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 THE COMMON SENSE COPYRIGHT COALITION, ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION, CTIA – THE WIRELESS ASSOCIATION, INTERNET INFRASTRUCTURE COALITION, NTCA–THE RURAL BROADBAND ASSOCIATION, USTELECOM – THE BROADBAND ASSOCIATION, AND WTA – ADVOCATES FOR RURAL BROADBAND AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*[1]

Amicus Common Sense Copyright Coalition is an alliance of leading Internet service providers ("ISPs"), convened by USTelecom – The Broadband Association, that brings a balanced, practical voice to the table to support smart, workable copyright solutions that protect creators without undermining the networks and connectivity that power American innovation. Its members include ISPs that collectively provide Internet access to hundreds of millions of Americans.

The Common Sense Copyright Coalition is joined on this brief by six additional *amici* trade associations that represent a wide variety of small and large ISPs—using an array of wireline, wireless, and satellite solutions to deliver connectivity to Americans—and other critical participants operating fundamental infrastructure in the Internet ecosystem. ACA Connects – America's Communications Association represents approximately 500 independent private and public broadband, video, and voice providers that pass more than 30 million households across the 50 states and U.S. territories, including seven million homes in rural areas. CTIA – The Wireless Association represents the U.S. wireless communications industry

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[1] No party's counsel authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity other than *amici*, their members, or their counsel made a monetary contribution to fund the brief's preparation or submission.

and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life, including wireless providers, device manufacturers, suppliers, as well as application and content companies. Internet Infrastructure Coalition ("i2C") is the leading voice for web hosting companies, data centers, domain registrars and registries, cloud infrastructure providers, managed services providers, and related tech. NTCA–The Rural Broadband Association represents approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services. USTelecom – The Broadband Association represents service providers and suppliers for the communications industry—including providers of broadband, voice, data, and video over wireline and wireless networks. WTA – Advocates for Rural Broadband represents approximately 400 small, rural local telecommunications carriers that provide voice, broadband and other communications-related services to some of the most remote, rugged, sparsely populated, and expensive-to-serve areas of the United States.

Collectively, *amici* represent the companies that get and keep Americans online. Their members provide Internet access everywhere from dense cities to rural, mountain communities. They also include the companies that build and sustain the infrastructure—both physical and virtual—that is critical to the provision of Internet access. These member companies are, in short, the engine that powers the "reliable, high-speed broadband" that Congress has deemed "essential to full participation in modern life in the United States." 47 U.S.C. § 1701(1).

The Fourth Circuit's unprecedented theory of copyright liability at issue in this case threatens to undermine Internet access and thereby do irreversible damage to *amici*'s members and their customers. The Fourth Circuit upheld a billion-dollar judgment against an ISP for not *preventing its customers* from engaging in copyright infringement. There was no allegation or evidence that the ISP wanted or encouraged its customers to infringe any copyrights, nor that it profited from infringement. Thus, the only surefire way for ISPs and Internet infrastructure companies to avoid liability under this erroneous reading of the Copyright Act is to kick their customers off the Internet *en masse* when presented with nothing more than bare, unverifiable allegations of infringement from a copyright holder. *Amici* file this brief to urge the Court to reverse the decision below, which is burdensome, unworkable, and inconsistent with Congressional intent. If permitted to stand, the decision would actively undermine decades of progress in getting Americans everywhere connected to the Internet.

SUMMARY OF ARGUMENT

In the decision below, the Fourth Circuit badly misapplied the Copyright Act. And its misapplication portends dire consequences for Internet access.

On the law, the Fourth Circuit adopted an extreme, novel form of contributory copyright infringement. It held an ISP liable merely for providing Internet access to customers with Internet

Protocol ("IP") addresses that had previously been associated with copyright infringement. That far-reaching holding has no basis in the statutory text and fails to adhere to the traditional guardrails surrounding secondary liability—in particular, the requirement to show purposeful, affirmative, and culpable conduct. And it compounded that error by automatically subjecting all secondary infringers to quintuple statutory damages under an erroneous, watered-down willfulness standard.

The result of the Fourth Circuit's errors will be disastrous for Internet access, broadband deployment, and the digital economy. Congress has spent decades of time and untold sums of money getting Americans online. The Fourth Circuit's copyright regime threatens to undo that hard and essential work. It would expose ISPs to the risk of ten-figure judgments unless they terminate subscribers upon receipt of barebones, unverifiable notices that typically consist of little more than a timestamp and an IP address. And termination on this IP-address basis would be unworkable and chaotic. Many IP addresses serve entire institutions, such as schools and hospitals, or hundreds of different customers in cloud environments—meaning that a single infringing user could trigger a duty for an ISP to disconnect thousands of innocent people. And even household-level IP addresses risk disconnecting entire families from the Internet for a single child's mistaken download. This ham-fisted, terminate-first-ask-questions-later approach is infeasible, nonsensical, and threatens to cut off millions of Americans from the Internet.

This Court should reverse.

ARGUMENT

I. THE TEXT OF THE COPYRIGHT ACT COMPELS A NARROW CONSTRUCTION OF SECONDARY LIABILITY.

This case turns on the proper meaning of a federal statute: the Copyright Act, and specifically, the scope of contributory liability authorized by the Act's private cause of action.

The text of the Copyright Act is central to that inquiry. As this Court has "stressed over and over again in recent years, statutory interpretation must begin with, and ultimately heed, what a statute actually says." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023) (cleaned up). Consistent with that teaching, "the text of a law controls over purported legislative intentions unmoored from any statutory text." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022).

The text here is thin. The Copyright Act provides that a "copyright owner is entitled to recover" against an "infringer," 17 U.S.C. § 504, by "institut[ing] an action" in court, *id.* § 501(b). And one infringes when they "do" or "authorize" activities that fall within "the exclusive rights" of the copyright owner. *Id.* § 106; *see also id.* § 501(a). Those exclusive rights include activities such as "reproduc[ing] the copyrighted work" or "perform[ing]" it. *Id.* § 106. But, this Court has repeatedly explained, "the Copyright Act does not expressly render anyone liable for infringement committed by another." *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005) (cleaned up); *see also Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 434 (1984). And while the Digital Millenium Copyright Act ("DMCA") affords safe harbors to service providers, it does not create or expand the Copyright Act's substantive liability. *See* 17 U.S.C. § 512(*l*) (expressly preserving existing defenses to copyright liability).

Congress's decision to not explicitly address secondary liability in the Copyright Act contrasts with its approach in other statutes. For example, the Patent Act reaches not only one who "infringes the patent" but also one who "actively induces infringement" or who acts "as a contributory infringer." 37 U.S.C. § 271(a)–(c). Just last term, this Court construed a civil statute that expressly reached one who "aid[s], abet[s], or conspire[s]" in certain firearms offenses. 15 U.S.C. § 7903(5)(A)(iii)(II); *see Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025). And just two terms ago, this Court construed a civil statute that expressly reached not only those that "directly" act but also "any person who aids and abets, by knowingly providing substantial assistance." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 478 (2023) (quoting 18 U.S.C. § 2333(d)(2)). The Copyright Act lacks this kind of express secondary-liability language.

This textual omission counsels in favor of a narrow interpretation of secondary copyright liability. This Court has explained that it cannot "expand the protections afforded by the copyright without explicit legislative guidance." *Sony*, 464 U.S. at 431; *see id.* at 456 ("The direction of Art. I is that *Congress* shall have the power to promote the progress of science and the useful arts," and thus "the sign of how far Congress has chosen to go can come only from Congress"). And the Court will not "[r]ais[e] up causes of action where a statute has not created them." *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). "Like substantive federal law itself," the Court has explained, "private rights of action to enforce federal law must be created by Congress." *Id.* at 286. After all, "the Legislature is in the better position to consider if the public interest would be served by imposing a new substantive legal liability." *Ziglar v. Abbasi*, 582 U.S. 120, 136 (2017) (quotations omitted). Thus, this Court "appl[ies] traditional principles of statutory interpretation" to assess a statutory "cause of action." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014).

These same principles counsel against inferring broad secondary liability from the Copyright Act's thin text. This Court's decision in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), is instructive. There, the Court considered the scope of "private civil liability" under a statute's civil fraud cause of action. *Id.* at 166. The plaintiff there asserted that the defendant had aided and abetted another's fraud by providing "substantial assistance … to the primary violator." *Id.* at 168–69. The Court rejected this theory. Foremost, it found no hint of secondary liability in "the text of [the statute] itself." *Id.* at 176. And that omission was telling because "Congress knew how to impose aiding and abetting liability when it chose to do so." *Id.* at 176–77 (collecting civil secondary-liability provisions).

The Court also declined to infer secondary liability on the theory "that Congress legislated with an understanding of general principles of tort law." *Id.* at 181. The Court explained that "Congress has not enacted a general civil aiding and abetting statute" akin to the criminal secondary-liability statute in Title 18. *Id.* at 182 (citing 18 U.S.C. § 2(a)). Thus, rather than a "general presumption that the plaintiff may also sue aiders and abettors," Congress "has taken a statute-by-statute approach to" secondary liability. *Ibid.* That result was supported by the fact that secondary liability is "at best uncertain" with divergent "common-law precedents." *Id.* at 181. Thus, the Court rejected "that kind of liability" under "the private causes of action in" the statute. *Id.* at 184–85.

Because of the Copyright Act's sparse textual basis for secondary liability, this Court has applied these interpretive principles to sharply—and rightly—limit the reach of such liability. In *Kalem Co. v. Harper Brothers*, 222 U.S. 55 (1911), for example, a film producer created a film dramatization of a copyrighted book without the author's permission. *See id.* at 60–61. It then distributed the infringing film to "jobbers" for exhibition and "advertised [the film] under the title" of the copyrighted book. *Id.* at 61. After being sued for copyright infringement, the producer sought to escape liability on the ground that it did not literally exhibit the infringing film. *Id.* at 62. Justice Holmes, writing for the Court, disagreed. He rejected that one must "tak[e] part in the final act" to be an infringer. *Id.* at 63. Because the producer *created* the infringing film, *advertised* it as an infringing film, and operated with a "*conspicuous purpose*" to infringe, it was liable. *Id.* at 62–63 (emphasis added). This purposeful, affirmative conduct was sufficient to render the producer an infringer.[2]

The Court declined to extend *Kalem* in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984). There, copyright holders sued sellers of "Betamax video tape recorders" on the theory that some buyers used the recorders for copyright infringement. *Id.* at 419–20. The Court rejected this "unprecedented" expansion of "copyright liability." *Id.* at 421. It started with the text, recognizing that "the protection given to copyrights is wholly statutory." *Id.* at 431. It then acknowledged that the "Copyright Act does not expressly render anyone liable for infringement committed by another"—an omission that stands "[i]n contrast" to the Copyright Act's sister statute, "the Patent Act." *Id.* at 434–35. Despite the "absence of such express language," the Court found, consistent with *Kalem*, that some extreme forms of contributory conduct could result in liability. *See ibid.* But the Court rejected the copyright holder's "novel theory of liability" that would have held a party liable for infringement for "supplying the 'means' to accomplish an infringing activity and encouraging

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[2] Congress appeared to have the facts of *Kalem* in mind when it amended the Copyright Act to reach one who "authorize[s]" an exclusive activity. 17 U.S.C. § 106. That word "ordinarily denotes affirmative enabling action." *Wash. Cnty. v. Gunther*, 452 U.S. 161, 169 (1981) (citing dictionaries and statutes); *see ibid.* (explaining that failing to "prohibit[ ]" something "can hardly be said to 'authorize' anything at all"). Thus, while Congress arguably sought to capture some form of secondary liability with "authorize," it envisioned *Kalem*'s active, purposeful participation in a scheme to infringe. *See* H.R. Rep. No. 94-1476, at 61 (1976); S. Rep. No. 94-743, at 57 (1975) (listing as "example" of contributory infringement "engag[ing] in the business of renting [a copyrighted work] to others for purposes of unauthorized public performance").

that activity through advertisement," *id.* at 436–37, particularly where the party's product was "capable of substantial noninfringing uses," *id.* at 456. Because Congress's limited text "ha[d] not plainly marked [a] course" on secondary liability, the Court recognized that it "must be circumspect in construing the scope of rights created by [the] legislative enactment." *Id.* at 431; *see id.* at 456 (explaining that Court must apply "the copyright statute, as it now reads," rather than policy judgments "that have not yet been written").

The Court adhered to these principles again in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). There, copyright holders sued companies that distributed software to end users. But unlike in *Sony*, the software companies "clearly voiced the objective that recipients use [their software] to download copyrighted works," and they "took active steps to encourage infringement." *Id.* at 923–24. Unsurprisingly, the "vast majority of users' downloads" on the software were "acts of infringement." *Id.* at 923. To assess copyright liability on these facts, the Court again began with the text. It acknowledged that "the Copyright Act does not expressly render anyone liable for infringement committed by another" and thus relied on the narrow "doctrines of secondary liability" recognized in *Sony* and *Kalem*. *Id.* at 930 (alteration accepted). The Court found infringement because the software companies' advertising manifested an "unmistakable" "unlawful objective," *id.* at 940, and "infringement on a gigantic scale," *id.* at 940–41. But the Court cautioned that liability was "premise[d]" on "purposeful, culpable expression and conduct" and did not reach providers of goods or services with "mere knowledge of infringing potential or of actual infringing uses." *Id.* at 937. As in *Kalem*, the conduct was so egregious that it was appropriate to conclude the companies themselves engaged in infringement.

In sum, these cases respect Congress's omission of secondary liability in the Copyright Act's text by requiring a high bar for such implicit liability. Lacking "explicit legislative guidance," *Sony*, 464 U.S. at 431, this Court has acted modestly and "reject[ed] … unprecedented attempt[s] to impose copyright liability" on a secondary basis, *id.* at 421. Without a textual hook, the Court has been "circumspect," *id.* at 431, to ensure "proper respect to the prerogatives of Congress in carrying out the quintessentially legislative act of defining" the scope of copyright liability, *Fischer v. United States*, 603 U.S. 480, 497 (2024) (quotations omitted); *see* U.S. Const. art. I, § 8, cl. 8. It has required a showing of "purposeful, culpable expression and conduct," *Grokster*, 545 U.S. at 937, that manifests an "*unmistakable*" intent to infringe, *id.* at 940 (emphasis added). These limitations have, in practice, limited contributory liability to those who foster infringement in "the vast majority" of use cases, *id.* at 923, or who commit every step to cause infringement except for "the final act," *Kalem*, 222 U.S. at 63. And the Court has contrasted these extreme fact patterns with "mere knowledge of infringing potential or of actual infringing uses," which does not confer liability. *Grokster*, 545 U.S. at 937. The key to the Court's analysis in each case was purposeful, affirmative participation in the infringing conduct that, in effect, rendered the participant itself an infringer.

II. RESPONDENTS FALL FAR SHORT OF THE REQUIRED SHOWING FOR SECONDARY LIABILITY UNDER THE COPYRIGHT ACT.

Despite the Copyright Act's thin textual basis for secondary liability, the Fourth Circuit used it as a launching point for Respondents' aggressive contributory-liability theory. That was error.

This Court has imposed limits on secondary liability even when there is an *express* basis for such liability. In *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), this Court considered whether social-media platforms could be secondarily liable under the Justice Against Sponsors of Terrorism Act ("JASTA") for "aiding and abetting ISIS" because the platforms "allegedly knew that ISIS was using their platforms" to "recruit new terrorists and to raise funds for terrorism." *Id.* at 478. Unlike the Copyright Act, JASTA contains an express cause of action for one "who aids and abets, by knowingly providing substantial assistance." *Ibid.* (quoting 18 U.S.C. § 2333(d)(2)). Acknowledging this express textual hook, *id.* at 484, the Court still held that the platforms were not secondarily liable. The Court explained that the express aiding-and-abetting provision still required a showing of "conscious, voluntary, and culpable participation in another's wrongdoing." *Id.* at 493. And the platforms did not meet that standard based on a mere "alleged failure to stop [terrorists] from using" their services. *Id.* at 500. Indeed, the Court found that it "would run roughshod over the typical limits on tort liability" to hold a "communication provider liable … merely for knowing that the wrongdoers were using its services and failing to stop them." *Id.* at 503; *accord Smith &*

Wesson, 605 U.S. at 292.

These traditional limits on tort liability recognized in *Twitter* have real purchase, and the Copyright Act requires an even higher showing. As explained in detail above, unlike JASTA, the Copyright Act "does not expressly render anyone liable for infringement committed by another." *Grokster*, 545 U.S. at 930; *Sony*, 464 U.S. at 434. This Court thus requires a showing of "*unmistakable*" wrongdoing, *Grokster,* 545 U.S. at 940 (emphasis added), evidenced by "purposeful, culpable expression and conduct," *id.* at 937, that, in effect, rises to the level of direct copyright infringement, *see Kalem*, 222 U.S. at 62–63.

But the Court need not delineate the precise scope of the Copyright Act's secondary liability in this case. That is because, as the Petitioners persuasively explain, the Fourth Circuit failed to abide by even the traditional limits on tort liability recognized in *Twitter*. *See* Pet. Br. 33–36. The Fourth Circuit found Cox liable for contributory infringement because "a reasonable jury could have found that Cox [i] provided [Internet] service with actual knowledge of infringement" and (ii) "failed to address that infringement." Pet. App. 26a (cleaned up). That is the *exact* fact pattern the Court held insufficient in *Twitter*, where the complaint alleged the platforms (i) "kn[ew] that ISIS has used their platforms," and (ii) "knowingly allow[ed] ISIS and its supporters to use their platforms and benefit from their" services by "fail[ing] to detect and remove a substantial number of ISIS-related accounts, posts, and videos." 598 U.S. at 481–82. And in fact, *Twitter* itself drew this analogy, explaining, "we generally do not think that internet or cell service providers incur culpability merely for providing their services to the public writ large." *Id.* at 499. "Nor," the Court explained, "do we think that such providers would normally be described as aiding and abetting" their subscribers' misdeeds. *Ibid.* Because the Fourth Circuit's approach is foreclosed by the traditional limits of tort liability, it plainly cannot meet the Copyright Act's higher standard for secondary liability.

The Fourth Circuit compounded its error with its interpretation of the Act's willfulness standard. It held that an ISP's knowledge of a *subscriber's* infringement establishes willful infringement by the *provider*—increasing the per-work liability cap by a factor of five from $30,000 to $150,000. *See BMG Rts. Mgmt. (US) LLC v. Cox Commc'ns, Inc.*, 881 F.3d 293, 312–13 (4th Cir. 2018). As Petitioners explain, this conception of willfulness is at odds with the principle that one acts willfully when he knows *his own* conduct is unlawful—not that of a third party. *See* Pet. Br. 47–54. The Fourth Circuit should thus be reversed on this ground too.

That error also further widens the chasm between the Fourth Circuit's finding of liability and the Copyright Act's statutory text. That is because *every* secondary infringer necessarily knows of direct infringement by another party. After all, one can hardly take "affirmative steps … to foster infringement," *Grokster*, 545 U.S. at 937, without knowledge of the infringement being fostered. Thus, under the Fourth Circuit's construction of the Copyright Act, *every* secondary infringer is automatically a *willful* infringer. *See* Pet. Br. 47. This means the Fourth Circuit would find that a statute that "does not expressly render anyone liable for infringement committed by another," *Grokster*, 545 U.S. at 930, *sub silentio* renders secondary infringers subject to quintuple damages *by default*.

This Court should reject both the Fourth Circuit's unprecedented conception of secondary liability and its unbounded willfulness standard.

III. THE FOURTH CIRCUIT'S BROAD CONCEPTION OF SECONDARY LIABILITY WOULD UNDERMINE CONGRESS'S EFFORTS TO EXPAND INTERNET ACCESS.

The impacts of the Fourth Circuit's misguided approach would be catastrophic. Congress has recognized that Internet access is a necessity in modern society and accordingly prioritized broadband access for all Americans. In furtherance of this goal, ISPs, infrastructure providers, and the federal government have invested *trillions* to expand access. The Fourth Circuit's approach would undermine these advances and impose far-reaching consequences that are disproportionate to any actual harm caused by copyright infringement and that would have little, if any, deterrent effect on that infringement.

A. Congress Has Deemed Internet Access A Federal Priority.

Congress has found that access to "reliable, high-speed broadband is essential to full participation in modern life in the United States." 47 U.S.C. § 1701(1). This Court has recognized as much, noting that "[w]hile in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general." *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997)).

The Federal Communications Commission ("FCC") has documented the importance of Internet access. "Every single day," the agency recently explained, "Americans turn to their broadband connections for work, education, healthcare, commerce, and communication." *Inquiry Concerning Deployment of Advanced Telecommunications Capability To All Americans In A Reasonable And Timely Fashion*, Notice of Inquiry, 39 FCC Rcd. 10115, ¶ 1 (2024) ("Advanced Telecommunications NOI").

Take education. "[S]ignificant advances in technology … have changed not only the way schools and libraries provide educational resources, but also the way students, school staff, and library patrons access such resources." *Addressing the Homework Gap Through the E-Rate Program*, Report and Order, WC Docket No. 21-31, ¶ 2 (rel. July 29, 2024). Thus, the FCC has found, "[i]t is imperative that schools have the speed and bandwidth required to adequately educate America's children both in schools and at home." Advanced Telecommunications NOI ¶ 49.

Next, consider healthcare. Internet-enabled telehealth facilitates "the efficient exchange of patient and treatment information, reduces geography and time as barriers to care, and provides the foundation for the next generation of health innovation." *Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd. 16678, ¶ 34 (2012). The FCC has highlighted evidence that "[p]roviding access where the patients are at is critical to the patients' hope for better outcomes." *COVID-19 Telehealth Program*, Report, 40 FCC Rcd. 2145, ¶ 35 (2025).

Education and healthcare are just two examples of many. The FCC has found Internet access important for "banking," accessing "[g]overnment services," and entering the "job market." *See Lifeline and Link Up Reform and Modernization*, 30 FCC Rcd. 7818, ¶ 5 (2015). Virtually nothing is untouched. The agency has even found "evidence of *crop yield improvements* from increased Internet penetration rates." Katherine LoPiccalo, *Impact of Broadband Penetration on U.S. Farm Productivity* (FCC Off. of Econ. and Analytics, Working Paper No. 50, 2020) (emphasis added). And the Internet has enabled unprecedented social connections. "Social-media platforms, as well as other websites," now "structure how we relate to family and friends, as well as to businesses, civic organizations, and governments." *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024).

Unsurprisingly, given these benefits, Congress has long made it a goal to "ensure that all people of the United States have access to broadband capability." American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2), 123 Stat. 115, 516. And those are not just hollow words.

Congress has made it a priority to foster Internet access and innovation through competition. In 1996, it concluded that the "Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens." Telecommunications Act, Pub. L. No. 104-104, § 509, 110 Stat. 56, 138 (1996) (codified at 47 U.S.C. § 230(a)(1)). It found that Internet access had "flourished, to the benefit of all Americans, with a minimum of government regulation." 47 U.S.C. § 230(a)(4). And so it made it "the policy of the United States" to "promote the continued development of the Internet" using "the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." *Id.* § 230(b)(1)–(2). Thus, free-market competition was—and is—central to Congress's efforts to expand and improve Internet access.

This competition-centric policy has proven successful. *Amici*'s members have invested *trillions* of dollars to build out nationwide infrastructure to ensure widespread Internet access. *See* USTelecom, *2023 Broadband Capex Report* (Oct. 18, 2024), https://tinyurl.com/82zn2vvx (announcing that broadband providers "invested $94.7 billion in U.S. communications infrastructure in 2023" alone and nearly "2.2 trillion since 1996"). And those efforts have paid off. In 2024, "96% of U.S. adults said they used the Internet." *See* Am. Soc'y Civ. Eng'rs, *2025 Infrastructure Report Card*, at 36 (2025), https://tinyurl.com/mw9fhmt6. And while only 1% of U.S. adults had broadband service in 2000, today that number has increased to 80%. *Ibid.* And it is not just access: household broadband *consumption* has more than doubled in just the last five years. *Id.* at 40.

Congress has also repeatedly supplemented its free-market approach with subsidies to rapidly advance broadband deployment. In the Telecommunications Act of 1996, Congress established the Universal Service Fund, *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2493 (2025), to continuously subsidize communications services, including broadband access, *see Connect America Fund, et al.*, Report and Order, 26 FCC Rcd. 17663, ¶¶ 44–45 (2011). In the American Recovery and Reinvestment Act of 2009, Congress appropriated $4.7 billion to the National Telecommunications and Information Administration ("NTIA") to subsidize the provision and improvement of broadband access across the country. *See* § 6001, 123 Stat. at 128, 512–16 (codified at 47 U.S.C. § 1305). In the same statute, Congress appropriated another $2.5 billion to the United States Department of Agriculture ("USDA") to back "broadband loans and loan guarantees." *Id.* Div. A, Tit. I, 123 Stat. at 118; *see also* Agriculture Act of 2014, Pub. L. No. 113-79, § 6104, 128 Stat. 649, 851–56 (2014) (codified at 7 U.S.C. § 950bb) (expanding program). In 2018, Congress appropriated $600 million to a pilot program to expand rural broadband access, Consolidated Appropriations Act, Pub. L. No. 115-141, § 779, 132 Stat. 348, 399 (2018), and has since "appropriated more than $5 billion" to that effort, John Pender, USDA, ReConnect Aims To Improve Broadband Availability In Rural Areas (Dec. 4, 2023), https://tinyurl.com/2a28pxy7. In the 2020 "ACCESS BROADBAND Act," Congress created a dedicated sub-agency—the Office of Internet Connectivity and Growth—to manage these and other federal programs that support Internet access. *See* Pub. L. No. 116-260, § 903, 134 Stat. 1182, 3210–13 (codified at 47 U.S.C. § 1307); *see also* NTIA, *Office of Internet Connectivity and Growth (OICG)*, https://tinyurl.com/4jp4zsk7 (last visited Sep. 5, 2025).

Congress significantly expanded these efforts in the Infrastructure Investment and Jobs Act of 2021 ("IIJA"). In it, Congress made "a $65 billion investment into broadband." NTIA IIJA Broadband Programs at 1 (Jan. 2022), https://tinyurl.com/5cdry3s7. That investment included a staggering $42 billion for a new NTIA-run Broadband Equity, Access & Deployment ("BEAD") Program to subsidize broadband deployment to hard-to-reach areas across the country. Pub. L. No. 117-58, § 60102(b)(2), 135 Stat. 429, 1184 (2021). In addition, Congress allocated $14.2 billion for the FCC to establish a new Affordable Connectivity Program, *id.* Div. J., Tit. IV, 135 Stat. at 1382, and $2 billion for the USDA's rural broadband efforts, *id.* Div. J. Tit. I, 135 Stat. at 1351.

Congress and President Trump have continued these efforts. In the recently-enacted One Big Beautiful Bill Act, Congress directed NTIA and the FCC to reallocate hundreds of megahertz of spectrum for wireless broadband services, *see* Pub. L. No. 119-21, § 40002, 139 Stat. 72, 128–30 (2025), in order to, *inter alia*, "strengthen rural broadband." The White House, 50 Wins in the One Big Beautiful Bill (June 3, 2025), https://tinyurl.com/4skhc8f2. "[P]ro-investment policies in the One Big Beautiful Bill Act" have already spurred one provider to increase its infrastructure "investment by an additional 1 million fiber customer locations annually." Press Release, AT&T to Accelerate Fiber Network Expansion Following Passage of the One Big Beautiful Bill Act (July 3, 2025), https://tinyurl.com/5rue4cz6. Building on these legislative efforts, NTIA has rapidly reformed the BEAD Program to "speed broadband deployment" and thereby ensure "that American taxpayers receive the greatest 'Benefit of the Bargain' for their historic investment." NTIA, BEAD Restructuring Policy Notice, § 1 (June 6, 2025), https://tinyurl.com/4na924j2.

In short, Congress and industry have invested decades of time and trillions of dollars to achieve ubiquitous Internet access in the United States. As explained below, the Fourth Circuit's approach places that investment in jeopardy.

B. The Fourth Circuit's Approach Would Undermine Congress's Efforts To Expand Internet Access.

The Fourth Circuit would "hold any sort of communication provider liable for any sort of wrongdoing merely for knowing that the wrongdoers were using its services and failing to stop them." *Contra Twitter*, 598 U.S. at 503. Such an unprecedented form of secondary liability would have far-reaching, disastrous consequences for Internet access and the digital economy.

Start at the technical level. The Fourth Circuit's approach is unworkable because it improperly equates an IP address with "specific users." Pet. App. 28a. That is, Cox was deemed liable because it supposedly knew that certain IP addresses—and thus certain users of the IP addresses—were infringing and failed to terminate their service. This conclusion, however, rests on a fundamental misunderstanding of how IP addresses are assigned and used by Internet access subscribers.

In practice, there typically is not a one-to-one match between an IP address and a subscriber. For example, an entire hospital or university might provide Internet access through a single IP address with thousands of individual users. And in cloud and hosting environments, a single IP address often supports hundreds of distinct customers. The result is that if a *single* individual is alleged to have committed copyright infringement through use of a shared IP address, it would—in the Fourth Circuit's view—trigger a duty for the ISP to terminate service to *all* users of that IP address. And these problems are not unique to large, institutional IP addresses. Even in a single household, if a child downloads a copyrighted song, an IP-address-level notice would demand termination of the entire household's Internet access. The result would be that a youthful mistake could cut the whole family off from the Internet. If the parents telework, the family's very livelihood could be at stake. And if the children engage in remote learning, they may be deprived of irreplaceable educational opportunities. The Fourth Circuit's approach would thus cause significant collateral damage to untold numbers of innocent bystanders.

There are also technical issues beyond shared networks. Most Internet infrastructure providers, including some ISPs, use dynamic IP addresses—meaning the IP address changes between each Internet session. The result is that the IP address will be used by different subscribers or different infrastructure components at different times. In these cases, if the clock used by the copyright holder when recording the allegedly infringing activity is not perfectly in sync with the ISP's clock, the IP address could identify the wrong customer. For other infrastructure providers, the IP address may identify an entire component of their infrastructure that is entirely unrelated to the infringement alleged in an IP-address-level notice.

Precisely because of these technical limitations, courts have declined to find infringement on the basis of an IP address alone. *See, e.g.*, *Cobbler Nev., LLC v. Gonzales*, 901 F.3d 1142, 1145 (9th Cir. 2018); *accord* Mohamed Boucadair et al., Internet Engineering Task Force (IETF), Analysis of Potential Solutions for Revealing a Host Identifier (HOST_ID) in Shared Address Deployments § 2 (June 2013), https://tinyurl.com/2um9swaa ("due to address sharing, servers need extra information beyond the source IP address to differentiate the sending host"). Yet, under the Fourth Circuit's approach, these IP-address-level notices would effectively require termination of access to the Internet.

Next, consider the scale of what the Fourth Circuit purports to require of ISPs. Providers are constantly inundated with *millions* of infringement notices. *See, e.g.*, Amended Complaint ¶ 43, *BMG Rts. Mgmt. (US) LLC v. Altice USA, Inc.*, No. 2:22-cv-00471, ECF No. 86 (E.D. Tex. May 12, 2023) ("over a million notices of infringement … by [ISP's] subscribers"); DMCA Authority, *31 DMCA Statistics, Trends, and Insights for 2025*, https://tinyurl.com/3ufdrxwx ("Google received just over 75 million DMCA-related takedown requests in March of 2016 alone."). And while already torrential, these notices are *increasing*.

It is not just the volume of the notices either. The notices, often issued by automated bots run by the copyright holders or copyright monetization vendors, are hardly definitive proof of copyright infringement. They are typically barebones *allegations* of infringement, consisting of only a timestamp and an IP address. They are also often wrong. *See* Pet. Br. 10. And there is typically no way for ISPs to double check them for errors. The Wiretap Act makes it a federal crime for providers to monitor the content of their subscribers' traffic, subject only to narrow exceptions. *See* 18 U.S.C. § 2511. Yet, under the Fourth Circuit's approach, each of these questionable notices—received in the millions each day—could leave an ISP on the hook for $150,000 in damages for each work identified in the notice if they do not terminate service. If the Fourth Circuit's approach were to stand, ten-figure judgments—like the one below—would remain an ever-present threat. That is not a rational copyright regime; it is a minefield.

These burdens are severe for any business—but they fall particularly hard on smaller, rural ISPs. These ISPs are everywhere: the "overwhelming majority of [fixed broadband] providers cover less than 1% of the U.S. population." *2024 Communications Marketplace Report*, Report, 39 FCC Rcd. 14116, ¶ 13 (2024). And thousands of broadband providers "employ[ ] fewer than 250 employees." *Connect America Fund, et al.*, Report and Order, 39 FCC Rcd. 14001, App. B, ¶¶ 31, 33 (2024). For these ISPs, fielding millions of unverifiable infringement notices—with the threat of catastrophic liability hanging over them—is simply unrealistic. And when these small, rural ISPs are inevitably pushed to terminate subscribers on the basis of barebones infringement notices, the results will be draconian.

"[O]nly approximately 35% of households living in rural areas and 49% of households in Tribal areas ha[ve] at least two options for" high-speed broadband. *2024 Communications Marketplace Report*, *supra*, ¶ 45. Thus, for millions of Americans, termination by their ISP leaves them with no meaningful way to access the modern digital economy.

This approach is also nonsensical. Cutting off an entire hospital's Internet access based on notices alleging that a single patient infringed from the hospital's IP address is utterly disproportionate to any harm to the copyright holder. *See* Pet. Br. 15 (explaining that value of an infringing download is, on average, approximately one dollar). And even in cases where an IP address is correctly matched with a single user, mandating termination is hardly a fair outcome. Congress has deemed Internet access "increasingly critical to how individuals … participate in the society, economy, and civic institutions of the United States," 47 U.S.C. § 1722(1)(A), and found that "digital exclusion … carries a high societal and economic cost," *id.* § 1722(2)(A). Worse still, because users on a given IP address often fluctuate—particularly at the institution level—termination would have little, if any, deterrent effect on would-be infringers.

It is no answer that providers can invoke the DMCA's safe harbor. For one, that is not the scheme created by Congress. Rather, ISPs may *choose* to take advantage of the safe harbor. But, if they do not, that choice does not render them liable for their subscribers' alleged copyright infringement. Indeed, the statute expressly disclaims that approach. *See* 17 U.S.C. § 512(*l*); *accord* Pet. Br. 7, 45 (explaining that the "safe harbors *do not* set the bounds of infringing or noninfringing conduct"). Nor, from a practical perspective, does the DMCA's safe harbor resolve the unworkability of the Fourth Circuit's approach. The safe harbor applies only where a defendant has "reasonably implemented … a policy that provides for the termination in appropriate circumstances of … repeat infringers." 17 U.S.C. § 512(i)(1)(A). But words like "reasonable" and "appropriate" are subject to differing interpretations. *See, e.g.*, *Scott v. Harris*, 550 U.S. 372, 383 (2007) (describing "reasonableness" as a "factbound morass"); *Sossamon v. Texas*, 563 U.S. 277, 286 (2011) (finding "the word 'appropriate'" to be "open-ended," "ambiguous," and "context dependent"). When billion-dollar judgments hinge on these wiggle words, a "safe" harbor is anything but. And indeed, judges often decline to apply the "safe harbors in Section 512" on "motions to dismiss." Hunter McGhee, *Reinterpreting Repeat Infringement in the Digital Millennium Copyright Act*, 25 Vand. J. Ent. & Tech. L. 483, 493 n.63 (2023) (citing Eric Goldman, *It's Really Hard to Win a Motion to Dismiss Based on 512(c)-Myeress v. Buzzfeed*, Tech & Mktg. L. Blog (Mar. 5, 2019)).

The burdens of the Fourth Circuit's capacious approach to secondary liability are not limited to Internet access ISPs. The ecosystem that makes the Internet work depends on technical intermediaries that allow the public to share and access content. These include hosting providers, cloud service providers, data centers, traditional websites, and more. These companies, like ISPs, act as conduits for their customers to use the Internet and its various capabilities. These companies too are inundated with a deluge of unverifiable copyright notices demanding

IP-address-level customer termination. Thus, even if not cut off by an ISP, a subscriber may face harsh consequences from companies that manage the Internet's infrastructure and services.

Taken together, the burdens and technical distortions imposed by the Fourth Circuit's approach to copyright liability promise untold damage to Internet access and the entire Internet ecosystem. ISPs will be expected to terminate first and ask questions later—even where the "evidence" of infringement is a barebones notice listing an IP address that might host thousands of innocent users. Failure to abide by that nonsensical regime will saddle providers with the threat of staggering damages that will ultimately take money away from broadband deployment. This monumental threat to Internet access would undermine decades of work by Congress—including its historic $65 billion broadband investment in 2021.

There is no statutory basis for such punitive consequences. An expansive application of copyright liability "can come only from Congress." *Sony*, 464 U.S. at 456. But "[o]ne may search the Copyright Act in vain for any sign that the elected representatives of the millions of people who" use the Internet "have made it unlawful," *ibid*, for ISPs to provide Internet access to an IP address after receiving bare allegations of infringing use, *see* Pet. Br. 43–46. Nor is that a sensible inference in the face of the Copyright Act's "statutory silence." *Central Bank of Denver*, 511 U.S. at 185. "Only a two-faced Congress," *In re MCP No. 185*, 2024 WL 3650468, at *6 (6th Cir. Aug. 1, 2024) (Sutton, C.J., concurring), would prioritize and heavily subsidize Internet access for Americans and then strip them of that very access under an *in terrorem* copyright regime. This Court should reject the Fourth Circuit's extreme interpretation of the Copyright Act that would put "Congress's statutes … at war with one another." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

CONCLUSION

The Court should reverse.

Respectfully submitted,

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