FEDERAL STATUTES

FEDERAL REGULATORY MATERIALS

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

TABLE OF AUTHORITIES
(Continued)

Page(s)

INTEREST OF AMICI CURIAE[1]

Amici curiae are the Recording Industry Association of America ("RIAA") and the National Music Publishers' Association ("NMPA").

The RIAA is a nonprofit trade organization that supports and promotes the creative and financial vitality of recorded music and the people and companies that create it in the United States. RIAA's several hundred members—ranging from major American music groups with global reach to artist-owned labels and small businesses—make up the world's most vibrant and innovative music community. RIAA members create, manufacture, and/or distribute the majority of all legitimate recorded music produced and sold in the United States. They also are the copyright owners of, or owners of exclusive rights with respect to, sound recordings embodying the performances of some of the most popular and successful recording artists of all time. In support of its members, RIAA works to protect the intellectual property and First Amendment rights of artists and music labels, and monitors and reviews state and federal laws, regulations, and policies.

The NMPA is the principal trade association representing the United States music publishing and songwriting industry. Over the last one hundred years,

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[1] Pursuant to Supreme Court Rule 37.2, amici timely notified counsel of record for all parties of amici's intent to file this brief. Pursuant to Supreme Court Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

NMPA has served as the leading voice representing American music publishers before Congress, in the courts, within the music, entertainment, and technology industries, and to the public. NMPA's membership includes "major" music publishers affiliated with large entertainment companies as well as independently owned and operated music publishers of all sizes representing musical works of all genres. Taken together, compositions owned or controlled by NMPA's hundreds of members account for the vast majority of musical compositions licensed for commercial use in the United States.

In this brief, amici take no position on the correct answer to the question presented in the petition. But obtaining an answer to that question from this Court, and therefore achieving nationwide uniformity, is exceptionally important to amici and their members. Participants in the music industry such as music labels and music publishers regularly enforce their copyrights in the federal courts. At the same time, those participants are regularly subject to suit by others asserting copyright violations. It is therefore vital for amici and their members that the law supply a clear, predictable, and geographically consistent answer to the question whether the Copyright Act's statute of limitations precludes relief for acts that occurred more than three years before the filing of a lawsuit.

INTRODUCTION

There is a square and acknowledged circuit split on an issue that is of fundamental importance in copyright cases: the extent of damages available to a successful plaintiff. That split arises from language in this Court's decision in *Petrella* v. *Metro-Goldwyn-*

Mayer, Inc., 572 U.S. 663 (2014), in which the Court stated in the course of discussing a laches issue that copyright "infringement is actionable within three years, and only three years, of its occurrence" and that the Copyright Act's three-year statute of limitations "insulated" an infringer "from liability for earlier infringements of the same work." *Id.* at 671. The Second Circuit has deemed that language to be binding and has held on that basis that the statute of limitations precludes relief for acts that occurred more than three years before the filing of a lawsuit. The Ninth Circuit has disagreed, and in the decision below the Eleventh Circuit joined the Ninth Circuit in rejecting the Second Circuit's damages-availability rule. In those circuits, so long as a suit is timely filed under the "discovery rule," copyright holders may seek damages for infringement that took place over three years before suit was filed.

That conflict among the circuits is an intolerable one—particularly for entities, like amici's members, whose businesses center around copyrights. Because copyrights are the music industry's most consequential asset, music labels and music publishers regularly find themselves both enforcing and defending copyright lawsuits. Without a clear national rule setting the temporal limits of recoverable damages, amici and their members face serious uncertainty, knowing neither the extent of their potential liability nor the extent to which they can recover for infringement committed by others. Only this Court can remove that uncertainty and put in place a nationally uniform rule for damages availability in copyright cases. Amici therefore urge this Court to grant review.

ARGUMENT

I. The Circuits Are Squarely Split On The Question Whether The Copyright Act's Statute Of Limitations Precludes Relief For Acts That Occurred More Than Three Years Before The Filing Of A Lawsuit

Under the Copyright Act, the "legal or beneficial owner of an exclusive right under a copyright" is empowered to "institute an action for any infringement of that particular right committed while he or she is the owner of it." 17 U.S.C. 501(b). The Act authorizes various forms of relief, including an award of actual damages and "any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," 17 U.S.C. 504(a)(1), (b), or an award of statutory damages, see 17 U.S.C. 504(a)(2), (c).

The Act also contains a three-year statute of limitations. Section 507(b) of Title 17 provides that any civil action under the Act is barred unless the action "is commenced within three years after the claim accrued." 17 U.S.C. 507(b). In applying that provision, the majority of the courts of appeals have employed a "discovery rule" to determine when a claim "accrued." *E.g.*, *William A. Graham Co.* v. *Haughey*, 568 F.3d 425, 433 (3d Cir. 2009) (citing cases). Under the discovery rule, a claim accrues "when the plaintiff discovers, or with due diligence should have discovered, the injury that forms the basis for the claim." *Ibid*. The discovery rule contrasts with the "injury rule," under which "a cause of action accrues at the time of the injury," regardless of when the copyright holder knew (or should have known) of the injury. *Ibid.*

The question as to which there is a square and acknowledged disagreement among the circuits is whether copyright holders may seek relief for infringement that occurred more than three years before the filing of an infringement suit, provided the copyright holder sued within three years of discovering the infringement. That division of authority stems from a disagreement about how to interpret this Court's decision in *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014). Although the issue before the Court in *Petrella* was whether "the equitable defense of laches" could bar an infringement claim that is otherwise timely under Section 507(b), *id.* at 676-680, not whether damages are available for infringement that occurred more than three years before the filing of an infringement claim, the Court made various statements about Section 507(b) that some lower courts have understood as binding on the damages-availability question.

In *Petrella*, the Court stated that the Act's statute of limitations "takes account of delay." 572 U.S. at 677. The Court expressly refused to "pass[] on" whether the discovery rule applies under the Act's statute of limitations. *Id.* at 670 n.4; see *SCA Hygiene Prods. Aktiebolag* v. *First Quality Baby Prods., LLC*, 580 U.S. 328, 337-338 (2017) (citing *Petrella*, 572 U.S. at 670 n.4, and reiterating that this Court has not resolved whether the discovery rule is applicable in copyright cases). The Court also stated that "[u]nder the Act's three-year provision, an infringement is actionable within three years, and only three years, of its occurrence. And the infringer is insulated from liability for earlier infringements of the same work." 572 U.S. at 671-672. According to the Court, "when a defendant

has engaged (or is alleged to have engaged) in a series of discrete infringing acts, the copyright holder's suit ordinarily will be timely under § 507(b) with respect to more recent acts of infringement (*i.e.*, acts within the three-year window), but untimely with respect to prior acts of the same or similar kind." *Ibid.*; see *id.* at 672 (stating that the "limitations period" authorizes copyright plaintiffs "to gain retrospective relief running only three years back from the date the complaint was filed"); *id.* at 677 ("Brought to bear here, § 507(b) directs that MGM's returns on its investment in [the copyrighted work at issue] in years outside the three-year window * * * cannot be reached by Petrella.").

"The circuits are split on the meaning of *Petrella*." *Nealy* v. *Warner Chappell Music, Inc.*, 60 F.4th 1325, 1331 (11th Cir. 2023). The Second Circuit has held that, "independent of whether the * * * discovery rule applies," *Petrella* "explicitly delimited damages to the three years prior to the commencement of a copyright infringement action." *Sohm* v. *Scholastic Inc.*, 959 F.3d 39, 51 (2d Cir. 2020). In other words, in the Second Circuit's view, courts "must apply the discovery rule to determine when a copyright infringement claim accrues, but a three-year lookback period from the time a suit is filed to determine the extent of the relief available." *Id.* at 52; see *ibid.* ("*Petrella*'s plain language explicitly dissociated the Copyright Act's statute of limitations from its time limit on damages."). The Second Circuit reached that result on the ground that "the three-year limitation on damages was necessary to the result in *Petrella* and thus [is] binding precedent." *Ibid.*; see *ibid.* ("The *Petrella* Court partially based its determination that laches was inapplicable to actions under the Copyright Act on the conclusion

that the statute 'itself takes account of delay' by limiting damages to the three years prior to when suit is filed.").

The Ninth Circuit disagrees. That court has concluded that the Second Circuit's reading of *Petrella* "eviscerate[s] the discovery rule," which *Petrella* did not abrogate and which both the Second Circuit and the Ninth Circuit continue to apply in copyright cases. *Starz Ent., LLC* v. *MGM Domestic Television Distrib., LLC*, 39 F.4th 1236, 1244 (9th Cir. 2022); see *id.* at 1241-1243; *Sohm*, 959 F.3d at 49-51; see also *Martinelli* v. *Hearst Newspapers, LLC*, 65 F.4th 231, 237 (5th Cir. 2023) (continuing to apply the discovery rule in copyright cases after *Petrella*, but not reaching the damages-availability question). In the Ninth Circuit's view, "[t]here is no reason for a discovery rule if damages for infringing acts of which the copyright owner reasonably becomes aware years later are unavailable." *Starz*, 39 F.4th at 1244. And the Ninth Circuit interpreted *Petrella*'s language concerning Section 507(b) as "simply a shorthand for the statute of limitations laid out in § 507(b) in [injury rule] cases—where infringement and accrual occur simultaneously." *Id.* at 1246; see *id.* at 1245-1246. The Ninth Circuit concluded that *Petrella* does not address the availability of damages for past infringement where the discovery rule applies, and that "the discovery rule for accrual allows copyright holders to recover damages for all infringing acts that occurred before they knew or reasonably should have known of the infringing incidents." *Id.* at 1244.

In the decision below, the Eleventh Circuit disagreed with the Second Circuit and joined the Ninth Circuit. Like both the Second Circuit and the Ninth

Circuit, the Eleventh Circuit continues to apply the discovery rule in copyright cases, see *Nealy*, 60 F.4th at 1331, 1332-1336—and that court agreed with the Ninth Circuit that the rule is undermined by a limitation on the period of damages, see *id.* at 1331, 1333 ("It would be inconsistent with *Petrella*'s preservation of the discovery rule to read *Petrella* to bar damages for claims that are timely under the discovery rule."). The Eleventh Circuit reasoned that *Petrella* "did not cap copyright damages for claims that are timely under the discovery rule" because it "did not present the question whether a plaintiff could recover for harm that occurred more than three years before the plaintiff filed suit if his claim was otherwise timely under the discovery rule" and because "the Court made its statements in the context of a claim that was timely *because of the injury rule*." *Id.* at 1332; see *id.* at 1333. The court of appeals also reasoned that "the plain text of the Copyright Act's statute of limitations does not limit the remedies available on an otherwise timely claim." *Id.* at 1334.

The disagreement in the lower courts about whether copyright holders may seek relief for infringement that occurred more than three years before the filing of an infringement suit, and about how to interpret *Petrella* in regard to that question, is not confined to the courts of appeals. District courts in various circuits have reached different and conflicting answers to that question, with some district courts taking the same approach as the Second Circuit and others taking the same approach as the Ninth and Eleventh Circuits. Compare, *e.g.*, *Navarro* v. *Procter & Gamble Co.*, No. 17-CV-406, 2021 WL 913103, at *1-2 (S.D. Ohio Mar. 10, 2021) (concluding that the Second Circuit's

analysis is "persuasive" and that the "language regarding the three-year look-back period in *Petrella* was both clear and necessary to the decision there," while acknowledging that other district courts have "concluded that *Petrella*'s damages look-back language" is not binding on the damages-availability issue), *with AMO Dev., LLC* v. *Alcon Vision, LLC*, No. 20-CV-842, 2022 WL 17475479, at *4 & n.1 (D. Del. Dec. 6, 2022) (agreeing "with the Ninth Circuit that it does not make sense to preserve the discovery rule and at the same time preclude a plaintiff who is supposed to benefit from the rule from recovering damages," and citing other district court decisions reaching the same conclusion).

Because the conflict and confusion in the lower courts is centered on the meaning of this Court's decision in *Petrella*, only this Court can restore national uniformity on the question presented. That makes this case a particularly compelling one for a grant of review. See, *e.g.*, *Seminole Tribe of Fla.* v. *Fla.*, 517 U.S. 44, 64 (1996) (resolving disagreement over decision of this Court that, "[s]ince it was issued, * * * has created confusion among the lower courts that have sought to understand and apply" it); *Torres* v. *Madrid*, 141 S. Ct. 989, 1005 (2021) (Gorsuch, J., dissenting) (explaining that "[w]e took this case to sort out the confusion" between "dueling passages in" a prior decision of this Court that "led to a circuit split"). Absent this Court's intervention, it is clear that the lower courts' geographically disparate views will persist and will subject litigants in different parts of the country to different rules on an issue that is absolutely central to any copyright suit: what relief a successful claimant may obtain from a court.

II. Nationwide Clarity And Predictability On The Fundamental Issue Of What Damages Are Available For Copyright Infringement Is Vitally Important To The Music Industry

This Court's resolution of the question presented is necessary to provide the recording and music publishing industries—as well as commercial entities more generally—with clarity and predictability on an issue that is fundamentally important to their businesses. Congress enacted the statute of limitations in the Copyright Act in the first place to erase "dispar[ities]" between different limitations periods and the problems associated with those disparities. *Petrella*, 572 U.S. at 670 (discussing problems associated with disparate state-law limitations periods). This Court therefore should not permit disparate interpretations of that statute of limitations, which give rise to the very same problems, to persist.

The division in authority described above, under which one rule applies in certain areas of the country and one rule applies in another, has real and harmful effects in the world by yielding different outcomes based merely on a happenstance of geography. That is particularly true given that courts in the circuits that have reached divergent conclusions as to the question presented adjudicate a large percentage of the copyright cases that are heard in the U.S. judicial system. See, *e.g.*, Candace Sundine, Note, *Sohm Starz Will Never Align: How the Split Between the 2nd and 9th Circuits Will Impact Damages in Copyright Cases*, 43 Loy. L.A. Ent. L. Rev. 37, 60 (2023) ("*Sohm Starz*") ("The Second and the Ninth Circuit also happen to be the jurisdictions with the most copyright lawsuits.

California, which is in the Ninth Circuit, has the most copyright filings of any state. Second to California is New York.") (footnotes omitted) (citing *Just the Facts: Intellectual Property Cases—Patent, Copyright, and Trademark*, U.S. Courts (Feb. 13, 2020), https://www.uscourts.gov/news/2020/02/13/just-facts-intellectual-property-cases-patent-copyright-and-trademark).

Accordingly, it is not surprising that numerous commentators and copyright practitioners have noted the starkness and problematic nature of the circuit split and have called for this Court to resolve the issue. See, *e.g.*, Isaiah Poritz, *Circuit Split on Larger Copyright Damages Invites Forum Shopping* (Mar. 1, 2023), https://news.bloomberglaw.com/ip-law/wider-copyright-damages-circuit-split-may-invite-forum-shopping; Kenneth M. Trujillo-Jamison, *A Circuit Split In Copyright Law: Will the Supreme Court Resolve It?* (Mar. 13, 2023), https://www.dailyjournal.com/articles/371577-a-circuit-split-in-copyright-law-will-the-supreme-court-resolve-it; *Sohm Starz*, 43 Loy. L.A. Ent. L. Rev. at 69.[2]

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[2] See also, *e.g.*, Benjamin E. Marks & Camilla Brandfield-Harvey, *Creating a Split With the Second Circuit, the Ninth Circuit Holds That the "Discovery Rule" Allows Plaintiffs to Recover Damages for Copyright Infringements That Occurred More Than Three Years Prior to Filing of Complaint* (July 21, 2022), https://www.weil.com/-/media/mailings/2022/q3/ip_media_alert_220722.pdf ("The Supreme Court repeatedly has emphasized the importance of uniformity in federal copyright cases, the majority of which are brought in either the Second or Ninth Circuits. Given the clear split between those circuits on an important issue of federal law, additional guidance from the Supreme Court is warranted."); James Bryan, *Attention, Copyright Owners: How Far Back Can You Claim Damages?* (Apr. 25, 2019), https://www.yahoo.com/now/attention-copyright-owners-far-back-101556923.html ("The

For amici, resolution of the circuit split is particularly important, and the effects of the current disagreement among the lower courts are particularly problematic. Copyright is the lifeblood of the music industry. All "uses of music require licenses from copyright owners." *Music Licensing Study: Notice and Request for Public Comment*, 78 Fed. Reg. 14739, 14740 (Mar. 17, 2014). Indeed, in most instances multiple licenses are required, as multiple copyrights are at issue, each of which may have multiple owners—for example, a copyright in the song's composition (often owned by a music publisher), and a copyright in the sound recording of a particular performance of the song (often owned by a music label). See, *e.g.*, Jeff Brabec & Todd Brabec, *Music Money and Success: The Insider's Guide to Making Money in the Music Business* 104, 246 (8th ed. 2018).

For those reasons, copyrights are the music industry's most consequential asset, generating billions of dollars annually in royalty and other revenues. In 2022, record companies' recorded music revenue in the United States hit a record high of $15.9 billion, up from nearly $15 billion in 2021. See Joshua P. Friedlander & Matthew Bass, *Year-end 2022 RIAA Revenue Statistics*, https://www.riaa.com/wp-content/uploads/2023/03/2022-Year-End-Music-Industry-Revenue-Report.pdf (last visited May 26, 2023). And Spotify has reported paying out more than $3 billion in royalties to music publishers, performance rights organizations, and collecting societies that represent songwriters in

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Supreme Court should craft an answer that applies everywhere.").

the last two years. See https://loudandclear.byspotify.com/ (last visited May 26, 2023).

At the same time, music labels and music publishers lose billions of dollars each year to copyright violators. One estimate from a number of years ago placed the economic harm of piracy for the sound recording industry at $5.3 billion per year and for the U.S. economy as a whole at $12.5 billion per year. See Stephen E. Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, Institute for Policy Innovation, Policy Report 188 (Aug. 2007), https://tinyurl.com/4fb4cnez; see also, *e.g.*, Michael D. Smith & Rahul Telang, *Assessing the Academic Literature Regarding the Impact of Media Piracy on Sales* 1 (Aug. 2012), https://www.riaa.com/reports/assessing-the-academic-literature-regarding-the-impact-of-media-piracy-on-sales/; Stephen E. Siwek, *Copyright Industries in the U.S. Economy* 2-4 (2014), https://www.riaa.com/wp-content/uploads/2015/09/2014_CopyrightIndustries_USReport.pdf. The harm caused by piracy remains substantial today, as tens of millions of people continue to engage in conduct that infringes music copyrights. See, *e.g.*, IFPI, *Engaging With Music* 22 (2022), https://www.ifpi.org/wp-content/uploads/2022/11/Engaging-with-Music-2022_full-report-1.pdf; IFPI Submission to the EU Counterfeit and Piracy Watchlist Consultation 3 & nn.5-6 (Feb. 14, 2022).

Given how valuable their copyrights are, music labels and music publishers regularly find themselves in court on both sides of the "v." Sometimes those entities go to court to enforce their copyrights against infringers. Sometimes they are haled into court to defend

against copyright infringement claims made by songwriters and others. And occasionally amici's members even sue each other for infringement.

Unsurprisingly, whether the statute of limitations applies to bar a suit is often front and center in those types of cases—and the discovery rule is "the statute of limitations issue that often arises." *Polar Bear Prods., Inc.* v. *Timex Corp.*, 384 F.3d 700, 705-706 (9th Cir. 2004); see, *e.g.*, *Everly* v. *Everly*, 958 F.3d 442, 450 (6th Cir. 2020); *Wilson* v. *Dynatone Publ'g Co.*, 892 F.3d 112, 118 (2d Cir. 2018); *Jordan* v. *Sony BMG Music Ent. Inc.*, 354 F. App'x 942, 945-946 (5th Cir. 2009); *Roger Miller Music, Inc.* v. *Sony/ATV Publ'g, LLC*, 477 F.3d 383, 389-390 (6th Cir. 2007); *Merchant* v. *Levy*, 92 F.3d 51, 56 (2d Cir. 1996); *On Top Recs. Corp.* v. *Sunflower Ent. Co.*, No. 15-CV-22664, 2015 WL 13264222, at *3-4 (S.D. Fla. Sept. 24, 2015); *Fahmy* v. *Jay-Z*, 835 F. Supp. 2d 783, 788-789 (C.D. Cal. 2011). When a court decides that the discovery rule applies and on that basis concludes that a suit filed more than three years after an infringement occurred is timely, the next question the court must face is whether the copyright holder may seek relief for infringement that occurred more than three years before the suit was filed. See generally *Merchant*, 92 F.3d at 56 (noting that the district court awarded plaintiffs "damages for a time period beginning three years before the commencement of their suit"); *On Top Recs.*, 2015 WL 13264222, at *3 (quoting *Petrella*'s statement that "an infringement is actionable within three years, and only three years, of its occurrence" and "the infringer is insulated from liability for earlier infringements of the same work") (citation omitted); *Fahmy*, 835 F. Supp. 2d at 790 (discussing circumstances in which a "plaintiff is

entitled to recover damages for infringements only within three years of filing suit (notwithstanding equitable tolling)").

When there is conflict and confusion in the law over what damages are available in a copyright infringement suit, amici's members are faced with unpredictability, often knowing neither the extent to which they can recover for infringement committed by others nor the extent of their potential liability. That makes it difficult or impossible to adequately undertake business planning and make informed business decisions. When amici's members are deciding whether to sue, the availability of damages is an important factor in that decision, especially given the particularly high costs of litigating copyright suits. See, *e.g.*, Shyamkrishna Balganesh, *Copyright Infringement Markets*, 113 Colum. L. Rev. 2277, 2285 (2013). But amici's members may not know in advance where the defendant or defendants may be found and where the suit can be filed, which side of the circuit split the court in which the suit will proceed will decide is correct under the law, or whether a suit will be transferred from a circuit that takes one position on the scope-of-damages question to a circuit that takes a different position. Similar uncertainty may surround the question of how many resources to pour into a suit once it has been filed and whether an early settlement may be feasible.

When amici's members face the prospect of being sued, the uncertainty is equally great. Amici's members may face uncertainty about whether a suit will come to pass at all if they make a particular business decision, because whether it is worth it to the plaintiff

to file suit may depend on how far back in time damages may reach. Amici's members also may face uncertainty about what the likely cost of defending against such a suit will be—for instance, the period for which damages are available will have an effect on the scope of discovery and therefore the cost involved in producing documents and obtaining expert testimony. And amici's members may face uncertainty about whether a case can be settled and, if so, in what amount.

In addition, with respect to music labels and music publishers with presences in circuits on both sides of the split, the conflict among the circuits strongly encourages forum shopping. Civil actions for copyright infringement may be brought in any "district in which the defendant * * * resides or may be found." 28 U.S.C. 1400(a). "A defendant 'may be found' in a district in which he could be served with process; that is, in a district which may assert personal jurisdiction over the defendant." *Palmer* v. *Braun*, 376 F.3d 1254, 1259 (11th Cir. 2004); accord *AF Holdings, LLC* v. *Does 1-1058*, 752 F.3d 990, 996 (D.C. Cir. 2014); *Varsic* v. *U.S. Dist. Ct.*, 607 F.2d 245, 248 (9th Cir. 1979).

Music labels and music publishers often "reside" in California or New York—home to prominent artistic centers. And many such companies "may be found," 28 U.S.C. 1400(a), in more than one of those states. For example, major record labels—which together create, manufacture, and/or distribute a substantial portion of the recorded music produced and sold in the United States—generally operate in several cities. The same is true of major music publishers, which control or administer a material share of musical works in the United States and account for approximately 60% of

the nation's music-publishing revenue. See *Recorded-music market share gains*, https://musicandcopyright.wordpress.com/tag/market-share/ (last visited May 21, 2023).

With a range of venues to choose from, copyright plaintiffs suing those of amici's members as to which personal jurisdiction is proper in California or Florida will likely choose to sue in federal court in those states, where plaintiffs can recover damages potentially far greater than those available in New York federal court (or in other federal district courts that have sided with the Second Circuit on the question presented). Defendants as to which personal jurisdiction is not proper in the Ninth and Eleventh Circuits will have less damages exposure, based purely on their geographic location. Only a decision by this Court enforcing nationwide uniformity can prevent such forum shopping, to which many of amici's members are particularly vulnerable given their geographic footprints. See *Petrella*, 572 U.S. at 670.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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