

In the  
Supreme Court of the United States

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JAIME ROGOZINSKI,

*Petitioner,*

v.

REDDIT, INC.,

*Respondent.*

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

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**BRIEF OF AMICUS CURIAE  
OWN YOUR DATA FOUNDATION  
IN SUPPORT OF PETITIONER**

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## INTEREST OF THE AMICUS CURIAE

OWN YOUR DATA FOUNDATION (“OYDF”) <sup>1</sup> is a nonprofit organization dedicated to promoting personal data ownership, digital identity integrity, and individual rights online. OYDF’s mission is to empower individuals to control their own data and creations in the digital space. The organization educates policy-makers and the public on the importance of users retaining ownership over their digital identities and content.

OYDF’s interest in this case stems from its far-reaching implications for who owns user-generated digital assets—a question at the core of OYDF’s advocacy. If left unreviewed, the decision below would cement a rule that online platforms, by virtue of providing hosting infrastructure, may appropriate the brands, identities, and cultural products that individuals and communities build on those platforms. Such a holding directly undermines the principle that individuals “own” their digital selves and creations.

The outcome of this case will not only determine ownership of the WallStreetBets community trademark; it will set a precedent for digital ownership rights nationwide. Petitioner Jaime Rogozinski’s experience—creating a vibrant online community from

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution intended to fund its preparation or submission. Pursuant to Sup. Ct. R. 37.2, Amicus provided timely notice of its intent to file this brief to all parties on December 2, 2025.

scratch only to be ousted while the platform claims his creation—exemplifies the systemic risk to user rights that OYDF was founded to oppose.

The breadth of amici supporting this petition underscores that the question presented carry extraordinary national importance transcending the immediate parties. A diverse coalition—from the Chamber of Digital Commerce to the Digital Asset Trade Association, Glazers Media, and the Open Source AI Foundation—have signaled their intent to participate. OYDF submits this brief to focus the Court’s attention on the threats to digital identity ownership, innovation, and user-driven culture that demand this Court’s review.



## **SUMMARY OF ARGUMENT**

This petition presents a question of first impression: Whether the owner of a digital platform that hosts user-created communities may claim trademark ownership over the names and goodwill of those communities—thereby dispossessing the individuals who conceived, built, and cultivated them—solely by virtue of providing the technical infrastructure on which the communities operate.

The Ninth Circuit reasoned that Reddit, Inc. was the provider of the relevant services for trademark analysis and therefore concluded that Petitioner failed to plausibly allege ownership of the WALLSTREET-BETS mark. *See Rogozinski v. Reddit, Inc.*, No. 24-735, 2025 WL 1650019 (9th Cir. June 11, 2025)

(mem.). That holding cannot be reconciled with this Court’s foundational trademark precedents.

First, the decision contravenes over a century of trademark jurisprudence establishing that ownership follows actual use in commerce—not mere infrastructure provision. This Court has repeatedly held that “the right to a particular mark grows out of its use, not its mere adoption.” *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97 (1918). The WallStreetBets community’s goodwill was earned by Petitioner’s years of cultivation—not by Reddit’s provision of server space.

Second, the ruling creates an irreconcilable tension with Section 230 of the Communications Decency Act. Reddit has repeatedly invoked Section 230 immunity by representing itself as a “passive conduit” for user content—not the “information content provider.” Yet the platform now claims to be the “source” of the WallStreetBets service for trademark purposes. This “sword and shield” approach—claiming passive-host immunity while asserting ownership rights—represents precisely the inconsistent position-taking that the doctrine of judicial estoppel forbids.

Third, the decision threatens to chill innovation and speech in what this Court has recognized as “the modern public square.” *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). If platforms can appropriate user-created communities at will, talented individuals will think twice before investing their time and creativity in new online ventures under someone else’s domain. The chilling effect on speech, association, and innovation is real and palpable.

Fourth, this Court has consistently rejected intellectual property overreach that would create “a species of perpetual patent and copyright, which Congress may not do.” *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003). Allowing platforms to claim trademark ownership of user-created community names constitutes precisely the kind of IP overreach this Court has rejected.

Finally, the question presented is of exceptional national importance. Over 100,000 active subreddits exist on Reddit alone, and countless user-created communities populate other platforms. Whether the law treats those users as creative contributors with protectable interests—or merely as unpaid contributors whose work can be commandeered—will shape the future of the digital economy, the creator ecosystem, and free expression online.

The Court should grant certiorari to address these far-reaching issues and prevent a dangerous precedent from taking root.



## ARGUMENTS

### I. The Decision Below Contravenes Foundational Trademark Principles Protecting Individual Ownership of User-Created Brands

The Ninth Circuit’s holding rests on a startling proposition: that by hosting an online community, a social media platform may be treated as the provider of the relevant services for trademark purposes, even though that treatment forecloses the creator’s ability

to plausibly allege ownership of the community’s trademark and brand identity. *See Rogozinski*, 2025 WL 1650019, at \*1. This holding represents a fundamental departure from bedrock trademark principles that have governed American commerce for over a century.

### **A. Trademark Ownership Arises from Use in Commerce, Not Mere Hosting**

This Court’s trademark jurisprudence has consistently emphasized that trademark rights arise from use in commerce—not from mere adoption or infrastructure provision. In *United Drug Co. v. Theodore Rectanus Co.*, this Court established the foundational principle that “the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will.” 248 U.S. 90, 97 (1918).

A trademark right, as the Court explained, is “not predicated upon anything in the nature of property,” but rather “the trade-mark really is but a protection for the good will, and not the subject of property except in connection with an existing business.” *Id.* at 98. This principle—that trademark ownership is inseparable from the underlying commercial activity generating goodwill—remains the cornerstone of American trademark law.

In *Hanover Star Milling Co. v. Metcalf*, this Court defined the trademark function: “The primary and proper function of a trade-mark is to identify the origin or ownership of the article to which it is affixed.” 240 U.S. 403, 412 (1916).

This Court’s most recent trademark decision confirms that source identification remains paramount. In *Vidal v. Elster*, 602 U.S. 286 (2024), the Court emphasized that a mark can only fulfill its goals “to the extent that it ‘tells the public who is responsible for [the] product.’” *Id.* (quoting *Jack Daniel’s Properties, Inc. v. VIP Prods. LLC*, 599 U.S. 140, 146 (2023)).

In *Park ’N Fly, Inc. v. Dollar Park & Fly, Inc.*, Justice O’Connor confirmed that trademark protection exists to “secure to the owner of the mark the goodwill of his business and to protect the ability of consumers to distinguish among competing producers.” 469 U.S. 189, 198 (1985). Similarly, in *Qualitex Co. v. Jacobson Products Co.*, Justice Breyer articulated that trademark law “quickly and easily assures a potential customer that this item—the item with this mark—is made by the same producer as other similarly marked items that he or she liked (or disliked) in the past.” 514 U.S. 159, 163-64 (1995).

The Ninth Circuit’s own precedent aligns with these principles. In *Sengoku Works Ltd. v. RMC International, Ltd.*, the court stated unequivocally: “It is axiomatic in trademark law that the standard test of ownership is priority of use.” 96 F.3d 1217, 1219 (9th Cir. 1996). That axiom should have controlled here.

Critically, the Trademark Trial and Appeal Board has addressed the specific question of user-created communities on platforms. In *In re Florists’ Transworld Delivery, Inc.*, 119 USPQ2d 1056 (TTAB 2016), the Board held that “an applicant generally will not be able to rely on use of its social media account to support an application for registration of a mark for [the service of creating an online community for

users].” *Id.* at 1057. But the Board left open whether creators who “carved out a smaller, online ‘community’” on a platform could claim rights—the precise question presented here. *Id.*

Applying these principles to the present case: Petitioner conceived the WALLSTREETBETS name in 2012 and, through nearly a decade of hands-on leadership, gave that name its distinct meaning. Petitioner set the community’s tone, enforced its rules, and became inextricably identified with the quality and character of the services that WallStreetBets provided to its millions of members. Under this Court’s precedents, Petitioner’s control over the nature and quality of the services should have established his trademark ownership.

## **B. Control Over Quality Determines Trademark Ownership**

The trademark ownership inquiry turns not on who provides hosting infrastructure, but on who exercises control over the nature and quality of services offered under the mark. This principle flows directly from the function trademarks serve: signaling to consumers the source and quality of goods or services.

The Ninth Circuit has recognized the critical importance of quality control in determining trademark rights. In *Barcamerica Int’l USA Trust v. Tyfield Importers, Inc.*, the court explained that “naked licensing”—permitting use without quality control—“is inherently deceptive and constitutes abandonment of any rights to the trademark by the licensor.” 289 F.3d 589, 598 (9th Cir. 2002); *see also Freecycle-Sunnyvale v. Freecycle Network*, 626 F.3d 509, 515

(9th Cir. 2010) (reaffirming this principle). As the Ninth Circuit has explained, naked licensing “may result in the trademark’s ceasing to function as a symbol of quality and a controlled source.” *Freecycle-Sunnyvale*, 626 F.3d at 515.

Under these principles, Petitioner—not Reddit—exercised the quality control that determines trademark ownership. Petitioner established the community’s distinctive culture, curated its content standards, moderated discussions, and shaped the very identity that made WallStreetBets a recognizable brand. Reddit provided server space; Petitioner provided everything that gave the mark meaning to consumers.

The brick-and-mortar analogy is instructive. A shopping mall provides infrastructure—space, electricity, security—that enables stores to operate. Yet if a small business builds a loyal customer base and a famous brand while renting space in the mall, the mall owner cannot claim the business’s trademark as its own simply because it provided the services of maintaining the building. The law sensibly recognizes that the goodwill attached to the brand was earned by the business controlling the nature and quality of its product—not by the landlord.

This Court has recognized heightened expectations in digital information contexts. In *Carpenter v. United States*, Chief Justice Roberts noted that “[a] person does not surrender all Fourth Amendment protection by venturing into the public sphere.” 585 U.S. 296, 308 (2018). Similarly, in *Riley v. California*, the Court emphasized that modern devices “hold for many Americans ‘the privacies of life,’” and “[t]he fact that technology now allows an individual to carry such information in his hand does not make the information

any less worthy of the protection for which the Founders fought.” 573 U.S. 373, 403 (2014).

The same principle should apply to digital identity and community ownership. That Petitioner built his community on a platform’s servers does not strip him of the ownership rights he would possess had he built the same community on his own infrastructure.

## **II. The Ruling Creates an Impermissible Tension With Section 230 Immunity**

Reddit’s assertion of trademark ownership exposes a fundamental contradiction in its legal posture. In defending against liability for user-generated content, platforms like Reddit routinely invoke Section 230 of the Communications Decency Act, which provides:

“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

47 U.S.C. § 230(c)(1).

The statute defines “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet.” 47 U.S.C. § 230(f)(3). Reddit has consistently represented itself as not the information content provider with respect to user-created subreddits.

The seminal Section 230 case, *Zeran v. America Online, Inc.*, established that “[b]y its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the

service.” 129 F.3d 327, 330 (4th Cir. 1997). The Second Circuit has confirmed that, “[i]n light of Congress’s objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.” *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019).

The Ninth Circuit’s en banc decision in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC* drew the critical distinction:

“A website operator can be both a service provider and a content provider: If it passively displays content that is created entirely by third parties, then it is only a service provider with respect to that content. But as to content that it creates itself, or is ‘responsible, in whole or in part’ for creating or developing, the website is also a content provider.”

521 F.3d 1157, 1162 (9th Cir. 2008) (en banc).

The court emphasized that “[w]ith respect to the defamatory content, the website operator was merely a passive conduit and thus could not be held liable.” *Id.* at 1173. The distinction turns on whether the platform “becomes much more than a passive transmitter of information provided by others” and instead “becomes the developer, at least in part, of that information.” *Id.* at 1166.

Reddit cannot have it both ways. When sued for content on its platform, Reddit claims to be a mere passive conduit deserving of Section 230 immunity. But when claiming trademark ownership, Reddit asserts it is the source of the WallStreetBets service—the very developer status it disclaims for immunity purposes.

This Court recognized in *Gonzalez v. Google LLC* that Section 230's application to modern platform conduct raises significant questions. 598 U.S. 617, 622 (2023). The tension between immunity claims and ownership claims represents precisely the kind of doctrinal inconsistency this Court should address.

The doctrine of judicial estoppel forecloses the kind of position-switching Reddit attempts here. In *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001), this Court identified the factors for applying judicial estoppel: whether the party's later position is "clearly inconsistent" with its earlier position and whether the party "succeeded in persuading a court to accept that earlier position." Reddit has repeatedly persuaded courts to accept its passive host position for Section 230 purposes. It should not now be permitted to claim it was the active source of user-created communities for trademark purposes.

### **III. Platform Overreach Chills Innovation and Threatens the Modern Public Square**

This Court has recognized the constitutional significance of online forums. In *Packingham v. North Carolina*, Justice Kennedy's majority opinion declared:

"While 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, and social media in particular."

582 U.S. 98, 104 (2017).

The Court further emphasized that social media platforms “can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard,” allowing individuals “to ‘become a town crier with a voice that resonates farther than it could from any soapbox.’” *Id.* at 107. Critically, “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.” *Id.*

In *Reno v. ACLU*, Justice Stevens similarly recognized that “[t]he vast democratic forums of the Internet” have not been “subject to the type of government supervision and regulation that has attended the broadcast industry.” 521 U.S. 844, 868 (1997).

The protection of associational rights is equally relevant. In *NAACP v. Alabama ex rel. Patterson*, Justice Harlan’s unanimous opinion established:

“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment.”

357 U.S. 449, 460 (1958).

The Court recognized “the vital relationship between freedom to associate and privacy in one’s associations,” emphasizing that “[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of

freedom of association, particularly where a group espouses dissident beliefs.” *Id.* at 462.

Justice Frankfurter’s concurrence in *Wieman v. Updegraff* warned of regulatory overreach that has an “unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice.” 344 U.S. 183, 195 (1952) (Frankfurter, J., concurring). The same “chilling effect” concern applies when platform overreach threatens user communities.

The decision below sends a clear message to the next generation of innovators who might otherwise build the online communities of tomorrow: whatever you create can be taken from you at the platform’s discretion. Such a message strikes at the heart of the “creator economy” and the ethos of open innovation that has fueled the Internet’s growth.

The chilling effect on self-governance is equally concerning. A critical innovation of platforms like Reddit is that they allow user self-governance: volunteer moderators set rules, police behavior, and maintain the community’s ethos. This model leverages local expertise and fosters accountability among users. But the effectiveness of self-governance depends on moderators believing their role is respected and secure from arbitrary removal. If the law conclusively sides with platforms’ right to remove and replace community leaders at will—and to expropriate the community’s brand identity—the social contract underpinning self-governance is broken.

#### **IV. The Question Presented Is of Exceptional National Importance**

This Court has consistently rejected intellectual property overreach that would extend proprietary rights beyond their proper bounds. In *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, Justice O’Connor’s unanimous opinion established the core limitation:

“From their inception, the federal patent laws have embodied a careful balance between the need to promote innovation and the recognition that imitation and refinement through imitation are both necessary to invention itself, and the very lifeblood of a competitive economy.”

489 U.S. 141, 146 (1989).

The Court emphasized that federal IP laws “must determine not only what is protected, but also what is free for all to use,” *id.* at 151, and warned against creating “a species of mutant copyright law that limits the public’s ‘federal right to copy and to use’ expired copyrights.” *Id.* at 165.

In *Sony Corp. of America v. Universal City Studios, Inc.*, Justice Stevens emphasized that IP serves public purposes:

“The monopoly privileges that Congress may authorize are neither unlimited nor primarily designed to provide a special private benefit. Rather, the limited grant is a means by which an important public purpose may be achieved. . . . [P]rivate motivation must ultimately serve the cause of promoting broad public availability.”

464 U.S. 417, 429, 432 (1984).

Most directly on point, *Dastar Corp. v. Twentieth Century Fox Film Corp.* addressed trademark's proper limits. Justice Scalia's unanimous opinion cautioned:

“Thus, in construing the Lanham Act, we have been ‘careful to caution against misuse or over-extension’ of trademark and related protections into areas traditionally occupied by patent or copyright. . . . ‘The Lanham Act does not exist to reward manufacturers for their innovation in creating a particular device; that is the purpose of the patent law and its period of exclusivity.’”

539 U.S. 23, 34 (2003).

The Court concluded that allowing the expansive trademark claim at issue “would be akin to finding that § 43(a) created a species of perpetual patent and copyright, which Congress may not do.” *Id.* at 37. The same concern applies here: allowing platforms to claim trademark ownership of user-created community names would expand trademark doctrine far beyond its proper function.

In *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, this Court reaffirmed that “[t]rade dress protection must subsist with the recognition that in many instances there is no prohibition against copying goods and products.” 532 U.S. 23, 29 (2001). And in *Kellogg Co. v. National Biscuit Co.*, Justice Brandeis held: “Sharing in the goodwill of an article unprotected by patent or trade-mark is the exercise of a right possessed by all—and in the free exercise of which the consuming public is deeply interested.” 305 U.S. 111, 122 (1938).

The economic stakes are immense. Reddit's estimated revenue for the first three quarters of 2025 was approximately \$1.48 billion—revenue fueled by user engagement in subreddits. Over 100,000 active subreddits exist on Reddit alone, and countless more user-created communities populate other platforms. Whether the law treats those users as creative contributors with protectable interests, or merely as unpaid contributors whose work can be commandeered, is a question with enormous consequences for the digital economy.

Research confirms the scale of volunteer labor at issue. One study estimated that unpaid social media moderators perform labor worth at minimum \$3.4 million annually on Reddit alone. *See Hanlin Li et al., Measuring the Monetary Value of Online Volunteer Work* (2022). This Court's guidance is needed to ensure that the legal framework does not permit platforms to appropriate the value created by this volunteer labor.

Finally, the Court's intervention would restore confidence that the judiciary is attentive to ensuring justice on new technological frontiers. There is growing public concern that individuals have lost control over their personal data, their online identities, and even the communities they cherish. By taking up this case, the Court can directly engage with one facet of that broad concern—the notion of ownership and control in online life—and ensure the rule of law keeps pace with technological change.



## CONCLUSION

For the foregoing reasons, and those set forth in the petition, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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