

Appeal Nos. 15-55500, 15-55523, 15-56026

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PERFECT 10, INC.,

Plaintiff-Appellant,

v.

GIGANEWS, INC. AND LIVEWIRE SERVICES, INC.,

Defendants-Appellees.

On Appeal from the U.S. District Court for the Central District of California
Hon. André Birotte
Case No. 2:11-cv-07098-AB-(JPRx)

**BRIEF *AMICI CURIAE* OF
THE INTERNET INFRASTRUCTURE COALITION,
THE INTERNET ASSOCIATION, THE COMPUTER &
COMMUNICATIONS INDUSTRY ASSOCIATION, AND
THE CONSUMER TECHNOLOGY ASSOCIATION
IN OPPOSITION TO APPELLANT'S PETITION FOR PANEL
REHEARING AND REHEARING EN BANC**

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INTEREST OF *AMICI*¹

The Internet Infrastructure Coalition (“i2Coalition”) is the non-profit voice of companies from the Internet infrastructure industry. i2Coalition members are primarily small-to-medium-sized businesses with global businesses in web hosting, data centers and Cloud infrastructure, as well as companies who provide services to those industries.²

The Internet Association is the unified voice leading Internet companies and their global community of users.³ The Internet Association is dedicated to advancing public policy solutions that protect internet freedom, promote innovation and economic growth, and empower customers and users.

The Computer & Communications Industry Association (“CCIA”) represents more than twenty large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and

¹ No counsel for any party authored this brief in whole or part; no party or counsel made a monetary contribution intended to fund its preparation or submission; and no person other than *amici* made such a contribution. Counsel for both parties consented to the filing of this brief.

² A complete list of the i2Coalition’s members is available at <https://www.i2coalition.com>.

³ A complete list of The Internet Association members is available at <http://www.internetassociation.org>.

Internet products and services—companies that collectively generate more than \$540 billion in annual revenues.⁴

The Consumer Technology AssociationTM (“CTA”) is the trade association representing the \$292 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies – 80 percent are small businesses and startups; others are among the world’s best known brands – enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, and standards development. CTA also owns and produces CES® – the leading trade show for all consumer technologies.⁵

As i2Coalition, Internet Association, and CCIA observed in their March 2, 2016 *amici curiae* filing in this case, when predictability and clarity in copyright law decrease so does investor appetite to support innovation. The inflation in doctrine sought by *amici* Motion Picture Association of America (“MPAA”) and Recording Industry Association of America (“RIAA”) would make it almost impossible to invest in online services or connected devices without accepting severe and potentially incalculable risks of statutory damages. CTA joins these *amici* in urging

⁴ A complete list of CCIA members is available at <https://www.ccianet.org/members>.

⁵ A complete list of the Consumer Technology Association’s members is available at <http://cta.tech/Membership/Membership-Directory.aspx>.

that this Court not accept the invitation tendered by the MPAA and the RIAA in support of copyright troll Perfect 10.

SUMMARY OF ARGUMENT

The panel previously correctly held in this appeal that vicarious liability requires a causal connection between infringement of the works-in-suit and a direct financial benefit to the defendant. *Amici* MPAA and RIAA now join “serial litigant” Perfect 10 in asking this Court to rehear the case in order to discard this requirement. Doing so would have little effect on cases brought against pirates, but would severely and unnecessarily threaten innovation and investment in lawful online services and connected devices.

Eliminating the causal connection between financial benefit and infringement of works-in-suit would result in a vicarious liability test unprecedented in its scope, effectively turning it into a strict liability regime. Such a change would pose limitless and ruinous statutory damages liability for technology innovators based on inconsequential infringements by even a tiny minority of users, whether or not the service or device provider was aware of the infringement or had the capacity (which Giganews lacks in this case) to specifically identify or control it.

Vicarious liability is a potent weapon. It can impose liability for customer misconduct even where the defendant engaged in no volitional act

to bring the infringements about, yet exposes the defendant to statutory damages on a per-work basis. As applied to online services and connected products serving global audiences, simple multiplication can produce calculations running into billions of dollars.

Where appropriately tailored to deter and remedy piracy, statutory damage awards may be just. But without any link between a plaintiff's copyrighted works and a defendant's financial benefit, vicarious liability goes from secondary to plenary. It is vital that vicarious liability retain this sensible and predictable outer bound, lest it chill legitimate technology innovation, to the detriment of copyright holders, consumers, and innovators alike. In the words of the Supreme Court, "[t]he more artistic protection is favored, the more technological innovation may be discouraged; the administration of copyright law is an exercise in managing the trade-off." *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 928 (2005).

ARGUMENT

I. Severing The Causation Requirement Would Harm Online Services That Handle Enormous Amounts Of Non-Copyrighted And Copyrighted Material On Legitimate Bases.

This Court should reject the entertainment industry *amici*'s invitation to broaden the judge-made doctrine of vicarious liability by waiving the

need to establish a causal connection between a plaintiff's works-in-suit and a defendant's financial benefit.⁶

Conventionally, “[v]icarious liability attaches if the [defendant] had both the (1) ‘right and ability to supervise the infringing activity’ and (2) ‘a direct financial interest’ in the activity.” *Luvdarts LLC v. AT&T Mobility LLC*, 710 F.3d 1068, 1071 (9th Cir. 2013). In some cases, courts have held that the direct financial interest prong of the test could be satisfied where infringement of the plaintiff's works serves to attract users to the service. *See, e.g., Adobe Sys. Inc. v. Canus Productions, Inc.*, 173 F. Supp. 2d 1044, 1050-51 (C.D. Cal. 2001) (“*Canus Prods.*”) (discussing *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996)).⁷ The MPAA and the RIAA now ask the Court to expand this variation of “direct financial benefit” to swallow the entire test, eliminating the requirement that infringement of the plaintiff's works serve as the “draw” to consumers, and thus permitting *any* alleged infringement to satisfy the “direct financial

⁶ *Amicus* MPAA asks: “The court, at a minimum, should amend its opinion to make clear that where the availability of a particular type of infringing content, such as movies or music, acts as a draw for a defendant's users, and where the defendant has but does not exercise the right and ability to stop or limit that infringement, the defendant is vicariously liable for infringement of works of that type—and the plaintiff is not required to show that its specific works drew infringing users.” Br. at 2.

⁷ No such “draw” was found in *Canus Prods.*, in which summary judgment for plaintiff was denied.

benefit” prong. In short, Perfect 10’s *amici* ask that any copyright holder (or, as in this case, a copyright troll) be permitted to recover statutory damages by relying on allegations of *injury to some third party*. This would produce a secondary liability doctrine that, unlike direct liability, lacks the requirement of causation in fact. Any such inflation of this secondary doctrine would, as the Supreme Court warned, “block the wheels of commerce.” *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 441 (1984).

A. Vicarious Liability, Backed By Statutory Damages, Is Already A Potent Weapon For Copyright Holders.

The judicial doctrine of vicarious liability has expanded well beyond its common law roots. Backed by mandatory statutory damages calculated on a per-work basis, it represents an exceptionally potent weapon for plaintiffs. Conversely, because the number of works encountered increases according to the number of online participants, a judgment of secondary liability based on general measures of user conduct may have ruinous consequences for the providers of an online service or connected device.

The requirement that vicarious liability involve a “right and ability to supervise the infringing activity”⁸ is intended to define and bound the potential liability of those who provide a technology framework that others

⁸ *Luvdarts*, 710 F.3d at 1071-72.

might, of their own volition, use to infringe. A service provider that establishes a framework for governing users, hence some capacity to “supervise,” may be held vicariously liable in this Circuit to the extent that the present framework fails to prevent infringement. *See A&M Records, Inc. v. Napster Inc.*, 239 F.3d 1004, 1024 (9th Cir. 2001). Yet modern online services frequently must reserve the right to exclude users, in order to address abuse, harassment, non-payment, or copyright infringement. In fact, the entertainment industry *amici themselves* demand that online platforms must retain and assert the right to terminate users associated with infringement.⁹ As a result, copyright holders often argue, as *amici* MPAA and RIAA do here, that the “right and ability to supervise” element of vicarious liability is satisfied as a matter of course where online services and connected devices are concerned.

While courts have rightly rejected such claims, expanding notions of secondary liability nevertheless attract unscrupulous plaintiffs whose business model consists of “being infringed.” These troll entities seek

⁹ *See, e.g.*, MPAA, Comments of the Motion Picture Association of America Regarding Development of the Joint Strategic Plan on Intellectual Property Enforcement, at 14 (Oct. 16, 2015), <http://www.mpa.org/wp-content/uploads/2015/10/IPEC-Strategic-Plan-10.16.15.pdf>; RIAA, Music Community Written Submission Regarding Development of the Joint Strategic Plan on Intellectual Property Enforcement, at 12 (Oct. 16, 2015), <http://www.riaa.com/wp-content/uploads/2016/01/Music-Community-Submission-for-IPEC-2015-7177168.pdf>.

windfall damages unrelated to, and without proof of, any actual harm to themselves or benefit to a defendant. The district court explained that Perfect 10 “is a serial plaintiff operating on a self-proclaimed business model of litigation,” and hoped its ruling would “discourage serial litigants from bringing unmeritorious suits and then unnecessarily driving up litigation costs in order to drive a settlement.”¹⁰

This Court has previously held that vicarious liability may attach even in the absence of intent or knowledge on the part of the defendant, and even in the presence of overwhelmingly noninfringing uses. *See Napster*, 239 F.3d 1004 at 1020-22.¹¹ As a result, the requirement to establish a causal connection between a plaintiff’s works and a defendant’s alleged benefit may often be the only limit on vicarious liability claims.

¹⁰ *Perfect 10 v. Giganews*, 2015 U.S. Dist. LEXIS 54063, at *36 (C.D. Cal. Mar. 24, 2015).

¹¹ The DMCA “safe harbor” immunity, while crucial to technology innovators, does not address these concerns. It applies only to four specific online functions, and explicitly does not modify or displace underlying law, *see* 512(l), and thus logically crafted secondary liability principles are independently important. In fact, the entertainment industry *amici* have argued elsewhere that the DMCA does not apply to vicarious liability. *See, e.g.*, Brief for BMG Music et al. as Amici Curiae Supporting Plaintiff-Appellant at 24 n.5, *Ellison v. AOL* (No. 02-55797) (9th Cir. Aug. 30, 2002); Brief for the Recording Industry of America et al. as Amici Curiae Supporting Plaintiffs-Appellants at 26-31, *UMG Recordings, Inc. et al. v. Veoh Networks, Inc.* (No. 09-56777) (9th Cir. Apr. 27, 2010); Brief of Viacom International Inc. and NBC Universal, Inc. as Amici Curiae Supporting Plaintiff at 8-14, *Tur v. YouTube, Inc.* (No. 06-4436) (C.D. Cal. May 21, 2007).

B. The Entertainment Industry Amici Ask The Court To Further Relax Proof Of Vicarious Liability To A Standard Looser Than That For Direct Infringement.

By removing the critical limiting principle of causation in the context of secondary liability, the entertainment industry *amici* would make proof requirements for this secondary doctrine less strict, yet more consequential, than the standard for direct infringement itself. Even direct infringement, though a strict liability tort, requires some evidence of causation by volitional conduct of the defendant. *See Religious Tech. Center v. Netcom On-line Comm.*, 907 F. Supp. 1361, 1370 (N.D. Cal. 1995); *Perfect 10 v. Giganews*, 847 F.3d 657, 666-67 (9th Cir. 2017). Eliminating the causal connection between the works-in-suit and the “draw” of the defendants’ service would empower any rightsholder to hold any technology provider strictly liable for any infringement, irrespective of knowledge, noninfringing uses, actual harm to the plaintiff, or indeed any volitional conduct by the defendant.

This would be a giant step away from the limits and safeguards maintained in this Circuit to date. To establish the “obvious and direct financial benefit” prong of vicarious liability, a plaintiff must furnish evidence that the “draw” injured the plaintiff and benefited the defendant, not any indeterminate third parties. One clear example of this principle can

be found in *Canus Prods.*, 173 F. Supp. 2d at 1052-53. That case involved a vicarious liability claim by software maker Adobe against a computer trade show organizer. In rejecting Adobe’s claim, the court required Adobe to furnish evidence that the sale of “infringing *Adobe software* provide[d] a significant draw.” *Id.* (emphasis added). *See also Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004) (explaining that the analysis depends on “receiv[ing] a direct financial benefit from providing access to *the infringing material*,” not just any infringement on the Internet) (emphasis added). As *amici* would have it, Adobe could have prevailed by demonstrating that attendees were “drawn” by the availability of other software products, and the trade show operator would be vicariously liable for *every* infringement by any exhibitor of *any* copyrighted work, including software, posters, books, and music, even in the absence of any knowledge or notice.

To so expand on *Fonovisa* “would provide essentially for the limitless expansion of vicarious liability into spheres wholly unintended by the court.” *Canus Prods.*, 173 F. Supp. 2d at 1051. This would conflict with limits that this Court and Congress have carefully established for every other form of copyright liability. Indeed, no precedent stands for the sweeping proposition that the entertainment industry *amici* urge: that infringements of

works unrelated to a plaintiff, by users who have no relationship to that plaintiff's works, should form the basis for vicarious liability.

C. Expansion Of The Vicarious Liability Doctrine Would Threaten Investment In Internet Services And Connected Products That Are Vital To Users, Proprietors, And The Economy.

The modern Internet economy is founded on services that enable user interaction, creativity, and sharing. Investment and innovation in such services and in connected products depend upon reasonably bounded and predictable doctrines of secondary liability. Individuals and enterprises alike can use the Internet to disseminate content with low barriers to entry, whether that involves photo sharing, blogging, social media, or cloud computing. While the game-changing effect of Internet commerce on the economy is difficult to fully capture, U.S. officials observe that efforts to quantify the “economic contribution of the Internet have generally found that, *inter alia*, it has made significant contributions to U.S. output, employment, consumer welfare, trade, innovation...”¹² Today Internet

¹² See U.S. Int’l Trade Comm’n, *Digital Trade in the U.S. and Global Economies, Part 1*, at i (July 2013), <http://www.usitc.gov/publications/332/pub4415.pdf>.

commerce contributes an estimated 15% to GDP growth¹³ and rightsholders increasingly depend on online platforms to distribute protected works.¹⁴

Doing away with causation in the context of secondary liability would have enormous consequences for those who would innovate and invest in Internet services and connected products. Combined with the mandatory minimum statutory damages award of \$750, aggregated vicarious liability claims can have disproportionately disastrous consequences for modern online platforms. Actions by a tiny minority of users can quickly impose billions in damages risk. *See, e.g.*, Pamela Samuelson & Tara Wheatland, *Statutory Damages in Copyright Law: A Remedy in Need of Reform*, 51 Wm. & Mary L. Rev. 439 (2009).¹⁵ Yet such is the potential consequence of

¹³ *See* Matthieu Pélessié du Rausas *et al.*, *Internet Matters: The Net's Sweeping Impact on Growth, Jobs and Prosperity*, at 16, McKinsey Global Institute (2011).

¹⁴ *See, e.g.*, U.S. Department of Commerce Internet Policy Task Force, *Green Paper on Copyright Policy, Creativity, and Innovation in the Digital Economy*, at 77-80 (July 2013), <https://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>.

¹⁵ In *Arista Records LLC v. Lime Group LLC*, 784 F. Supp. 2d 313, 317 (S.D.N.Y. 2011), the court rejected as “absurd” a trillion-dollar damages theory by *amicus* RIAA. The court observed that RIAA was proposing an award of “more money than the entire music recording industry has made since Edison’s invention of the phonograph in 1877.” *Cf.* U.S. Department of Commerce Internet Policy Task Force, *White Paper on Remixes, First Sale, and Statutory Damages*, at 79-81 (Jan. 2016), <https://www.uspto.gov/sites/default/files/documents/copyrightwhitepaper.pdf>.

statutory damage awards under a rule as promoted now by the MPAA and the RIAA.

As *amici* i2Coalition, Internet Association, and CCIA pointed out in their March 2, 2016 brief at 17-18: “In order to have the ability to control and supervise user conduct *sua sponte*, a service provider would have to have actual knowledge of each specific infringing activity. But OSP’s systems and networks daily support the transmission of data by billions of users.¹⁶ It would be “‘simply impossible for a search engine – to say nothing of an ISP or bandwidth conduit – to cull through the literally billions of links and messages they process every day and identify all those messages and Web pages that may create liability under any law.’ Mark A. Lemley, *Rationalizing Internet Safe Harbors*, 6 J. on Telecomm. & High Tech. L. 101, 110 (2007).”¹⁷ These *amici* pointed out that “[i]f such a requirement were imposed, many Internet companies, particularly smaller enterprises that

¹⁶ The Statistics Portal estimated that in 2015, 3.17 billion people worldwide used the internet. Statista, *Number of worldwide internet users from 2000 to 2015 (in millions)*, <http://www.statista.com/statistics/273018/number-of-internet-users-worldwide/> (last visited Feb. 26, 2016).

¹⁷ Professor Lemley was quoted further: “This is not just a technical problem of assessing those petabytes of data, though comparing everything on the Web to everything ever copyrighted in real time is computationally infeasible with existing or any foreseeable technology. Rather, the deeper problem is that there is no way to automate the process of determining legal liability.” *Id.*

today serve hundreds of millions of users worldwide, would collapse under this impossible burden. Simply put, a small business that provides services to 1,000 other small businesses would not have the resources to create and staff a mechanism that would meet the standards proposed by Perfect 10 to be shielded from liability.” Br. at 18-19.

Amici urge this Court, on this rehearing motion, to refrain from removing a foundational element on which Internet services and connected devices have been established.

II. The Panel Opinion Provides No Help To Pirates, But The Entertainment Industry *Amici*'s Proposed Revision Would Provide Great Assistance To Copyright Trolls.

Pirate services by their nature will still lose copyright cases, whether under theories of direct liability, or judicially developed theories of contributory, vicarious, and inducement liability, to say nothing of technological protection measure and rights management information-related claims, *see* 17 U.S.C. §§ 1201-1204, among the numerous other statutory causes of action available to rightsholders. *See* Brian T. Yeh, *Intellectual Property Rights Violations: Federal Civil Remedies and Criminal Penalties Related to Copyrights, Trademarks, and Patents*, at 5-8, 14-17, Congressional Research Service (2012).

Plaintiffs properly recover where there is tangible evidence of supervision, or a business model calculated to infringe so as to result in actual harm to the plaintiff, and benefit to the defendant, from *the* infringement of the plaintiff's rights in content. In *Disney Enterprises, Inc. v. Hotfile Corp.*,¹⁸ the court cited such factors in finding not only the defendant vicariously liable, but also the co-defendant liable in his personal capacity. In *A&M Records, Inc. v. Napster, Inc.*¹⁹ the defendant was found contributorily and vicariously liable based on the design of a system calculated to exploit infringement. In *Arista Records LLC v. Lime Group*²⁰ the defendant was found liable for direct infringement, inducement, common law copyright infringement, and unfair competition. In *Columbia Pictures Industries, Inc. v. Fung*²¹ the defendant was liable for inducement. In fact, in most of these cases, courts need not linger on the causation requirement, as the defendants are engaged in infringements of a broad range of popular films, television programs, and music, and the plaintiffs represent the principal owners of the majority of those works.

The main beneficiaries of divorcing secondary infringement from financial benefit, in contrast, would be copyright trolls such as Perfect 10.

¹⁸ 2013 U.S. Dist. LEXIS 172339 (S.D. Fla. Sept. 20, 2013).

¹⁹ 239 F.3d 1004.

²⁰ 784 F. Supp. 2d 398 (S.D.N.Y. 2011).

²¹ 710 F.3d 1020 (9th Cir. 2013).

The troll playbook, as exemplified by Perfect 10, is to *avoid* meaningfully notifying defendants of infringing uses of their content, so as to inhibit a good-faith defendant from remediating the infringements in compliance with the procedures established in Section 512. The Congress enacted DMCA Section 512 in 1998 to establish a safe harbor limitation on liability for legitimate online service providers, in return for an obligation to take down allegedly-infringed content when identified in properly-compliant notices to a duly-appointed agent of the OSP. In taking this step Congress was, as this Court has observed, “loath to permit the specter of liability to chill innovation that could also serve substantial socially beneficial functions.” *UMG Recordings v. Shelter Capital Partners*, 718 F.3d 1006, 1014 (9th Cir. 2013).²² Tens of thousands of online services have since complied with the formalities necessary to qualify for this protection,²³ producing an

²² Congress repeatedly emphasized the intended breadth of these protections, explaining that they should “protect qualifying service providers from liability for all monetary relief for direct, vicarious and contributory infringement.” H.R. Rep. No. 105-796, at 73 (1998); S. Rep. No. 105-190, at 20, 40 (1998); H.R. Rep. No. 105-551, pt. 2, at 50 (1998).

²³ See U.S. Copyright Office, Old Directory of DMCA Designated Agents 1998-2016, http://www.copyright.gov/onlinesp/list/a_agents.html. Technologies that consumers use daily have been held insulated from potentially crippling liability in part because of the Section 512 immunity. See, e.g., *UMG Recordings, Inc. v. Shelter Capital Partners*, 718 F.3d 1006; *Viacom Int’l Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110 (S.D.N.Y. 2013).

increasingly global standard that has been incorporated into numerous international agreements.²⁴

Perfect 10 seeks to avoid participating in Congress's solution for remedying online infringement, a path that *amici* MPAA and RIAA now urge the Court to prescribe for all plaintiffs. Instead of sending compliant notices to assure removal of infringing content, Perfect 10 sent notices calculated only to *claim* DMCA compliance, without enabling the recipient to reliably act upon the notice or to stop the alleged infringement.²⁵ Under the rule proposed by the entertainment industry *amici*, such notices would impose liability on a service provider regardless of whether the content is

²⁴ See, e.g., United States Trade Agreements with Australia, art. 17.11(29); Bahrain, art. 14.10(29); Chile, art. 17.11(23); Colombia, art. 16.11(29); Dom. Rep.-Central America, art. 15.11(27); Morocco, art. 15.11(28); Oman, art. 15.10(29); Panama, art. 15.11(27); Peru, art. 16.11(29); Singapore., art. 16.9(22); South Korea, art. 18.10(30). The above referenced agreements can be found at Office of the U.S. Trade Representative, Free Trade Agreements, <https://ustr.gov/trade-agreements/free-trade-agreements>.

²⁵ *Amici* i2Coalition, Internet Association, and CCIA discussed this practice in relation to Section 512 in their Brief *Amici Curiae* of the Internet Infrastructure Coalition, the Internet Association and Computer and Communications Industry Association In Support of Defendants-Appellees, at 20-27 (March 2, 2016). The panel in this case has already determined that, based either on its own knowledge or on the faulty notices provided by Perfect 10, Giganews would not have been able to reliably remove the content claimed to be infringed. *Perfect 10 v. Giganews*, 847 F.3d at 671-72. Perfect 10's gaming of the system in this respect was among the litigation conduct cited by the district court in its award of attorneys' fees to appellee Giganews. *Perfect 10 v. Giganews*, 2015 U.S. Dist. LEXIS 54063, at *25-30.

taken down—making the business of “being infringed” an attractive path for all copyright holders, and an easier route to economic success than legitimate licensing could be. Rightsholders would be encouraged to submit non-compliant DMCA notices, insufficient to reliably identify the infringing content in question.²⁶

CONCLUSION

For the foregoing reasons, Perfect 10’s Petition for Rehearing should be denied.

Respectfully submitted,

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²⁶ The DMCA does not otherwise impose upon intermediaries an affirmative burden to police users and prevent their misconduct. Section 512(m) states unequivocally that service providers have no obligation to monitor users’ communications for possible infringements. *See* 17 U.S.C. § 512(m)(1).

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that this brief *amicus curiae* is proportionately spaced, has a typeface of 14 points, and contains 3,927 words.

DATED: April 17, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2017, I electronically filed the foregoing Brief *Amicus Curiae* of i2Coalition, The Internet Association, Computer & Communications Industry Association, and Consumer Technology Association in Support of Defendants-Appellees, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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