No. 18-956

IN THE
Supreme Court of the United States

GOOGLE LLC,
Petitioner,

v.

ORACLE AMERICA, INC.,
Respondent.

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

BRIEF OF *AMICUS CURIAE* MOTION PICTURE ASSOCIATION, INC. IN SUPPORT OF RESPONDENT

Robert H. Rotstein
Counsel of Record
Eleanor M. Lackman
MITCHELL SILBERBERG & KNUPP LLP
2049 Century Park East
18th Floor
Los Angeles, CA 90067
(301) 312-2000
rxr@msk.com

J. Matthew Williams
Craig C. Bradley
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street, NW
7th Floor
Washington, DC 20036
(202) 355-7900

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

The Motion Picture Association, Inc. ("MPA") is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry.[1] Since that time, MPA has served as the voice and advocate of the film and television industry around the world, advancing the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. MPA's member companies are Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, Warner Bros. Entertainment Inc., and Netflix Studios, LLC.[2] These companies and their affiliates are the leading producers and disseminators of filmed entertainment, which consumers enjoy in theaters, on Blu-ray discs and DVDs, via cable, satellite and over-the-top streaming services, and by downloading copies from online retailers.

MPA members rely upon correct applications of copyright law and on judicial protection of their exclusive rights of reproduction, adaptation,

---

[1] Pursuant to Rule 37.6, *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *Amicus* and its counsel made a monetary contribution to its preparation or submission. Petitioner's consent to the filing of *amicus* briefs has been filed with the Clerk, and Respondent consented on January 22, 2020 to MPA's filing of an *amicus* brief. (Prior to September 2019, MPA was known as the Motion Picture Association of America, Inc. ("MPAA").)

[2] MPA member Netflix Studios, LLC takes no position on the issues presented in this *amicus* brief.

distribution, public performance, and public display. MPA members also depend upon the proper application of the fair use defense to protect the free speech interests of filmmakers and their distributors. Accordingly, MPA is well-positioned to provide the Court with a unique and balanced perspective on the proper contours of the fair use defense.

Copyright law serves as an incentive for creators and distributors to create and disseminate expressive works. The fair use defense, properly applied, also encourages the creation and dissemination of such works without impairing the law's incentives. As an organization that serves studios that are responsible for the creation and dissemination of valuable artistic, expressive works that provide lasting benefit to the public welfare and the U.S. economy, MPA has a strong interest in ensuring that the Court appreciates the risk and damage that would inevitably arise from applying an overly broad, improperly calibrated fair use test to traditional, purely expressive works like motion pictures.

SUMMARY OF ARGUMENT

"[C]opyright supplies the economic incentive to create and disseminate ideas." *Golan v. Holder*, 565 U.S. 302, 328 (2012) (citation omitted). With this incentive, producers and distributors of motion pictures have for decades created and disseminated works based on the authorized use of scripts, novels, video games, comic books, and other works, and in the form of sequels, prequels, and remakes based on existing motion pictures both through traditional

channels like theaters and progressively through new channels and in new markets.

In arguing that its copying of Respondent Oracle America, Inc.'s ("Oracle") software was fair use under 17 U.S.C. § 107, Petitioner Google LLC ("Google") flouts copyright law's core incentivizing principle. In a radical departure from applicable law, Google stretches to cast a purportedly "new," "innovative," and "socially valuable" use of copyrighted material as *transformative* under the first factor. Moreover, Google suggests that these descriptive terms should be synonymous with fair use. Because this Court has held that no one factor is dispositive, Google's approach conflicts with long-understood notions of fair use and with the copyright owner's exclusive rights under 17 U.S.C. § 106. The approach also warps the careful balancing of additional considerations under a traditional fair use analysis by, among other flaws, minimizing the importance of commercial purpose under factor one and harm to potential markets under factor four.

For example, the copyright holder's exclusive right under 17 U.S.C. § 106(2) to make derivative works exists precisely to encourage copyright owners to create new, innovative, and socially valuable works based on prior copyrighted works. So, novelty, innovation, and social value are not by themselves valid indicia of transformation, much less fair use. Applying Google's unprecedented and unduly broad definition of transformation to traditional expressive works like motion pictures would potentially eviscerate the copyright owner's right to prepare new derivative works (such as sequels, prequels, and spinoffs) for the public to enjoy. Indeed, even this

Court's narrower articulation of a transformative use in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994)—especially when given undue importance as compared to other fair use considerations—can cause tension with the copyright owner's adaptation right under section 106(2). *A fortiori*, Google's uncircumscribed approach would lead to absurd results that run counter to the incentives that the Copyright Act is designed to provide for the ultimate benefit of the public.

Transformative use considerations, as previously articulated by this Court and developed in cases involving more traditional, purely expressive works, are particularly ill-suited for application in a case involving software. Unlike purely expressive works, software, by definition, has a functional component that makes it inherently different. Applying the concept of transformation to partially non-expressive works like software is like trying to put the proverbial square peg into a round hole: transformation, with its focus on new expression, meaning, or message, assumes an effect on human thought or emotion; in contrast, software, in significant part, operates independently of such human thought and emotion. Here, Google admits that the functional aspects of its software dictate that its re-use will be for the same purpose and same function as the original. Pet'r's Br. at 45. Recognizing that such verbatim use without adding new meaning fails to satisfy any existing judicial precedent regarding "transformative use," Google attempts a factitious pivot, arguing that, so long as its new use of the underlying work is "new" and "innovative," the use must be transformative and excused as fair. Google's approach not only lacks any

precedent and is inapt, its purported new exception swallows the rule. The unintended consequences of applying legal concepts developed in fair use cases involving purely expressive works to a software case like this one, especially in the radical manner advocated by Google, could cause a seismic shift away from long-established law and legitimate marketplace expectations. The harmful consequences would be felt not only in the instant case, but also across the creative industries, should the resulting analysis be inappropriately applied to future cases involving traditional, purely expressive works.

Google's narrow view of market harm under the fourth fair use factor would, if adopted, likewise impair the incentives to create and disseminate expressive works in the motion picture industry and in many other industries. In today's era of rapid changes in technologies and business models, potential markets can and do quickly become actual markets. As a means of encouraging copyright owners to create and disseminate new works in new ways, the Copyright Act protects copyright owners' rights to develop those new markets. To dismiss harm to such potential markets in the fourth-factor analysis contravenes the purposes of copyright law and the text of section 107.

MPA therefore asks the Court to apply the correct standards governing the first and fourth fair use factors, and to recognize the harm that Google's approach would cause if applied to the motion picture industry and to other creative industries.

ARGUMENT

I. GOOGLE'S UNPRECEDENTED APPROACH TO TRANSFORMATION, IF APPLIED TO TRADITIONAL EXPRESSIVE WORKS LIKE MOTION PICTURES, WOULD UNDULY IMPAIR COPYRIGHT OWNERS' EXCLUSIVE RIGHTS.

As this Court has repeatedly recognized, innovation and social value result from enforcing the copyright holder's exclusive rights as against unauthorized uses. *See*, *e.g.*, *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975) ("The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good."). Those exclusive rights include the right to prepare derivative works based upon the copyrighted work, including with new and innovative content, and for different markets. Yet, in addressing the first fair use factor, 17 U.S.C. § 107(1), Google and some of its supporting *amici* distort the first factor and define as "transformative" those uses that are merely "new," "innovative," and "socially valuable." Pet'r's Br. at 42; *see also*, *e.g.*, Br. of Copyright Scholars at 6 (arguing that "reuse of portions of an API for a functional purpose can be a transformative use of a work . . . where it enables the creation of new creative works and enhances the overall creative ecosystem"). This is not the law. If applied to motion pictures, literature, visual arts, music, and other traditional copyrighted works, Google's misguided approach to transformation would threaten the legitimate rights

of copyright owners, to the ultimate detriment of the public.

A. Google's Radical, Overly Broad View Of Transformation Conflicts With Long-Established Law And Industry Practice.

This Court has cautioned against undue reliance on a single fair use factor. *See Campbell*, 510 U.S. at 578 ("Nor may the four statutory factors be treated in isolation, one from another. All are to be explored, and the results weighed together, in light of the purposes of copyright."). Certainly, undue weight should not be given to transformation, which is but one consideration under the first factor. In deciding whether a use is truly "transformative," a court must consider whether the use impairs the legitimate exercise of the copyright holder's exclusive rights under section 106, which includes the right to create derivative works in any "form in which [the original] work may be recast, *transformed*, or adapted." 17 U.S.C. § 101 (emphasis added), *quoted in Castle Rock Entm't v. Carol Publishing Grp.*, 150 F.3d 132, 143 (2d Cir. 1998) (recognizing tension between derivative work right and transformative use inquiry); *see also Kienitz v. Sconnie Nation LLC,* 766 F.3d 756, 758 (7th Cir. 2014) (noting that the concept of transformative use threatens to override copyright owner's right to make derivative works); 4 Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT § 13.05[B][6], 13-224.20 (2019) (same).

Without question, Google's contrived, result-oriented definition of transformation, if applied to expressive works that are the foundation of the motion picture industry, would immediately and

substantially undermine the exclusive rights on which MPA's members rely to make new and valuable works. As one court put it:

> What fair use law does not protect is the right of others to produce works that, generally speaking, the "creators of imaginative works" might choose to produce themselves. Congress granted the exclusive right to produce (or license) such derivatives and other substantially similar works to copyright holders, regardless of whether, in any given instance, the copyright holders intend to use these rights or not.

Penguin Random House LLC v. Colting, 270 F. Supp. 3d 736, 749–50 (S.D.N.Y. 2017). Cognizant of the grave danger to copyright that an unduly broad, ill-conceived concept of transformation poses, courts recognize that transformation requires more than that a new work be additive or have social value:

> [T]he focus of inquiry *is not simply on the new work, i.e., on whether that work serves a purpose or conveys an overall expression, meaning, or message different from the copyrighted material it appropriates*. Rather, the critical inquiry is whether the new work uses the copyrighted material itself for a purpose, or imbues it with a character, different from that for which it was created. Otherwise, any play that needed a character to sing a song, tell a joke, or recite a poem could use

> unaltered copyrighted material with impunity, so long as the purpose or message of the play was different from that of the appropriated material.

TCA Television Corp. v. McCollum, 839 F.3d 168, 180 (2d Cir. 2016) (emphasis added) (citing *Campbell*, 510 U.S. at 579).[3]

Google's misguided approach to the first factor is clearly unworkable when applied to the traditional creative industries, the context in which the fair use doctrine was first developed. Improper emphasis on this Court's original articulation of transformative use, especially when taken in isolation or given too much weight, often conflicts with the derivative work right and threatens to undermine important market opportunities for copyright owners. Because derivative works often contain new meanings and messages, and adapt or modify the original work, improper application of the transformative use inquiry conflicts with the derivative work right on which the entertainment industries so heavily rely.

If Google's distorted approach to transformation were applied to traditional expressive works like motion pictures and given undue weight at

---

[3] *See also* Pierre Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105, 1112-13 (1990) (stating that his district court holding in *Salinger v. Random House, Inc.*, 650 F. Supp. 413 (S.D.N.Y. 1986), *rev'd*, 811 F.2d 90 (2d Cir. 1987), *cert. denied*, 484 U.S. 890 (1987), was error because his finding was "based primarily on the overall instructive character of the [defendants'] biography" and failed to recognize the importance of the biography's "nontransformative takings" of quotes from J.D. Salinger's letters).

the expense of the other salient factors, copyright law and the fair use defense would careen off the tracks. Google acknowledges that its use of the APIs incorporates Oracle's copyrighted works for the same purpose. Pet'r's Br. at 45. This, by itself, is not transformation of the original. Google instead argues for a radical shift in focus away from the original work to "whether the new work as a whole transformed the use of the borrowed elements," asserting that the Android platform "undoubtedly added something new to the computing world." *Id.* (emphasis omitted). But this result-oriented approach to "transformation" could apply equally to "a music video adapted from a series of photographs, a motion picture adapted from a novel, or a musical drama adapted from a play"—all uses that are traditionally and almost universally acknowledged to belong to the copyright holder. 2 Paul Goldstein, GOLDSTEIN ON COPYRIGHT § 12.2.2.1(c), 12:37-38 (3d ed. Supp. 2019); *see also id.* at 12:38 n.78.7 (noting that classic movie *Rear Window* did not make fair use of short story although it "possessed an aesthetic and a sensibility that distinguished it from the underlying story").[4] If Google's unprecedented approach to transformation were to become the law, a producer who makes an unauthorized feature film of the hit TV series *Game of Thrones* (HBO 2011) could claim that the use was new, innovative, and socially valuable, and therefore

[4] *See Stewart v. Abend*, 495 U.S. 207, 236-38 (1990). While the Court decided *Abend* four years before *Campbell*, *Abend*'s holding on the issue of fair use remains good law. *See Campbell,* 510 U.S. at 577-78 (citing *Abend* on fair use issues). The Court has never suggested that *Abend* was wrongly decided because the new, innovative, and socially beneficial movie transformed the plaintiff's short story.

a transformative fair use—a preposterous legal position. *Amicus* therefore requests that the Court once again emphasize that transformation, like the first factor itself, is only part of one prong of a fair use determination, and that the significance of transformation is necessarily cabined by protection of the derivative work right, by other elements of the first factor (*e.g.*, commercialism), and by appropriate application of all the factors taken together, in context, and in light of the purposes of copyright law.

B. The Balance Of Fair Use Factors As Applied To Software Code Should Not Upend Well-Established Principles For Fair Use Of Traditional Expressive Works.

Google's erroneous view of transformation, if adopted here, might in the future be applied in the lower courts to cases involving traditional expressive works like motion pictures. Section 107 provides no bright-line rules but rather calls for case-by-case analysis of fair use. *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 560 (1985). *Amicus* therefore urges the Court to avoid resolving fair use issues in this highly technical and specific software context in a manner that could negatively impact cases involving traditional expressive works.

"Most of the law of copyright . . . developed in the context of literary works such as novels, plays, and films." *Lotus Dev. Corp. v. Borland Int'l, Inc.*, 49 F.3d 807, 819 (1st Cir. 1995) (Boudin, J., concurring). In contrast to traditional, purely expressive works, software code combines functional and expressive elements. *See Comput. Assocs. Int'l, Inc. v. Altai, Inc.*,

982 F.2d 693, 712 (2d Cir. 1992) (observing "the hybrid nature of a computer program, which, while it is literary expression, is also a highly functional, utilitarian component in the larger process of computing"); *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 451 (2d Cir. 2001) (distinguishing software from other works); *Sony Comput. Entm't, Inc. v. Connectix Corp.*, 203 F.3d 596, 602 (9th Cir. 2000), *cert. denied*, 531 U.S. 871 (2000) (same); *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1527 (9th Cir. 1992) (same).[5] Thus, "[u]nlike a blueprint or a recipe, which cannot yield any functional result without human comprehension of its content, human decision-making, and human action, computer code can instantly cause a computer to accomplish tasks . . . ." *Corley*, 273 F.3d at 451.

The functional component of software code, the purpose of which is to instruct a computer to perform a task—not to entertain or educate a human audience—makes the "new expression, meaning, or message" language from *Campbell* ill-suited to a software case. *See* Br. of the Robert Rauschenberg Foundation and the Andy Warhol Foundation For the

---

[5] Google and its *amici* rely on *Accolade* and *Connectix* for the proposition that Google's use of Oracle's copyrighted software was transformative. *See* Pet'r's Br. at 40; Br. of Copyright Scholars at 10-11. However, those reverse-engineering opinions involved temporary or "intermediate" copying of computer programs to create entirely new programs that did not use the original works in the defendants' final, distributed products. Here, in contrast, Google admittedly incorporated Java code into Android. Expanding the holdings of those prior cases beyond their facts could disrupt existing and potential markets for copyrighted works.

Visual Arts, Inc. at 17–18. The very terms *expression*, *meaning*, and *message* imply that the work has an effect on a human's thoughts, emotions, or actions. As noted, in a fair use analysis, all four factors are to be explored, and the results weighed together. *See Campbell*, 510 U.S. at 578. Proper analysis of the fair use defense in software cases may require courts to emphasize relevant factors differently than in typical cases involving more traditional fully expressive copyrighted works that depend upon their impact on humans' thoughts, emotions, or actions for their meaning and message. Under the first factor, for example, transformation might come into play less, while the commercial nature of the use might play a more prominent role in the analysis. The nature of the work at issue might be given more attention. Regardless, the Court should reject Google's approach to transformative use, which, if applied to traditional creative works like motion pictures, could upend decades of well-understood industry precedent and this Court's own jurisprudence, and impair copyright owners' exclusive rights to reproduce and adapt their copyrighted works.

II. IN ASSESSING THE FOURTH FAIR USE FACTOR, GOOGLE FAILS TO CONSIDER ORACLE'S POTENTIAL MARKETS.

The ability of MPA members and other copyright owners to enforce their exclusive rights against infringement has permitted the growth of a rich, diverse ecosystem affording consumers a vast banquet of creative content. MPA's members now provide viewers with content in numerous formats

and via hundreds of authorized platforms, products, and services that facilitate remote access, family sharing, and back-up access. For example, the motion picture industry and other content providers have developed subscription-based, digital access to movies, television content, books, magazines, music, and videogames, as well as inexpensive, time-limited access to downloads of such works. Consumers can enjoy motion pictures at home or "on the go" via discs, downloadable copies, digital rental options, cloud storage platforms, "TV everywhere," video game consoles, and subscription streaming services. Movie studios also provide means to license clips from motion pictures.

Exploitation in these markets would not be viable business models without legal protection. And this protection depends on a copyright scheme that ensures that the fair use defense does not improperly impair the copyright holder's exclusive rights. Correctly applied, the fourth fair use factor provides such insurance.

The evolving marketplace, which Google disregards, is a vital part of the fair use test. In evaluating the fourth fair use factor, a court must consider "the effect of the [defendant's use of the copyrighted work] upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107(4). As this Court has held, the fourth factor "requires 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 (quoting 3 Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT § 13.05[A][4], 13-102.61 (1993)). In undertaking this inquiry, a court should assess harm to "traditional, reasonable, or likely to be developed markets." *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 930 (2d Cir. 1994).

Google's approach to the fourth factor threatens copyright holders' exclusive rights. Google argues that Oracle merely "wished" to enter the potential market for tablets and smartphones and that, unlike Android, Oracle's software "did not include the features and functionalities needed for a modern smartphone." Pet'r's Br. at 48. From this premise, Google concludes that the jury could find the absence of market harm. However, that a plaintiff has not yet entered a market does not obviate harm to that potential market. *See, e.g.*, *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1017 (9th Cir. 2001) ("[L]ack of harm to an established market cannot deprive the copyright holder of the right to develop alternative markets for the works."); *UMG Recordings, Inc. v. MP3.Com, Inc.*, 92 F. Supp. 2d 349, 352 (S.D.N.Y. 2000) ("Any allegedly positive impact of defendant's activities on plaintiffs' prior market in no way frees defendant to usurp a further market that directly derives from reproduction of the plaintiffs' copyrighted works. This would be so even if the copyright holder had not yet entered the new market . . . .") (citation omitted).

Google further argues that its Android software did not supplant or supersede the market for Oracle's Java SE because Java SE was designed for servers and desktop computers and was unsuitable

for the modern smartphone market. Google's focus only on *existing* markets for Oracle's software while ignoring the harm to Oracle's *potential* markets—in other words, Oracle's reasonable or likely-to-be developed licensing markets—which included smartphones and tablets, is contrary to controlling Supreme Court authority. *See Campbell*, 510 U.S. at 590; *Harper & Row*, 471 U.S. at 568 ("This inquiry must take account not only of harm to the original but also of harm to the market for derivative works.").

By analogy, in the motion picture industry, a motion picture sequel is not a substitute for the original, yet an unauthorized sequel clearly results in actionable harm to the copyright holder even if the copyright holder has not yet begun to create the sequel. Indeed, many notable sequels have been produced long after the release of the original.[6] For instance, MPA member Paramount Pictures Corporation's sequel *Top Gun: Maverick* is scheduled for release in 2020, thirty-four years after release of the original *Top Gun* (1986).[7] It would, of course, have been absurd for someone to have made an unauthorized sequel to *Top Gun* in the intervening thirty-four years and then to have claimed that there

---

[6] *See* Nick Steinberg, *Movie Sequels That Took Forever (But Were Worth The Wait)*, GOLIATH, https://www.goliath.com/movies/movie-sequels-that-took-forever-but-were-worth-the-wait/ (last visited Feb. 17, 2020) (listing additional examples).

[7] PARAMOUNT PICTURES CORPORATION, *Movies,* https://www.paramount.com/movies (last visited Feb. 17, 2020) (*Top Gun: Maverick* is currently scheduled for release on June 26, 2020).

was no market for a sequel because, for whatever reason, the copyright owner had not yet made one.

Infringers have often entered a potential market before the copyright holder can—in some cases because the infringing conduct permits easier entry for the infringers and itself inhibits the copyright owner from developing a legitimate market. *See, e.g.*, *Napster*, 239 F.3d at 1017 (infringer's entry into digital music market raised a barrier to record companies' entry into market for legitimate digital downloads of music). It is no exaggeration to say that if the Ninth Circuit had found Napster's infringing conduct to qualify as fair use, legitimate online services and subscription services for music and motion pictures—which give the consumer a broad choice of content at diverse costs and delivery options—may never have developed.

Google also argues that Oracle's Java SE business was "growing well" in its intended market of servers and desktops, and that Android benefitted Oracle's existing business. Pet'r's Br. at 49. However, as noted, "lack of harm to an established market cannot deprive the copyright holder of the right to develop alternative markets for the work." *Napster*, 239 F.3d at 1017. The inquiry under the fourth factor should not be limited solely to whether the defendant's challenged use harms the market within which the plaintiff is already operating. *See id.*; *Campbell*, 510 U.S. at 590 (explaining that the fourth factor "requires 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") (quoting 3 Melville B. Nimmer & David Nimmer, NIMMER ON COPYRIGHT § 13.05[A][4], 13-102.61 (1993)); *TCA Television Corp.*, 839 F.3d at 186 ("[I]n assessing harm posed to a licensing market, a court's focus is not on possible lost licensing fees from defendants' challenged use . . . . Rather, a court properly considers the challenged use's 'impact on potential licensing revenues for traditional, reasonable, or likely to be developed markets.'") (quoting *Am. Geophysical Union*, 60 F.3d at 930) (citations omitted).

Google's misguided approach to potential harm under the fourth factor threatens to impinge upon the exclusive rights of copyright holders like MPA's members, who have relied on the protections of copyright law to exploit new markets to disseminate copyrighted works to the consuming public via many different platforms and price points. It is therefore vital to this robust ecosystem of creation and dissemination that this Court reject Google's approach and engage in the proper assessment of the fourth fair use factor.

CONCLUSION

Amicus respectfully requests that the Court reject Google's approach to the first fair use factor as applied to fair use jurisprudence generally and to the motion picture industry in particular; and that the Court also reject Google's approach to the fourth fair use factor.

Respectfully submitted,

Robert H. Rotstein
Counsel of Record
Eleanor M. Lackman
MITCHELL SILBERBERG & KNUPP LLP
2049 Century Park East
18th Floor
Los Angeles, CA 90067
(301) 312-2000
rxr@msk.com

J. Matthew Williams
Craig C. Bradley
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street, NW
7th Floor
Washington, DC 20036
(202) 355-7900

Counsel for Amicus Curiae

February 19, 2020