No. 24-171

IN THE

Supreme Court of the United States

COX COMMUNICATIONS, INC., *et al.*,

Petitioners,

v.

SONY MUSIC ENTERTAINMENT, *et al.*,

Respondents.

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

BRIEF OF COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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A&M Records, Inc. v. Napster, Inc.,
239 F.3d 1004 (9th Cir. 2001). 17

Advanced Media Networks, LLC v. AT&T Mobility LLC,
748 F. App'x 308 (Fed. Cir. 2018) 7

ALS Scan, Inc. v. Cloudflare, Inc.,
2016 WL 11742059 (C.D. Cal. Oct. 24, 2016) 10

ALS Scan, Inc. v. Steadfast Networks, LLC,
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Arista Records LLC v. Lime Grp. LLC,
784 F. Supp. 2d 313 (S.D.N.Y. 2011) 26

Blue Nile, Inc., v. Ideal Diamond Solutions, Inc.,
2011 WL 3360664 (W.D. Wash. Aug. 3, 2011) 11

Capitol Records, Inc. v. MP3tunes, LLC,
48 F. Supp. 3d 703 (S.D.N.Y. 2014) 12

David v. CBS Interactive Inc.,
2012 WL 12884914 (N.D. Cal. July 13, 2012) 11

DISH Network L.L.C. v. Kumar,
2022 WL 5108085 (S.D.N.Y. Oct. 4, 2022) 8

Cited Authorities

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eBay Inc. v. MercExchange L.L.C.,
547 U.S. 388 (2006). 15

Elsevier Ltd. v. Chitika, Inc.,
826 F. Supp. 2d 398 (D. Mass. 2011). 10

Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.,
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Fonovisa Inc. v. Cherry Auction, Inc.,
76 F.3d 259 (9th Cir. 1996). 16

Gershwin Publ'g Corp. v. Columbia Artists Mgmt.,
443 F.2d 1159 (2d Cir. 1971) 16, 17, 18

Global-Tech Appliances, Inc. v. SEB SA,
563 U.S. 754 (2011) 19, 21

Greer v. Moon,
83 F.4th 1283 (10th Cir. 2023). 21

Hachette Book Grp., Inc. v. Internet Archive,
115 F.4th 163 (2d Cir. 2024). 24

In re Napster, Inc. Copyright Litig.,
479 F.3d 1078 (9th Cir. 2007) 11

Kalem Co. v. Harper Bros.,
222 U.S. 55 (1911) 14, 15, 16, 18, 19

Cited Authorities

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Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.,
545 U.S. 913 (2005). 2, 3, 5, 13-15, 18-23, 27

Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.,
380 F.3d 1154 (9th Cir. 2004) 17

Mon Cheri Bridals, LLC v. Cloudflare, Inc.,
2019 WL 3245740 (N.D. Cal. July 11, 2019). 9

Mon Cheri Bridals, LLC v. Cloudflare, Inc.,
2021 WL 4572015 (N.D. Cal. Oct. 6, 2021) 7, 9

Moody v. NetChoice, LLC,
603 U.S. 707 (2024). 6

Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.,
545 U.S. 967 (2005) 6, 7

Perfect 10, Inc. v. Amazon.com, Inc.,
508 F.3d 1146 (9th Cir. 2007) 21

Perfect 10, Inc. v. Giganews, Inc.,
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Perfect 10, Inc. v. Visa Int'l Serv. Ass'n,
494 F.3d 788 (9th Cir. 2007) 10

Perfect 10, Inc. v. CCBill LLC,
488 F.3d 1102 (9th Cir. 2007) 10

Cited Authorities

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Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos, 605 U.S. 280 (2025) 13, 21

Sony Corp. of Am. v. Universal City Studios, 464 U.S. 417 (1984) 2-5, 13, 17-20, 23

Sony Music Ent. v. Cox Commc'ns, Inc., 93 F.4th 222 (4th Cir. 2024) 6, 12

Twitter, Inc. v. Taamneh, 598 U.S. 471 (2023) 13, 21

UMG Recordings, Inc. v. Grande Commc'ns Networks, LLC, 384 F. Supp. 3d 743 (W.D. Tex. 2019) 11

UMG Recordings, Inc. v. Shelter Capital Partners LLC, 718 F.3d 1006 (9th Cir. 2013) 25, 26

UMG Recordings, Inc. v. Vital Pharmaceuticals, Inc., 2022 WL 2670339 (S.D. Fla. July 11, 2022) 10

Universal City Studios., Inc. v. Sony Corp. of Am., 659 F.2d 963 (9th Cir. 1981) 17

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Statutes and Regulations

17 U.S.C. § 512 . . . . . .5, 20

17 U.S.C. § 512(l) 5

35 U.S.C. § 271(b). 18

35 U.S.C. § 271(c) 17

H.R. Rep. No. 105-551, pt. 1, at 11 (1998) 8

H.R. Rep. No. 105-551, pt. 2, at 71 (1998). 5

S. Rep. 105-190, at 55 (1998). 5

Other Authorities

J. Cam Barker, *Grossly Excessive Penalties in the Battle Against Illegal File-Sharing: The Troubling Effects of Aggregating Minimum Statutory Damages for Copyright Infringement*, 83 Tex. L. Rev. 525 (2004) 25

Mark Bartholomew & Patrick F. McArdle, *Causing Infringement*, 64 Vand. L. Rev. 675 (2011) 21

Page

Brief for the United States as *Amicus Curiae*, *Sony Music Ent. v. Cox Commc'ns, Inc.* (No. 14-171 May 27, 2025) 6

Michael Carrier, *Copyright and Innovation: The Untold Story*, 2012 Wis. L. Rev. 891 (2012) 26

Michael Carrier, *No Statutory Damages for Secondary Infringement*, Disruptive Competition Project (Jan. 30, 2014), https://project-disco.org/intellectual-property/013014-no-statutory-damages-for-secondary-liability/ 27

CCIA, *Copyright Reform for a Digital Economy* (Aug. 2015) at 19 n.8, https://ccianet.org/wp-content/uploads/2015/08/Copyright-Reform-for-a-Digital-Economy.pdf 25

Chat GPT Is Eating the World, *Anthropic faces potential business-ending liability in statutory damages after Judge Alsup certifies class action by Bartz* (July 17, 2025), https://chatgptiseatingtheworld.com/2025/07/17/anthropic-faces-potential-business-ending-liability-in-statutory-damages-after-judge-alsup-certifies-class-action-by-bartz/ 25

Cloudflare, *What is a CDN?*, https://www.cloudflare.com/learning/cdn/what-is-a-cdn/. 9

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Cloudflare, *What is a DDoS attack?*, https://www.cloudflare.com/learning/ddos/what-is-a-ddos-attack/ 9

Cloudflare, *What is DNS?*, https://www.cloudflare.com/learning/dns/what-is-dns/ 8

Eric Goldman, *Cloudflare Isn't Liable for Providing Services to Alleged Infringers*– Mon Cheri Bridals v. Cloudflare, Tech. & Mktg. L. Blog (Oct. 8, 2021), https://blog.ericgoldman.org/archives/2021/10/cloudflare-isnt-liable-for-providing-services-to-alleged-infringers-mon-cheri-bridals-v-cloudflare.htm 2, 7

Zahavah Levine, *Broadcast Yourself*, YouTube Official Blog (Mar. 18, 2010), https://blog.youtube/news-and-events/broadcast-yourself/ 26

Michael Masnick & Leigh Beadon, *The Sky Is Rising: 2024 Edition* (CCIA Research Center & Copia Institute Jan. 2024), https://ccianet.org/research/reports/sky-is-rising-2024-edition/ 6

Pamela Samuelson & Tara Wheatland, *Statutory Damages in Copyright Law: A Remedy in Need of Reform*, 51 Wm. & Mary L. Rev. 439 (2009) 25

Page

Eliot Van Buskirk, *Veoh Files for Bankruptcy After Fending Off Infringement Charges*, Wired (Feb. 12, 2010), https://www.wired.com/2010/02/veoh-files-for-bankruptcy-after-fending-off-infringement-charges/ 6

Viacom sues Google, YouTube for $1 billion, NBC News (Mar. 13, 2007), https://www.nbcnews.com/id/wbna17592285 26

Trevor Wagener, *The Combined Impact of Statutory Damages and Secondary Liability in the U.S. Copyright Regime Under the Fourth Circuit Standard* (CCIA Research Center Sept. 2025), https://ccianet.org/research/case-studies/impact-of-statutory-damages-secondary-liability-in-us-copyright-regime-under-fourth-circuit-standard/ 24

Alfred Yen & Joseph Liu, *Copyright Law: Essential Cases and Materials* 48. 16

INTEREST OF *AMICUS CURIAE*[1]

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross-section of communications, technology, and Internet industry firms that collectively employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA regularly files *amicus* briefs in this and other courts to promote balanced copyright policies that reward, rather than stifle, innovation.[2]

SUMMARY OF ARGUMENT

New technologies present new opportunities and new challenges. In an effort to give relief to plaintiffs that feel they have been wronged, adjudicators have grafted various theories of secondary or even *tertiary* liability onto the Copyright Act, which provides only for direct liability. Such theories, often espoused by lower courts, have no basis in the Act; they often serve the purpose of providing a sympathetic copyright owner a nominally

1. No counsel for any party authored this brief in whole or part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief.

2. A list of CCIA members is available at https://www.ccianet.org/members.

culpable "deep pocket"—sometimes even "one-stop-shopping for allegedly infringing activity across the Internet."[3]

Roughly every twenty years—from video tape recorders in the 1980s[4] to peer-to-peer networks in the 2000s[5] to the instant case—this Court has been called upon to unsnarl what inevitably becomes a tangle of unclarity, especially for new market entrants. This morass creates extraordinary, unpredictable liability for legitimate businesses far attenuated from any infringing activity.

The Court can stop this decades-long cycle of embellishment and refinement by enumerating the clear outer boundaries for all theories of secondary copyright liability that Congress has not expressly articulated in Title 17. (Section I.A., *infra*.) This would help protect a wide range of service providers from the threat of draconian statutory damages that diminish the incentive to innovate—a threat exacerbated by the contributory infringement standard applied by the court below. (Section I.B., *infra*.)

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3. Eric Goldman, *Cloudflare Isn't Liable for Providing Services to Alleged Infringers*–Mon Cheri Bridals v. Cloudflare, Tech. & Mktg. L. Blog (Oct. 8, 2021), https://blog.ericgoldman.org/archives/2021/10/cloudflare-isnt-liable-for-providing-services-to-alleged-infringers-mon-cheri-bridals-v-cloudflare.htm.

4. *Sony Corp. of Am. v. Universal City Studios*, 464 U.S. 417, 429 (1984) ("*Betamax*").

5. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005).

Amicus curiae suggests that the Court unambiguously state that under *Grokster* and its other secondary liability jurisprudence, a provider of services used by another person to infringe copyright is contributorily liable for that infringement only if the service provider intended to aid and abet in the infringement. (Section II, *infra*.) Furthermore, the Court should clarify that a secondary infringer acted willfully only in cases where the secondary infringer knew that its own conduct was infringing. (Section III, *infra*.)

ARGUMENT

I. This Court Should Reaffirm The Limits Of Contributory Infringement Liability Set Forth In *Grokster*.

A. The Court Should Instruct Lower Courts to Exercise Great Caution in Imposing Judicially Created Doctrines Not Contained in the Copyright Act's Text.

This Court in *Betamax* recognized that "it is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors . . . in order to give the public appropriate access to their work product." 464 U.S. at 429. As new technologies developed, "it has been the Congress that has fashioned the new rules that new technology made necessary." *Id*. at 431.

The Court added that "[s]ound policy, as well as history, supports our consistent deference to Congress when major technological innovations alter the market for copyrighted materials. Congress has the constitutional

authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology." *Id.* Accordingly, where "Congress has not plainly marked our course, we must be circumspect in construing the scope of rights created by a legislative enactment which never contemplated such a calculus of interests." *Id.*

As the *Betamax* Court noted, "the Copyright Act does not expressly render anyone liable for infringement committed by another," in contrast to the Patent Act, which establishes a detailed secondary liability framework. *Id.* at 434-35. Nonetheless, "the absence of such express language in the copyright statute does not preclude the imposition of liability for copyright infringements on certain parties who have not themselves engaged in the infringing activity." *Id.* at 435. This is because secondary liability is "imposed in virtually all areas of the law," and the concept of contributory copyright infringement "is merely a species of the broader problem of identifying the circumstances in which it is just to hold one individual accountable for the actions of another." *Id.*

In sum, *Betamax* clearly teaches that the judiciary must be reluctant to expand the protections afforded by copyright without explicit legislative guidance, and it should be circumspect in construing the scope of rights created by Congress in new and unanticipated contexts. Because Congress has declined to codify, much less expand, the bounds of secondary copyright liability, despite opportunities to do so, the courts should be particularly cautious in imposing liability on one entity for the infringing actions of another.

Nonetheless, over the past two decades, the lower courts have taken exactly the opposite approach with the providers of internet services and products. Courts have indulged copyright plaintiffs' repeated efforts to stretch the secondary copyright liability principles articulated by the Court in *Betamax* and *Grokster* to hold entities like internet intermediaries responsible for the infringing activities of third-party users.

Given the large number of entities in the internet stack, as explained *infra*, this is both unjust and unwise, *cf. Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991); it places a deadweight on the progress of science and useful arts, the objective of the Constitution's IP clause.[6] Even if a service provider is ultimately found not liable, the absence of clear, narrow secondary liability rules means that they must endure lengthy litigation under a sword of Damocles of ruinous statutory damages, rather than have the case dismissed at a preliminary

6. To be sure, Congress adopted limitations on copyright infringement remedies available against different categories of online service providers in Section 512 of the Copyright Act, 17 U.S.C. § 512. But Congress also made it clear that failure to qualify for the safe harbors cannot itself give rise to secondary liability. *See* 17 U.S.C. § 512(l); H.R. Rep. No. 105-551, pt. 2, at 71 (1998); S. Rep. 105-190, at 55 (1998) ("Even if a service provider's activities fall outside the limitations on liability specified in the bill, the service provider is not necessarily an infringer; liability in these circumstances would be adjudicated based on the doctrines of direct, vicarious, or contributory infringement . . . which are unchanged by new Section 512."); *Id.* at 19 ("Rather than embarking upon a wholesale clarification of these doctrines, the Committee decided to leave current law in its evolving state.").

stage. This can be devastating for startups and small businesses.[7]

B. A Vast Number of Businesses Are Potentially Exposed to Claims of Contributory Infringement.

As the Government's brief explains, "the internet has become an essential feature of modern life" and "the decision below could cause numerous non-infringing users to lose their internet access." Brief for the United States as *Amicus Curiae*, *Sony Music Ent. v. Cox Commc'ns, Inc.* (No. 14-171 May 27, 2025) ("SG Cert. Br.") at 15. Internet connectivity is essential not only to everyday Americans, but also to entertainment industry interests such as Respondents.[8] While "the public likely no longer needs this Court to define the internet," *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), more technical elements regarding "how Internet technology works and how it is provided," *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 991 (2005), require further explication.

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7. Eliot Van Buskirk, *Veoh Files for Bankruptcy After Fending Off Infringement Charges*, Wired (Feb. 12, 2010), https://www.wired.com/2010/02/veoh-files-for-bankruptcy-after-fending-off-infringement-charges/ ("History will add online video site Veoh to the long list of promising start-ups driven into bankruptcy by copyright lawsuits—despite the fact that unlike the others, it actually prevailed in court.").

8. *See* Michael Masnick & Leigh Beadon, *The Sky Is Rising: 2024 Edition* (CCIA Research Center & Copia Institute Jan. 2024), https://ccianet.org/research/reports/sky-is-rising-2024-edition/, at 1 ("The sky is rising for the entertainment industries, almost entirely because of the internet.").

"Computer networks typically use several protocols that work together to transmit information, and these protocols can be modeled as 'layers' in a 'stack.'" *Advanced Media Networks, LLC v. AT&T Mobility LLC*, 748 F. App'x 308 (Fed. Cir. 2018). The landscape of the internet "stack" includes dozens of private stakeholders with virtually no connection to end users. There are many different "layers" of internet services, ranging from transport and infrastructure to content delivery networks (CDNs) and hosting to edge content and services. These include critical infrastructure like the "Domain Name System (DNS)," "Internet Protocol (IP) addresses," and "[c]acheing," *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 987, 999-1000 (2005), as well as "performance-improvement services" and "security services," *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, 2021 WL 4572015 (N.D. Cal. Oct. 6, 2021), at *1-2.

Strategic litigants in copyright cases often pursue expansive relief from businesses far from any infringing activity. As discussed *infra*, these not only include internet access providers like Petitioners, but also many other service providers, online and off. Some copyright owners, not satisfied with secondary liability, have pursued "tertiary infringers"—parties that are merely vendors to intermediary service providers.[9] Even for these parties, litigation requires years of time and expense to resolve.

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9. Eric Goldman, *Cloudflare Isn't Liable for Providing Services to Alleged Infringers*–Mon Cheri Bridals v. Cloudflare, Tech. & Mktg. L. Blog (Oct. 8, 2021), https://blog.ericgoldman.org/archives/2021/10/cloudflare-isnt-liable-for-providing-services-to-alleged-infringers-mon-cheri-bridals-v-cloudflare.htm.

A wide range of both infrastructure and non-infrastructure stakeholders have been accused of secondary copyright infringement, often on the basis of a highly-attenuated connection to the alleged direct infringement.

1. Infrastructure stakeholders

a) Internet access providers

As in the instant case, "internet access providers" have been targeted for secondary liability for alleged infringement by their users for decades, which in part led to Congress enacting the Online Copyright Infringement Liability Limitation Act as part of the Digital Millennium Copyright Act (DMCA). H.R. Rep. No. 105-551, pt. 1, at 11 (1998).

b) DNS providers

"The Domain Name System (DNS) is the phonebook of the Internet."[10] The system's sole function is to translate human-readable names like www.supremecourt.gov into the numerical IP addresses computers use to communicate, the way a phonebook connects people's names to their telephone numbers. While phonebook publishers are not held responsible for the misconduct of individuals whose phone numbers they print, DNS providers have been enjoined on the grounds that they furnished the numbers to reach an alleged infringer.[11]

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10. Cloudflare, *What is DNS?*, https://www.cloudflare.com/learning/dns/what-is-dns/.

11. *See*, *e.g.*, *DISH Network L.L.C. v. Kumar*, 2022 WL 5108085 (S.D.N.Y. Oct. 4, 2022) (permanently enjoining "[t]hird parties who provide web, server or file hosting services, data center

c) CDNs and DDoS protection

Providers of technical services like content delivery networks (CDNs)[12] that "mak[e] content load faster for users" and DDoS (Distributed Denial of Service)[13] protection tools that "can detect suspicious traffic patterns and prevent attacks on a website's host" have also been subjected to the same litigation burden as direct infringers. *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, 2021 WL 4572015 (N.D. Cal. Oct. 6, 2021), at *1-2 (granting defendant's motion for summary judgment in *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, 2019 WL 3245740 (N.D. Cal. July 11, 2019), more than two years after denying defendant's motion to dismiss).

d) Hosting, servers, and data centers

Plaintiffs have brought secondary copyright liability claims against providers of "webhosting and related

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or colocation services, or primary and backup storage services (including but not limited to cloud storage services), or who provide services used in connection with any activities enjoined . . . including but not limited to: back-end service providers; service providers routing traffic or providing bandwidth; content delivery networks; domain name server systems; content hosting websites; search-based online advertising services (such as through paid inclusion, paid search results, sponsored search results, sponsored links, and internet keyword advertising); domain name registration privacy protection services; providers of social media services, user generated and online content services; and data security services (including but not limited to denial-of-service attack prevention, firewall and proxy services)").

12. Cloudflare, *What is a CDN?*, https://www.cloudflare.com/learning/cdn/what-is-a-cdn/.

13. Cloudflare, *What is a DDoS attack?*, https://www.cloudflare.com/learning/ddos/what-is-a-ddos-attack/.

Internet connectivity services to the owners of various websites," such as "ensuring power is provided to the server and connecting the client's service or website to the Internet via a data center connection." *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1108 (9th Cir. 2007); *see also Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657 (9th Cir. 2017); *ALS Scan, Inc. v. Steadfast Networks, LLC*, 2020 WL 4038050 (9th Cir. July 17, 2020).

2. Non-infrastructure stakeholders

a) Ad networks

Copyright holders have sued ad networks for secondary liability, under theories of both contributory and vicarious liability. *ALS Scan, Inc. v. Cloudflare, Inc.*, 2016 WL 11742059 (C.D. Cal. Oct. 24, 2016); *Elsevier Ltd. v. Chitika, Inc.*, 826 F. Supp. 2d 398 (D. Mass. 2011); *see also UMG Recordings, Inc. v. Vital Pharmaceuticals, Inc.*, 2022 WL 2670339 (S.D. Fla. July 11, 2022).

b) Payment providers

Another strategy for serial copyright plaintiffs has been to pursue payment providers for secondary liability, including "banks and data processing services," *Perfect 10, Inc. v. Visa Int'l Serv. Ass'n*, 494 F.3d 788, 792 (9th Cir. 2007), and services that enable "consumers to use credit cards or checks to pay for subscriptions or memberships to e-commerce venues," *CCBill*, 488 F.3d at 1108.

c) Software distributors

Software distributors have been sued as well, with varying judicial theories on tertiary liability. *David v. CBS Interactive, Inc.*, 2012 WL 12884914 (N.D. Cal. July 13, 2012) ("The courts have yet to find contributory liability based on a tertiary actor's conduct."); *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007) ("According to defendants, plaintiffs thus state claims for what this court has termed 'tertiary infringement'—vicarious or contributory assistance to a vicarious or contributory infringer, here Napster—and towards which this court has previously expressed disfavor."). *Cf. UMG Recordings, Inc. v. Grande Commc'ns Networks, LLC*, 384 F. Supp. 3d 743, 765 (W.D. Tex. 2019).

d) Investors

Individual executives and investors have also been targeted directly and indirectly by plaintiffs. One court reasoned that "copyright is a strict liability tort; therefore there is no corporate veil. . . ."[14] *Blue Nile, Inc., v. Ideal Diamond Solutions, Inc.*, 2011 WL 3360664, at *2 (W.D. Wash. Aug. 3, 2011) (holding that a controlling officer of a small company could be held personally liable for the display of infringing photographs on the company's website). Another court declined to hold "that there is no legal basis for 'tertiary liability," and found "that a

14. The threat of personal liability of founders and corporate officers for multi-million dollar statutory awards has been deliberately invoked by plaintiffs to intimidate defendants into capitulation. There should be no copyright-specific exception to the corporate veil; courts must apply the same "piercing the veil" analysis in copyright cases as they do for every other kind of tort liability.

'tertiary' liability claim is cognizable." *Capitol Records, Inc. v. MP3tunes, LLC*, 48 F. Supp. 3d 703, 713 (S.D.N.Y. 2014).

3. The Impossibility of Compliance

This wide array of entities simply could not, as a practical matter, comply with the standard for contributory infringement employed by the court below. The Fourth Circuit imposed liability on Cox merely because it continued to supply internet service "with knowledge that the recipient will use it to infringe." *Sony Music Ent. v. Cox Commc'ns, Inc.*, 93 F.4th 222, 236 (4th Cir. 2024). Virtually every entity described above knows that their products or services could, and likely would, be misused by some quantum of consumers for infringing purposes. Moreover, these entities often have heard allegations, with varying degrees of specificity, from copyright owners concerning particular acts of infringement. The only way to avoid ruinous statutory damages relating to infringements that occurred through the misuse of their services would be to do business only with vetted customers who could indemnify the provider against possible copyright infringement liability.

Adding the gloss that the provider would incur liability only if it failed to take "simple measures" to prevent known infringing activity would not improve matters. Determining what constitutes "simple measures" is highly subjective. Rightsholders could always argue that every measure the provider failed to take was "simple." A "simple measures" test, therefore, would deprive businesses of the certainty they need to operate,

especially at scale. In short, the standard advocated by Respondents would "compromise legitimate commerce" and "discourage innovation having a lawful promise," directly contrary to *Grokster*. *Grokster*, 545 U.S. at 937.

C. The Court Should Rein in the Lower Courts' Judicial Activism in This Area.

As detailed below, twenty years ago the *Grokster* Court provided a clear definition of contributory copyright infringement. The lower courts, including the court below, proceeded to ignore *Grokster*. The Court now should not only affirm its decision in *Grokster*, and *Grokster*'s relationship to *Betamax*, *see infra*, but also provide unambiguous instructions to the lower courts that they must not embark on creative expansions of secondary copyright liability that satisfy their policy preferences for the allocation of accountability in the digital environment.

As the Court clearly stated in *Betamax*, "[t]he remedies for infringement 'are only those prescribed by Congress.'" 464 U.S. at 431 (citation omitted). Unless and until Congress decides differently, courts should impose copyright liability on a person who is not a direct infringer only in accordance with traditional common law principles. As the Court explained in *Taamneh*, the "conceptual core" of secondary liability in common law was that a defendant had "consciously and culpably 'participate[d]' in a wrongful act so as to help 'make it succeed.'" *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 490 (2023) (brackets and citation omitted). *See also Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025); SG Cert.

Br. at 11. This is the standard that the Court applied in *Grokster*, and that the court below failed to apply here.[15]

II. The Court Below Erred By Failing To Apply The *Grokster* Standard For Contributory Infringement.

This Court in *Grokster* announced a clear standard for contributory copyright infringement: "[o]ne infringes contributorily by *intentionally* inducing or encouraging direct infringement." 545 U.S. at 930 (emphasis added). In the twenty years since *Grokster*, the courts of appeals, including the court below, have not strictly applied this standard, instead improvising on the theme. Indeed, as the Solicitor General observed, "none of [the courts of appeals'] decisions has adopted the correct approach dictated by this Court's precedents." SG Cert. Br. at 15.

In particular, the courts of appeals failed to adhere to this Court's ruling in *Grokster*: that the knowledge-based standard some lower courts had previously applied was erroneous because it departed from the intent-based approach followed by this Court almost a century earlier in *Kalem Co. v. Harper Bros.*, 222 U.S. 55, 62-63 (1911), and explicitly adopted by Congress in the Patent Act. This led to the courts of appeals attempting to reconcile their pre-*Grokster* precedents with *Grokster* itself, resulting in the hodge-podge of inconsistent standards identified by Petitioners and the Solicitor General. The Court should now state unambiguously that *Grokster* rejected the lower

15. Although this case specifically concerns contributory infringement, and not vicarious liability, the Court should make clear that vicarious liability for copyright infringement also requires showing a culpable intent sufficient to meet this common law standard.

courts' knowledge-based standard and reaffirmed the *Kalem* standard based on intent.

Chief Justice Roberts observed that "a page of history is worth a volume of logic," *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006) (Roberts, J., concurring) (citations omitted). A brief history of contributory copyright infringement will explain how the decisions of the courts of appeals reached their confused state, and how this Court should guide them out of it.

A. Contributory Infringement Before *Grokster*

In *Kalem*, the Court held that the seller of copies of an unauthorized motion picture version of the novel *Ben Hur* was contributorily liable for infringing the right to dramatically reproduce the novel. The defendant "not only expected but invoked by advertisement the use of its films for dramatic reproduction of the story. That was the most conspicuous purpose for which they could be used, and the one for which especially they were made." 222 U.S. at 62-63. Although the applicable copyright statute did not address secondary liability, the Court nonetheless ruled that the defendant was liable for contributory infringement "on principles recognized in every part of the law." *Id.* at 63 (citations omitted). The Court distinguished the facts in *Kalem* from a seller of liquor with the "mere indifferent supposition or knowledge" that the buyer "is contemplating such unlawful use." *Id.* at 62. In the case of the liquor seller, the sale "is not enough to connect" the seller "with the possible unlawful consequences." *Id.* Thus, relying on common law principles, the Court imposed liability because the defendant clearly intended to enable infringement. The films the defendant sold were

made for the purpose of infringing performances, and the defendant advertised these unlawful uses.

In the decades after *Kalem*, in the absence of statutory standards for secondary liability in the Copyright Act of 1909, the lower courts developed two separate theories for imposing copyright liability on parties who did not directly infringe: contributory infringement and vicarious liability.[16] The courts did not always strictly follow *Kalem* in cases involving claims of contributory infringement. The Second Circuit in 1971, for example, found that "one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another, may be held liable as a 'contributory' infringer." *Gershwin Publ'g Corp. v. Columbia Artists Mgmt.*, 443 F.2d 1159, 1162 (2d Cir. 1971). Courts subsequently formulated this test into two prongs: 1) knowledge; and 2) material contribution. *See* Alfred Yen & Joseph Liu, *Copyright Law: Essential Cases and Materials* 48 (contributory infringement "case law after *Gershwin* generally focused on the role of knowledge and material contribution"); *see, e.g.*, *Fonovisa Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996) ("[c]ontributory infringement . . . imposes liability where one knowingly contributes to the infringing conduct of another").

When Congress enacted the Copyright Act of 1976, it once again declined to codify standards for secondary copyright. Without Congressional guidance, courts continued to apply the knowledge-based standard

16. Vicarious liability is not at issue in this case, but as noted above in note 15, the Court should clarify that it should not be expanded beyond its common law roots.

recognized by *Gershwin*. This Court first confronted contributory copyright infringement under the 1976 Act in *Betamax*. The Ninth Circuit had held that Sony was liable for contributory infringement because it sold the Betamax video tape recorder knowing that some consumers might use it to make unauthorized reproductions of copyrighted television programming. *Universal City Studios., Inc. v. Sony Corp. of Am.*, 659 F.2d 963 (9th Cir. 1981). This Court reversed, holding that the sale of copying equipment did not constitute contributory copyright infringement if the equipment was "capable of substantial noninfringing uses." *Betamax*, 417 U.S. at 442. The Court based its decision on the Patent Act's staple article of commerce doctrine.[17]

At first, the lower courts treated *Betamax* as an exception to the knowledge-based contributory infringement standard, although their precise doctrinal basis was unclear. Thus, the Ninth Circuit in both *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001), and *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd.*, 380 F.3d 1154 (9th Cir. 2004), interpreted *Betamax* as applying to the knowledge prong of contributory infringement—that *Betamax* stood for the proposition that the distributor of a product capable of a substantial noninfringing use could not be presumed to know that the product was being used to infringe. By attaching *Betamax* to the knowledge prong, the Ninth

17. Unlike the Copyright Act, the Patent Act established a statutory framework for contributory infringement. 35 U.S.C. § 271(c) provides that "[w]hoever offers to sell . . . a component of a patented machine . . . knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article of commerce . . . suitable for substantial noninfringing use, shall be liable as a contributory infringer."

Circuit limited *Betamax* in a way that had no real basis in the *Betamax* decision, and fashioned a rule that led to inconsistent results.

B. The *Grokster* Decision

The unanimous Court reversed the Ninth Circuit in *Grokster*, holding that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." *Grokster*, 545 U.S. at 919 (2005). Thus, the Court decided the case on the basis of Grokster's *intent* to promote infringement, rather than its *knowledge* that its technology *could be* used to infringe.

Grokster substituted intent for knowledge at the outset of its discussion of contributory infringement. The *Grokster* Court stated that "[o]ne infringes contributorily by intentionally inducing or encouraging direct infringement." *Id.* at 930. In support of this proposition, the Court cited *Gershwin*. But as noted above, *Gershwin* does not refer to intent; rather, it refers to knowledge. The *Grokster* Court based this refinement of *Gershwin* on *Kalem*, which it stated "emerged from common law principles," *id.* at 931, and presented "the classic case of direct evidence of unlawful purpose." *Id.* at 935. The Court also relied upon the Patent Act's inducement rule as a "sensible" "model" for copyright—and, critically, stated it was a model that "premises liability on purposeful, culpable expression and conduct."[18] *Id.* at 936-37. *Grokster*'s shift in focus from knowledge

18. 35 U.S.C. § 271(b) provides that "[w]hoever actively induces infringement of a patent shall be liable as an infringer."

to intent thus flowed from the Court's own precedent in *Kalem* as well as the Patent Act.

Further, *Grokster* explained how *Betamax* fit within an intent-based standard for contributory infringement. *Betamax* "barred secondary liability based on presuming or imputing intent to cause infringement solely from the design or distribution of a product capable of substantial lawful use, which the distributor knows is in fact used for infringement." *Id.* at 933. Thus, although Sony knew that the Betamax could be used for infringing purposes, the *Betamax* rule "limits imputing culpable intent as a matter of law from the characteristics or uses of a distributed product." *Id.* at 934. Since "[t]here was no evidence that Sony had expressed an object of bringing about taping in violation of copyright or had taken active steps to increase its profits from unlawful taping," *id.* at 931, and since such an unlawful objective could not be presumed, Sony was not liable for contributory infringement.[19] If a service were capable of both infringing and noninfringing uses, the service provider would incur

19. This interpretation of *Betamax* appears inconsistent with the Court's refusal to import trademark's intentional inducement of infringement standard in footnote 19 of *Betamax*. However, this footnote centers more on the inappropriateness of copyright cases relying on trademark principles than on the correctness of any particular standard for contributory infringement. The footnote's basic point is that although the Court has recognized a "historic kinship between patent law and copyright law," 464 U.S. at 439, it has "consistently rejected the proposition that a similar kinship exists between copyright law and trademark law." *Id.* at n. 19. *Grokster* relied on patent law rather than trademark law, and thus does not conflict with the thrust of *Betamax* n. 19. The Court reiterated this commonality in *Global-Tech Appliances v. SEB SA*, 563 U.S. 754 (2011) (*Grokster* "looked to the law of contributory patent infringement for guidance").

liability only if it manifested unlawful intent in some manner beyond providing the service.[20]

Significantly, under *Grokster*'s clarified definition of contributory infringement, inducement is not a separate cause of action, as it is under the Patent Act. Rather, inducement and contributory infringement are one and the same.[21] And inducement is not an exception to the *Betamax* safe harbor. To the contrary, *Betamax* is a limitation on inducement liability. That is, *Betamax* (as interpreted by *Grokster*) teaches that a court cannot impute intent to induce infringement by virtue of the distribution of a technology used to infringe if that technology is capable of substantial noninfringing uses. Instead, the intent to induce infringement must be shown "by clear expression or other affirmative steps taken to foster infringement. . . ." *Id.* at 937.

C. Post-*Grokster* Decisions

As demonstrated above, *Grokster* clarified that a showing of intent to induce or otherwise facilitate infringement was necessary for contributory copyright infringement liability to attach. Unfortunately, *Grokster* did not explicitly repudiate the knowledge-based standard. Accordingly, when confronted by claims for contributory infringement post-*Grokster*, some lower courts just attempted to fine tune their knowledge-based precedents

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20. Of course, an online service provider would still be entitled to 17 U.S.C. § 512's limitations on remedies, if the provider satisfied Section 512's requirements.

21. Pre-1952, this was true in patent law as well. The Patent Act of 1952 split patent contributory infringement into two separate causes, inducement and contributory infringement.

to accommodate *Grokster* rather than follow *Grokster* directly. *E.g.*, *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1172 (9th Cir. 2007) (a defendant could be liable for contributory infringement if it (i) had "actual knowledge that specific infringing material" was available on its system and (ii) could "'take simple measures to prevent further damage' to copyrighted works" but failed to do so). Others treated intentional inducement as a third theory of secondary liability separate from contributory infringement and vicarious liability. *E.g.*, *Greer v. Moon*, 83 F.4th 1283, 1295 (10th Cir. 2023). Curiously, the court below acknowledged *Grokster*, but then applied a knowledge-based contributory infringement test by holding that continuing to supply internet service "with knowledge that the recipient will use it to infringe" constituted "culpable" conduct. *Cox*, 93 F.4th at 236.

The Court should resolve this "confusing mishmash of contributory infringement decisions," Mark Bartholomew & Patrick F. McArdle, *Causing Infringement*, 64 Vand. L. Rev. 675, 679-80 (2011), by unequivocally interpreting *Grokster* as rejecting a knowledge-based theory of contributory copyright infringement. This not only is a faithful reading of *Grokster*, it also is consistent with the Court's jurisprudence concerning secondary liability. *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023); *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025); *see* SG Cert. Br. at 10-11.

Grokster gives ample guidance for how the lower courts should apply the intent-based standard in copyright law.[22] Contributory infringement liability should be imposed

22. *Cf. Global-Tech Appliances, Inc. v. SEB SA*, 563 U.S. 754 (2011).

only on one who provides a device or service "with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement. . . ." *Grokster* at 919. Merely providing a product or service, even with knowledge of infringing potential or actual infringement, would not be enough to subject the provider to liability. Nor "would ordinary acts incident to product distribution, such as offering customers technical support or product updates, support liability in themselves." *Id.* at 937. Rather, a "classic case" of inducement would involve advertising an infringing use or instructing how to engage in an infringing use. *Id.* at 935. Internal communications could also demonstrate the defendant's "unlawful purpose." *Id.* at 938. The Court noted that other facts could "complement . . . direct evidence of unlawful objective." *Id.* at 939.

Grokster ruled that contributory infringement liability necessitated a showing of "unequivocal indications of unlawful purpose." *Id.* at 938.[23] Unequivocal indications

23. The language of the opinion suggests that liability should attach only if the defendant had the specific intent to cause infringement: "the object of promoting its use to infringe," *id.* at 919, "their principal object was use of their software to download copyrighted works," *id.* at 926, "an actual purpose to cause infringing use," *id.* at 934, "statements or actions directed to promoting infringement," *id.* at 935, "purposeful, culpable expression and conduct," *id.* at 937, "a message designed to stimulate others to commit violations," *id.*, "acted with a purpose to cause copyright violations," *id.* at 938, "a principal, if not exclusive, intent on the part of each to bring about infringement," *id.* at 939, "intentional facilitation of their users' infringement," *id.*, "unlawful objective," *id.*, "the distributor intended and encouraged the product to be used to infringe," *id.* at 940, n.13, "a purpose to cause and profit from third-party acts of copyright infringement," *id.* at 941, and "patently illegal objective." *Id.*

of unlawful purpose are absent from the record in this case.

The *Grokster* Court emphasized that "in the absence of other evidence of intent, a court would be unable to find contributory infringement liability merely based on a failure to take affirmative steps to prevent infringement, if the device otherwise was capable of substantial noninfringing uses. Such a holding would tread too close to the [*Betamax*] safe harbor." *Id.* at n.12. This statement completely refutes Respondents' position that "failing to take even 'simple measures' to prevent known infringement constitutes contributory infringement." Sony Supp. Br. at 5. The *Grokster* Court found that "[i]f liability for inducing infringement is ultimately found, it will not be on the basis of presuming or imputing fault, but from inferring a patently illegal objective from statements and actions showing what that objective was." *Grokster* at 941. A patently illegal objective cannot be inferred merely from the failure to take "simple" steps to prevent known infringement. Furthermore, as noted above, determining what would be considered "simple measures" is highly subjective, failing to provide businesses with the certainty they need to operate, especially at scale.

III. The Standard For Willful Infringement Applied By The Court Below Exacerbates An Already Unbalanced Statutory Damages Regime.

Statutory damages remedies not rooted in any actual injury can easily balloon into millions or even billions of dollars, especially with $150,000 per work for "willful" infringement, with this case notoriously reaching an unprecedented $1 billion jury verdict—among the highest ever in a copyright case. This reflected a statutory

damages to actual economic harms ratio of at least 1,445 to 1, and potentially as high as 481,695 to 1. Trevor Wagener, *The Combined Impact of Statutory Damages and Secondary Liability in the U.S. Copyright Regime Under the Fourth Circuit Standard* (CCIA Research Center Sept. 2025), https://ccianet.org/research/case-studies/impact-of-statutory-damages-secondary-liability-in-us-copyright-regime-under-fourth-circuit-standard/, at 2.

Applying the standards from the Fourth Circuit's ruling in the instant case to another recent copyright case, *Hachette Book Grp., Inc. v. Internet Archive*, 115 F.4th 163 (2d Cir. 2024), shows that if the plaintiffs in that case had sued the Internet Archive's service provider for statutory damages, they could have sought at least $690 billion (greater than the GDP of 172 IMF-tracked countries in 2023, and greater than the *combined* sum of 77 IMF-tracked countries' GDP)—and potentially up to $6.6 *trillion* dollars (one-fifth of U.S. GDP, greater than the GDP of every country except the United States and China, and more than the *combined* sum of 144 IMF-tracked countries' GDP). *Id.*

The court below found that a secondary infringer acted willfully, on the basis that it knew that its conduct facilitated the direct infringement, regardless of whether it reasonably believed that its own conduct was lawful. Such a standard for willfulness exposes online services and manufacturers to extraordinary statutory awards due to potential aggregation of awards for a large number of works, which can be punitively large even at the minimum bound ($750). And not only do corporations providing products and services face this exposure, which can grossly exceed actual harm; as explained *infra*, investors, founders, and officers have been sued in their personal

capacity for alleged copyright infringement by users of the corporation's products.

Because copyright disputes involving new technologies often implicate a multitude of works, providers of digital products and services can face truly exorbitant damages liability, even assuming the smallest statutory award.[24] The threat of enormous damages encourages some rightsholders to view "being infringed" as a business model, and to assert aggressive theories of secondary liability in the hopes of coercing quick settlements.[25]

Scholarly studies of statutory damages show punitive and inconsistent outcomes,[26] as well as improper threats of personal liability for statutory damages as demonstrated in *UMG Recordings, Inc. v. Shelter Capital Partners*

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24. *See* Pamela Samuelson & Tara Wheatland, *Statutory Damages in Copyright Law: A Remedy in Need of Reform*, 51 Wm. & Mary L. Rev. 439 (2009). *Cf.* Chat GPT Is Eating the World, *Anthropic faces potential business-ending liability in statutory damages after Judge Alsup certifies class action by Bartz* (July 17, 2025), https://chatgptiseatingtheworld.com/2025/07/17/anthropic-faces-potential-business-ending-liability-in-statutory-damages-after-judge-alsup-certifies-class-action-by-bartz/.

25. *See* CCIA, *Copyright Reform for a Digital Economy* (Aug. 2015) at 19 n.8, https://ccianet.org/wp-content/uploads/2015/08/Copyright-Reform-for-a-Digital-Economy.pdf (citing photographer characterizing statutory damages as a "windfall", "Vegas-style slot machine" and stating that "a little copyright infringement can actually do your business good").

26. Samuelson & Wheatland, *supra*. *See also* J. Cam Barker, *Grossly Excessive Penalties in the Battle Against Illegal File-Sharing: The Troubling Effects of Aggregating Minimum Statutory Damages for Copyright Infringement*, 83 Tex. L. Rev. 525 (2004).

LLC, 718 F.3d 1006 (9th Cir. 2013), are a severe deterrent to exploring new business models. Michael Carrier, *Copyright and Innovation: The Untold Story*, 2012 Wis. L. Rev. 891, 944 (2012).

The deterrent effect on investment is magnified by the fact that, in copyright, damages awards are entirely unmoored from any actual injury. In Viacom's unsuccessful 7-year long litigation against YouTube, the company sought over $1 billion dollars in damages, for nearly 160,000 alleged infringements,[27] despite the fact that Viacom's own employees were uploading Viacom content to YouTube.[28] In another case brought by many of the same record label plaintiffs as the instant case, a court presented with a damages theory that "could reach into the trillions" rejected it as "absurd," holding plaintiffs should not be entitled to "more money than the entire music recording industry has made since Edison's invention of the phonograph in 1877." *Arista Records LLC v. Lime Grp. LLC*, 784 F. Supp. 2d 313, 317 (S.D.N.Y. 2011).

At the very least, the Court should find that a secondary infringer acted willfully only in cases where the secondary infringer knew that its own conduct was infringing. An even better approach would be for the

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27. *Viacom sues Google, YouTube for $1 billion*, NBC News (Mar. 13, 2007), https://www.nbcnews.com/id/wbna17592285.

28. Zahavah Levine, *Broadcast Yourself*, YouTube Official Blog (Mar. 18, 2010), https://blog.youtube/news-and-events/broadcast-yourself/ ("For years, Viacom continuously and secretly uploaded its content to YouTube, even while publicly complaining about its presence there. . . . In fact, some of the very clips that Viacom is suing us over were actually uploaded by Viacom itself.").

Court to interpret willful infringement in the copyright context to include only direct infringers.[29]

CONCLUSION

The Court should now state unambiguously that *Grokster* overturned knowledge-based standards for contributory infringement and reaffirm a standard based on intent. The Court should also reverse the ruling below and find that a secondary infringer acted willfully only in cases where the secondary infringer knew that its own conduct was infringing.

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29. The Copyright Act does not define willful infringement. *See also* Michael Carrier, *No Statutory Damages for Secondary Infringement*, Disruptive Competition Project (Jan. 30, 2014), https://project-disco.org/intellectual-property/013014-no-statutory-damages-for-secondary-liability/.