IN THE SUPREME COURT OF THE UNITED STATES

No. ____

SHOSH YONAY, an individual; YUVAL YONAY, an individual,

Applicants,

v.

PARAMOUNT PICTURES CORPORATION,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. §2101(c) and this Court's Rule 13.5, Applicants Shosh Yonay and Yuval Yonay ("Applicants") respectfully request a 58-day extension of time, to and including July 10, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this matter. The court of appeals entered its judgment on January 2, 2026, and denied Applicants' timely rehearing petition on February 12, 2026. The petition for a writ of certiorari is currently due May 13, 2026. See this Court's Rule 13.3. Under this Court's Rule 13.5, this application is being filed at least 10 days before that deadline. This Court has jurisdiction under 28 U.S.C. §1254(1). A copy

of the court of appeals' opinion is attached as Exhibit A, and a copy of the order denying rehearing is attached as Exhibit B. As discussed below, the Ninth Circuit's opinion reflects one side of a longstanding and acknowledged conflict among eight federal circuits.

There is good cause for the extension. Undersigned counsel was not involved in the proceedings below and will require additional time to familiarize himself with the extensive record and to prepare a petition that is helpful to the Court. In addition, counsel has been and will remain heavily engaged with the press of other matters.

1. This case arises from a copyright dispute involving the film *Top Gun: Maverick*. In 1983, *California Magazine* published an article by Ehud Yonay ("Yonay") entitled "Top Guns." Ex. A at 4. That article discussed the history, culture, and setting of the Navy's Top Gun program. *Ibid.* It focused on two lieutenants who go by callsigns "Yogi" and "Possum" and described their decisions to become fighter pilots and experience in the Top Gun program. *Ibid.* The article used a style called "New Journalism," where "'writers use extensive imagery and subjective expression to present facts with the colorful voice of fiction.'" *Id.* at 4-5.

Shortly after "Top Guns" was published, Yonay granted Respondent Paramount Pictures Corporation all rights to the article in exchange for a fixed sum of money and an agreement to credit Yonay in any movies produced by Paramount that were substantially based upon or adapted from the article. Ex. A at 5. In 1986,

Paramount released the feature-length movie *Top Gun* to great commercial success. The credits state the movie was "[s]uggested by" Yonay's article. *Ibid.*

After Yonay's death in 2012, Applicants became the owners of the copyright in "Top Guns." Ex. A at 6. Under the Copyright Act, rightsholders such as Applicants may terminate a license agreement at will "at any time during a period of five years beginning at the end of thirty-five years from the date" the license was granted. 17 U.S.C. §203(a)(3). In 2020, Applicants timely exercised that right to terminate Yonay's agreement with Paramount. Ex. A at 6. Two years later, Paramount released a *Top Gun* sequel titled *Top Gun: Maverick*. *Ibid.* Paramount did not credit Yonay. It also did not make any effort to secure rights from Applicants. *Id.* at 7.

2. Applicants filed a complaint against Paramount, asserting copyright-infringement and breach-of-contract claims. Ex. A at 7. The district court entered summary judgment for Paramount on both claims.

3. As relevant here, the district court concluded that *Maverick* did not infringe the copyright in the "Top Guns" article. Ex. A at 7.[1] To show infringement, plaintiffs ordinarily must establish the "copying of constituent elements of the [copyrighted] work that are original." *Feist Publ'ns, Inc.* v. *Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). The allegedly infringing work need "not be literally identical"

[1] The district court also rejected Applicants' breach-of-contract claims, and the Ninth Circuit affirmed. Ex. A at 8, 21-26.

to the original. 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[A] (2021). "[S]ubstantial similarity" is sufficient. *Ibid.* Nor is the analysis confined to a comparison of individual, protectable elements. As this Court has recognized, copyright protection also extends to an author's "choices as to selection and arrangement" of individually unprotectable elements, so long as those choices "are made independently * * * and entail a minimal degree of creativity * * * *" *Feist*, 499 U.S. at 348.

In this case, the district court acknowledged that the "Top Guns" article and *Maverick* have "'some similarities.'" Ex. A at 7. But the court thought those similarities were "'based upon unprotected elements' like facts about the Top Gun program, 'general plot ideas, [and] familiar stock scenes and themes.'" *Ibid.* Setting those purportedly unprotected elements aside, the court concluded that the remaining, protected elements of the works were not "'substantially similar'" as required to find infringement. Dist. Ct. Dkt. 105 at 7 (quoting *Cavalier* v. *Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002)). The court excluded the contrary opinion of Applicants' expert, faulting him for failing to filter out the works' unprotected elements and for offering what the court deemed a "subjective" comparison of the works' overall "'feel[ ].'" *Id.* at 4. The court also rejected Applicants' alternative argument that, even if some elements of "Top Guns" were not individually protectable, *Maverick* had copied Yonay's protectable selection and arrangement of those elements. *Id.* at 11-12.

4. The Ninth Circuit affirmed. The court of appeals applied its longstanding two-part approach to assessing whether two works are "substantially similar." Ex. A at 9. Under that approach, a copyright holder "must satisfy both an extrinsic test and an intrinsic test." *Ibid.* The analysis begins with the "extrinsic test." Under that test, "'a court must filter out and disregard'" any "'non-protectible elements'" of the copyrighted work and then "'assess[] the objective similarities of the two works'" based solely on the protectable elements that remain. *Id.* at 9-10. That process requires "'analytical dissection,'" or "breaking the works 'down into their constituent elements, and comparing *those elements* for proof of copying as measured by "substantial similarity."'" *Swirsky* v. *Carey*, 376 F.3d 841, 845 (9th Cir. 2004) (emphasis added). If the court is satisfied the works are "substantially similar," the case proceeds to a factfinder to apply the "intrinsic test"—a "subjective" assessment of the works that "tests 'for similarity of expression from the standpoint of the ordinary reasonable observer, with no expert assistance.'" Ex. A at 9-10.

Under the "extrinsic test," the Ninth Circuit held as a matter of law that the protectable elements of Yonay's "Top Guns" article were not sufficiently similar to *Maverick* to raise a triable issue of infringement. Ex. A at 11-21. The Ninth Circuit first addressed the individual elements Applicants alleged were misappropriated—the article's plot, characters, dialogue, theme, mood, setting, and pace. *Id.* at 11-16. The court acknowledged that the "Top Guns" article "contains much original,

protected expression." *Id.* at 11. But the court of appeals agreed with the district court that "the similarities between the article and the film" did "not involve protected expression." *Ibid.*

The court then considered whether Paramount had copied the article's selection and arrangement of elements. Ex. A at 17-21. The court acknowledged that "[a] selection and arrangement of elements can be original and protectable, whether or not the elements themselves are protectable." *Id.* at 18-19. But the court rejected the notion that this required a holistic comparison of the two works. *Id.* at 18. Rather, the court required Applicants to isolate some "'pattern, synthesis, or design'" from the article "that is both 'particular' and 'coherent.'" *Id.* at 19. The court did not deny that Applicants identified patterns common to both works. *Id.* at 19-20. But it concluded that those patterns were too abstract to be protectable. *Id.* at 20.

The Ninth Circuit also affirmed the exclusion of Applicants' expert. The court of appeals concluded that the district court did not abuse its discretion in finding the expert's opinion unhelpful because the expert did not dissect protectable elements from unprotectable elements, as required by the "extrinsic" test. Ex. A at 21-24.

5. The Ninth Circuit denied Applicants' petition for rehearing en banc. Ex. B.

6. The Ninth Circuit's decision presents an important and recurring question that has long divided the courts of appeals—the proper starting point for a

comparison of asserted and allegedly infringing works. Consistent with longstanding Ninth Circuit precedent, the decision below held that courts must start the substantial-similarity analysis by "'filter[ing] out and disregard[ing]'" the asserted work's "'non-protectible elements.'" Ex. A at 10. The Fourth Circuit follows the same approach.[2] By contrast, the First, Second Third, Fifth, Seventh, and D.C. Circuits hold that "a court is *not* to dissect the works at issue into separate components and compare only the copyrightable elements." *Boisson* v. *Banian, Ltd.*, 273 F.3d 262, 272 (2d Cir. 2001) (emphasis added).[3]

7. The conflict is longstanding and acknowledged. See *Murray Hill Publ's, Inc.* v. *Twentieth Century Fox Film Corp.*, 361 F.3d 312, 317 (6th Cir. 2004) (noting differences between Second and Ninth Circuit approaches to dissection). It is deep, involving eight different courts of appeals. And it is untenable. It cannot be that an author in Hollywood (within the Ninth Circuit) must show that an allegedly

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[2] See *Copeland* v. *Bieber*, 789 F.3d 484, 489 (4th Cir. 2015). The Sixth and Eleventh Circuits have implied dissection is appropriate. See *Stromback* v. *New Line Cinema*, 384 F.3d 283, 294-295 (6th Cir. 2004); *Herzog* v. *Castle Rock Ent.*, 193 F.3d 1241, 1257 (11th Cir. 1999); but see *Oravec* v. *Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218, 1224 n.5 (11th Cir. 2008) (criticizing *Herzog*).

[3] See, *e.g.*, *Situation Mgmt. Sys., Inc.* v. *ASP Consulting LLC*, 560 F.3d 53, 59 (1st Cir. 2009) ("a court should be careful not to over-dissect the plaintiff's work"); *Knitwaves, Inc.* v. *Lollytogs Ltd. (Inc.)*, 71 F.3d 996, 1002 (2d Cir. 1995); *Franklin Mint Corp.* v. *Nat'l Wildlife Art Exch., Inc.*, 575 F.2d 62, 65-66 (3d Cir. 1978); *Apple Barrel Prods., Inc.* v. *Beard*, 730 F.2d 384, 387-388 (5th Cir. 1984); *Design Basics, LLC* v. *Lexington Homes, Inc.*, 858 F.3d 1093, 1105 (7th Cir. 2017) (noting that "'dissection is generally disfavored'" in assessing copying of protectable elements); *Atkins* v. *Fischer*, 331 F.3d 988, 993 (D.C. Cir. 2003) ("When comparing designs, it is not sufficient to dissect separate components and dissimilarities.").

infringing work is substantially similar to the individual protected elements of his work, while an author in New York (within the Second) need only show substantial similarity in the two works' overall look and feel.

8. Applicants seek a 58-day extension of time within which to file a petition for a writ of certiorari seeking review of the Ninth Circuit's decision, to and including July 10, 2026. An extension is warranted for the following reasons:

Applicants' counsel of record in this Court, Jeffrey A. Lamken, was only recently retained by petitioners. The requested extension will provide sufficient time for counsel to conduct additional research, prepare a concise petition directed to the considerations of value to this Court, and see to its printing and submission. Mr. Lamken also has been, and will remain, heavily engaged with the press of other matters before this Court and other courts in the time since the rehearing petition was denied.[4]

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[4] Those matters include: a supplemental brief in *Nielsen* v. *Watanabe*, No. 25-417 (U.S.), to be filed on May 5, 2026; oral argument in *Vir2us, Inc.* v. *Sophos Inc.*, No. 25-1158 (4th Cir.) on May 7, 2026; oral argument in *VLSI Technology LLC* v. *Patent Quality Assurance LLC*, Nos. 23-2298, 23-2354 (Fed. Cir.), on May 8, 2026; a reply brief in *Anonymous Media Research Holdings, LLC* v. *Roku, Inc.*, No. 25-2129 (Fed. Cir.), currently due on May 22, 2026; an opening brief in *Ramot at Tel Aviv University* v. *Cisco Systems, Inc.* Nos. 26-1277, 26-1280 (Fed. Cir.), due on May 22, 2026; a reply brief in *C.R. Bard, Inc.* v. *Atrium Medical Corp.*, Nos. 25-5210, 25-5211 (9th Cir.), currently due on May 25, 2026; a brief in opposition to a petition for a writ of certiorari in *Finesse Wireless LLC* v. *AT&T Mobility LLC*, No. 25-953 (U.S.), due on May 26, 2026; a reply brief in *Corel Software LLC* v. *Microsoft*, No. 25-2167 (Fed. Cir.), currently due on June 1, 2026; a reply brief in *Trinka* v. *Collins*, No. 25-5341 (D.C. Cir.), currently due on June 3, 2026; and a response brief in *PalTalk Holdings,*

In view of those considerations, Applicants respectfully request an extension of 58 days, to and including July 10, 2026, within which to file a petition for a writ of certiorari.

May 1, 2026

Respectfully submitted.

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Inc. v. *Webex Communications, Inc.*, No. 25-1766 (Fed. Cir.), currently due on June 22, 2026.