No. 10-94

In the Supreme Court of the United States

WHITNEY HARPER,
Petitioner,
v.
MAVERICK RECORDING COMPANY; UMG RECORDINGS INC.; WARNER BROTHERS RECORDS INC.; SONY BMG MUSIC ENTERTAINMENT,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CHARLES NESSON, NED SNOW, RAY BECKERMAN, MICHAEL RUSTAD, RAYMOND KU, RALPH D. CLIFFORD, ROBERT HEVERLY, LLEWELLYN JOSEPH GIBBONS, MALLA POLLACK, AND CAROLINE WILSON AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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MOTION OF AMICUS CURIAE FOR LEAVE TO FILE BRIEF IN SUPPORT OF PETITIONER

Amici curiae respectfully move for leave of Court to file the accompanying brief. Counsel for both parties have been given notice and consented to its filing.

As stated below in the full text of the Statement of Interest, *Amici* are professors, scholars, and practitioners of law who are concerned with the integrity of copyright law and with assuring that enforcement of copyright holders' rights is justly balanced against considerations for those who might infringe unknowingly.

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are professors, scholars, and practitioners of law who specialize in the intersection of law, technology, and copyright. *Amici* join in this brief in their individual capacity and not as representatives of any institutions or organizations with which they are affiliated.

Charles Nesson is the William F. Weld Professor of Law at Harvard Law School as well as a Founder and Faculty Co-Director of the Berkman Center for Internet & Society.

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Ray Beckerman is an attorney at law whose practice includes entertainment, copyright, and internet law among many others. He is a respected analyst and commentator on the R.I.A.A.'s litigation campaign through his blog "Recording Industry vs. the People."

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1. No counsel affiliated with either party to this case authored the brief nor made any monetary contribution.

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Robert Heverly is an Assistant Professor of Law at Albany Law School of Union University.

Llewellyn Joseph Gibbons is an Associate Professor of Law at University of Toledo College of Law.

Malla Pollack is co-author of *Callmann on Unfair Competition, Trademark, and Monopolies* (4th ed.)

Caroline Wilson is a Lecturer in Intellectual Property Law at the University of Southampton School of Law, Highfield Campus. She is a Founding Member of the Institute for Law and the Web at Southampton.

Amici are concerned with the integrity of copyright law and with assuring that enforcement of copyright holders' rights is justly balanced against the longstanding policy of shielding unknowing

infringers of copyright from the imposition of excessive liability.

This case raises substantial questions about the application of statute to defeat any consideration of innocence of intent in imposing statutory damages for infringement. We are particularly concerned that this case, if unreviewed, will affirm the Seventh Circuit's unprecedented assertion that a downloader cannot claim innocent infringement because she "readily could have learned, had she inquired, that the music was under copyright."[2] As a consequence, the absurd conclusion is reached whereby notice in the record stores, never seen by the infringer, is sufficient to put a digital user, in his or her home, on notice of copyright liability.

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2. *BMG Music v. Gonzalez*, 430 F.3d 888, 892 (7th Cir. Ill. 2005).

SUMMARY OF ARGUMENT

17 U.S.C. § 504(c) provides for an innocent intent response to allegations of copyright infringement. The so-called "innocent infringer" defense is *not* a defense against a finding of infringement. "Innocent infringers" are still liable for infringement, but a court may recognize proven innocence of intent by reducing the minimum statutory penalty if the defendant sustains the burden of proving she "was unaware and had no reason to believe" her actions infringed upon a copyright (17 U.S.C. § 504(c)(2)).

The District Court held that there were triable issues of fact as to whether Whitney Harper, a young girl who downloaded mp3 song files, was able to invoke such a defense against damages. Harper possessed no knowledge or understanding of file sharing or copyright infringement. She believed that downloading songs using the internet was akin to listening to music on the radio.

The Fifth Circuit panel below ruled that the innocent infringement defense was precluded because plaintiffs had posted copyright notices for the songs she downloaded on the jacket-covers of physical recordings of the songs in record stores. There was no evidence that the defendant had ever seen or had access to such jacket-covers.

The appeals court based this ruling on its interpretation of § 402 of the Copyright Act (adopted

pre-internet), dealing with notice of copyright on "phonorecords." Section 402 specifies that "notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright" (17 U.S.C. 402(c)), and that, "If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords *to which a defendant in a copyright infringement suit had access*, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages ...." (17 U.S.C. 402(d) [emphasis added]). Thus a defendant cannot claim innocent intent when she copies a physical object with a notice of copyright clearly posted on it (the phonorecord being copied).

However, plaintiffs have neither claimed nor introduced any evidence that there was any notice on the digital music files the defendant downloaded. In fact, these files did not have notice. Under a plain reading of the statute, they are clearly not sufficient to trigger § 402(d).

Copyright notices on album covers in record stores are no substitute. To a person viewing an internet file in cyberspace who genuinely does not know or have reason to know that the file is copyrighted, they provide neither actual notice nor reasonable notice of copyright. They provide no basis for disregarding Harper's state of mind in downloading digital files.

In the plain language of the statute, the mp3 files were *the* copies to which she "had access." These copies bore no notice. As such, § 402(d) simply does not apply.

Not all music is copyrighted and, from the viewpoint of the music downloader on the internet, copyright-restricted files often appear to be no different from noncopyrighted files. When a downloader makes a subjectively earnest and objectively reasonable mistake of fact about copyright status, genuinely lacking the intent to infringe a copyright, innocent infringement ought to be available to mitigate damages. Of course, a court may determine if the downloader possessed reasonable knowledge of infringing activity, based on all the circumstances including the sophistication of the defendant[3] and the notoriety of the copyrighted work, and subsequently rule that an innocent infringement defense is not be available.

It is wrong to interpret a law passed by Congress to protect innocent infringers in an analog world so as to deny the mitigation of damages to digital infringers. Assuming away the problem confronting internet users by saying that they have access to copyright notices posted on records in record stores

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3. *D.C. Comics, Inc. v. Mini Gift Shop*, 912 F.2d 29 (2d Cir. N.Y. 1990) (Upholding the district court finding that "the lack of business sophistication and the absence of copyright notice on the infringing goods formed a proper basis for a determination of innocent infringement and [explaining] the failure of defendants to inquire as to the source of the goods.").

does not comport with the statutory concern for partially shielding innocent infringers against damages. This unwarranted interpretation of the statute by the court below imposes an undue burden on all internet users, no matter how young and unschooled, to determine whether files accessible to them in cyberspace are copyrighted, on pain of compulsion to pay immense, unmitigated monetary damages.

This interpretation of section 402 by the Fifth Circuit would totally and incorrectly eliminate innocent infringement as a consideration in actions for statutory damages against individual, noncommercial internet users. Infringement is now defined merely as the copying of copyrighted bits, a strict liability offense in which all defenses are foreclosed even as an issue for the mitigation of damages, leading inexorably to judgment and awards of substantial statutory damages for every act of copying.

The alternative to redefining copyright infringement as a strict liability offense is merely upholding the statute as written and by its literal terms. Only this case and one other, both resulting from the Recording Industry Association of America's litigation campaign against individual internet users, have held that notice posted on records in record stores can eliminate the innocent infringement defense. Even where, *arguendo*, the defendant can prove she was reasonable in believing

that a digital file is free to copy, her innocent state of mind is to be ignored. This pernicious doctrine deserves review before it becomes permanent and a precedential foundation for further impositions on internet users.

I. A Brief History of Innocent Infringement

Notice requirements in copyright were the first means adopted to avoid the injustice of imposing infringement liability on those unaware of the infringing nature of their actions. The legislative and judicial history of notice requirements confirms that the statutory provisions were designed to require that copyright notice be placed on the physical objects in question. Mandatory notice on physical objects made infringement easy to avoid and allowed liability to be eliminated for those who infringed innocently. Gradually, as copyright formalities liberalized, the consideration for unknowing infringers diminished to solely the mitigation of damages.

During the first two centuries of copyright law, the risk of liability for infringing innocently was minimal because copying was so difficult and the risk of committing any act of infringement was relatively small. Fewer works were copyrighted, fewer exclusive rights existed, and the means to copy were prohibitively expensive. In the late 18th-century, only about five percent of all copyrightable works were in fact copyrighted. Copyright law only guarded against verbatim duplicative copying of an entire work or substantial portion thereof. *See generally,* R. Anthony Reese, *Innocent Infringement*

in U.S. Copyright Law, 30 COLUMBIA JOURNAL OF LAW & THE ARTS, 133, 135-145 (2007). Furthermore, when Congress ratified the Copyright Act of 1790, there were only 127 printing establishments in the entire United States.[4]

Since infringement was so narrowly defined and the technology to infringe was concentrated in the hands of very few professional printers, those at risk of infringement liability were only those who might utilize copyright laws for their own works. Indeed, copyright law was originally penned only for professionals whose livelihoods depended, in part, on an understanding of copyright. *See* Reese at 141.

However, even when only a small segment of the population would have known of and been subject to the strictures of copyright, Congress still sought to protect those who might infringe innocently. The copyright system in the early years was profoundly concerned with avoiding the imposition of liability on those who might infringe unknowingly since copyright is less intuitive than laws pertaining to tangible property. Review of the first 200 years of American copyright can shed light on how the idea of *notice* was to be used in the context of infringement.

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4. Lawrence Lessig, *Copyright's First Amendment*, 48 UCLA L. REV. 1057, 1061 (2001).

A. The Introduction of Notice Requirements in Anglo-American Copyright Law

Despite the general improbability of infringement during the late 18th-century, the British Statute of Anne from 1709 demonstrates a genuine concern for those who might infringe unknowingly at the very beginning of Anglo-American copyright law:

> ...many Persons may through Ignorance offend against this Act unless some Provision be made whereby the Property in every such Book as is intended by this Act to be secured to the Proprietor or Proprietors thereof may be ascertained...[5]

The British system of notification relied on a private registry in London maintained by the Stationers' Company—a guild that regulated printers, publishers, and booksellers. The Statute of Anne conceived of the registry as a single, central, and complete authority that made avoiding offense a simple exercise in constructive notice. Since printers were concentrated in London, the time and investment necessary to produce a book during the 18th-century made checking the register before any commercial printing a relatively quick and worthwhile endeavor.

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5. Statute of Anne, 1710, 8 Ann. C. 19 (Eng.).

Over time, the central and comprehensive repository envisioned by the Statute of Anne proved imperfect due to the gradual spread of printers outside the London area, difficulties in manually searching through years of records, and a general lack of participation from printers. Nevertheless, the Statute established the vital premise that potential infringers must be given an effective means of determining the copyright status of any work so that they may easily avoid infringing innocently. This policy would inform the next 280 years of copyright law. *See* Reese at 147.

The 1790 Copyright Act used the Statute of Anne as a model but added the further requirement of recordation in a domestic newspaper for four weeks.[6] Despite the addition of public announcement, this too was an imperfect protection for the potential innocent infringer. The copyright term was 14 years during the 1790s; with over 200 newspapers across 13 districts, the process of searching 14 years of records scattered throughout the country created a cumbersome process for verifying copyright. In the 1830s, Justice Baldwin aptly characterized how this system failed to comport with the intent of providing notice to would-be infringers:

> A publication in any newspaper, printed anywhere in the United States for four weeks, would be compliance with the law; it cannot be pretended, that this

6. 1790 Copyright Act § 3 (repealed 1831).

> would answer any valuable purpose as notice, or for information, to warn any person from invading the copyright.[7]

In 1802, the 1790 Act was amended to require that copyright holders additionally "give information by causing the copy of the record...to be inserted at full length in the title-page or in the page immediately following the title of every such book or books..."[8] By mandating that the record be reproduced in the book itself and every reproduction of that book in circulation, Congress effectively made disclosure of copyright as easy as flipping a few pages into any work. Of this solution, Justice Baldwin remarked:

> The publishing [of] the copy of the record on the title leaf...was effectual notice, for none who would look at the book would fail to see the impress of copyright on the title-page, or the next succeeding one; so that none could offend ignorantly. [Publication of notice in a newspaper] was mere legal implied notice; [publication of notice on every printed copy of a work] was a notice in fact, which no man could either overlook or mistake.[9]

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7. *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834) (Baldwin, J., dissenting).

8. Act of April 29, 1802, ch. 36 § 1, 2 Stat. 171, 171 (repealed 1831).

9. See *Wheaton v. Peters, supra*, note 7.

Because of the requirement to place notice in every work, one would necessarily have encountered copyright notice before potential infringement. Anyone "who would look at the book" would see the notice. For almost 200 years, copyright rules were written with this assumption in mind.

B. The Necessity of Culpable Mental State in Early Statute and Jurisprudence

The combination of narrowly defined rights and the requirement of actual notice accompanying each copyrighted work was a more effective means to prevent unknowing infringement, but its efficacy was not absolute. For example, if an intentional infringer could remove the copyright notice from a copyrighted work, a third party would have no easy way of determining that the manuscript was in fact an infringing copy and that any subsequent copying would have constituted infringement. The same risk applied to those in the business of selling books, maps, and other works that may have been copyrighted. It would certainly be an undue burden for a vendor to verify the copyright status of every book in a large bookstore to ensure that the copies from each individual supplier were authorized. To this end, mental state historically was held to play a significant role in the determination of liability.

In the Statute of Anne, the liability of vendors who sold infringing copies was statutorily limited to those who were aware of the infringing nature thereof. Penalties applied only to those who, without consent of the copyright holder, sold or reprinted infringing works "...*[k]nowing* the same to be so Printed or Reprinted, without the Consent of the Proprietors."[10] Thus, sellers were entirely absolved from liability for unknowing infringement.

Despite an expansion of the categories covered by U.S. copyright law in the 19th-century, the courts never neglected those who might infringe innocently. For example, by mid-century the U.S. courts held that close imitation of a copyrighted work could also infringe. In each case however, liability for infringement by imitation was limited to those acting with culpable mental state.[11] Similar expansions took place in the judiciary regarding informational works, abridgment, and fair use; nevertheless

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10. Statute of Anne, 1710, 8 Ann. C. 19 (Eng.) (emphasis added).

11. *See* Bartlett v. Crittenden, 2 F. Cas. 967, 969 (C.C.D. Ohio 1849) (No. 1,076) ("...the discrepancies that appear only show the *intent* of the copyist" [emphasis added]). *See* Emerson v. Davies, 8 F. Cas. 615, 623 (C.C.D. Mass. 1845) (No. 4,437) (Justice Story on colorable alterations: "...the question [is] whether [the defendant] has, in substance, copied...from the plaintiff's work, with merely colorable alterations and devices *to disguise the copy*, or whether the resemblances are merely accidental..." [emphasis added]). *See* Daly v. Palmer, 6 F. Cas. 1132 (S.D.N.Y. 1868) ("The true test of whether there is piracy or not, is to ascertain whether there is a servile or *evasive* imitation of the plaintiff's work." [emphais added]).

conscientious consideration for innocent infringement prevailed.

In the 1831 Copyright Act, congress expanded the scope of copyright to include certain derivative uses of visual and musical works. Still, this act explicitly confined liability to those selling or reproducing copyrighted works "...either on the whole, or by varying, adding to, or diminishing the main design *with intent to evade the law.*"[12] Thus, culpable mental state was a requirement in both jurisprudence and federal statute through 1909.

Notably, the receipt of actual notice, either by service of process or other written notice, defeated many of the aforementioned defenses of innocent infringement.[13] In other words, personalized notice supplied directly to the infringer defeated innocent infringement. These exceptions illustrate the deference granted to actual notices provided directly to the infringer and are the likely progenitors to the § 402(d) limitation on innocent infringement.

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12. 1831 Copyright Act (Act of Feb. 8, 1831), ch. 16 § 7, 4 Stat. 436, 438) (repealed 1870) (emphasis added).

13. For example, Act of Aug. 24, 1912, ch. 356 § 25(b) (repealed 1976).

C. Continuing Consideration for Unknowing Infringement over the Twentieth Century

Changes in notification procedures, between 1909 and 1989, were incremental corrections to the longstanding dependence on "compliance, and exact compliance, with formalities" in the execution of "notice, registration, and deposit" in order to achieve copyright.[14] Without strict adherence to statutory terms, copyright holders' exclusive rights could easily be defeated by trivialities and consequently place their works in the public domain.

The 1909 Copyright Act also represented the first statutory considerations for copyright holders who attempted to comply with statutory guidelines in order to obtain copyright, but somehow failed to provide proper notice. Under the 1909 Act "the omission by accident or mistake of the prescribed notice from a particular copy or copies [did] not invalidate the copyright."[15] As such, works were copyrighted even if there were copies circulating without proper notice, so long as authors "sought to comply" with notice provisions.[16] However,

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14. S. COMM. ON THE JUDICIARY, 86TH CONG., 2D SESS., COPYRIGHT LAW REVISION: STUDIES PREPARED FOR THE SUBCOMMITTEE ON PATENTS, TRADEMARKS AND COPYRIGHTS OF THE COMMITTEE ON THE JUDICIARY, STUDY NO. 17, THE REGISTRATION OF COPYRIGHT 15 (Comm. Print 1960).

15. Copyright Act of 1909, ch. 320 § 20 (repealed 1976).

16. *Id.*

recognizing the importance of notice as a signifier of copyright, Congress reduced the remedies available against an infringer who was deceived by an absent notice. Copyright holders who mistakenly omitted notice on their works were prevented from "[recovering] damages against an innocent infringer who has been misled by the omission of the notice."[17] Despite still being held liable to pay the copyright holder any profits gained from the infringement, statutory damages were unavailable if notice was omitted on the work from which the infringement took place.

The 1976 Copyright Act continued the loosening of mandatory notification requirements. Nevertheless, the House Report on the 1976 Act still demonstrated concern for unknowing infringers:

> [A] person acting in good faith and with no reason to think otherwise should ordinarily be able to assume that a work is in the public domain if there is no notice on an authorized copy or phonorecord and...if he relies on this assumption, he should be shielded from unreasonable liability.[18]

Following the precedent from the 1909 Act, the 1976 Act also limited the remedies available against those "who innocently [infringed] a copyright, in reliance

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17. *Id.*
18. H.R. REP. NO. 94-1476, at 143 (1976).

upon an authorized copy...from which the copyright notice [had] been omitted."[19] The infringer "[incurred] no liability for actual or statutory damages" at all if "such person [proved] that he or she was misled by the omission of notice" on the work.[20]

Tellingly, in allowing the mitigation of the minimum from $200 to $100 for an infringer who "was not aware and had no reason to believe that his or her actions constituted an infringement of copyright," Congress stated that the provision offered "adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type of infringement suit."[21] This declaration demonstrates the kind of offenders, namely commercial ones, Congress had in mind when authoring the statutory damage clauses.

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19. 1976 Copyright Act, 90 Stat. 2541, 2578, § 405(b) (1976).

20. *Id.*, at § 406(a).

21. See *supra* note 18, at 163.

D. The Berne Convention

The Berne Convention was established in 1886, more than a century before the United States agreed to it. Under its original terms, neither notice nor registration were required as a prerequisite to the establishment of copyright. This insured creators unsophisticated about copyright (in countries less sophisticated than the United States) against loss of potential copyrights on their creative work due to publication without notice or registration. Not until 1989 did the U.S. Congress decide to alter its copyright legal architecture with regard to notice and registration sufficiently to meet the conditions of joining Berne. According to the U.S. Representative at the Berne Convention's 100th anniversary in 1998, "We took a perverse pride in the fact that we did it our way."[22]

Despite ultimately submitting to the international accord, the United States still respected its own legislative history and incorporated it into the domestic implementation of the Berne Convention. After explaining that formalities of notice would no longer be mandatory after adopting the Berne Convention, the Senate Report on the Berne Convention Implementation Act indicated that Congress still acknowledged the usefulness of the informational functions of providing notice:

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22. Ralph Oman, *The Impact of the Berne Convention on U.S. Copyright*, 455 PLI/Pat 233, 237 (1996).

> ...the committee recognizes the value of including notice of copyright on publicly distributed works. The placement of such notices on copies of works alerts users to the fact that copyright is claimed in the work in question, and *may prevent many instances of unintentional infringement.*[23]

Pursuant to this acknowledgment, Congress preserved "an incentive for use of the same type of copyright notice" in the form of what is now 17 U.S.C. § 402(d), the statute at issue in this case.[24] In doing so, it removed the mitigation of damages provided by § 504(c) but only when notice is sufficiently presented to the infringer to take it away. When no such notice is given, the defense remains.

The two courts that have addressed this issue as it arises in a digital context have failed to take account of either the statute or the realities of the internet. Rather than acknowledge the shortcomings of notice in a cyberspace context, the Seventh Circuit and now the Fifth Circuit have adopted an interpretation of the notice requirement so loose that it removes the innocent infringement defense altogether. When this issue first arose in the Seventh Circuit, Judge Easterbrook simply said, unsupported by either

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23. S. REP. NO. 100-352, at 43 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 3706, 3740-41 (emphasis added). *See also* H.R. REP. NO. 100-609, at 26-27 (1988).

24. Melville B. Nimmer & David Nimmer, *NIMMER ON COPYRIGHT*, § 7.02(c)(3) (2009).

citation or example, that the infringer in that case "readily could have learned, had she inquired, that the music was under copyright." This casual imposition of burden on internet users leaves a user two options: First, she can assume, incorrectly, that all music is copyrighted. Alternatively, she can embark on an open-ended quest to verify copyright. Ultimately, even if no copyright notice is found, it will never be safe to assume that a work is in the public domain. Under this scheme, innocent infringement can never be proved.

CONCLUSION

The result reached by the Fifth Circuit, which reversed the eminently correct result reached by the District Court, is absurd. The mp3 files Harper downloaded are the copies "to which [she] in a copyright infringement suit had access." These copies had no notice. The statute simply does not apply to negate the defense of innocent infringement on its own. Both the plain language of the statute and the legislative history confirm this reading. Unless the digital file itself bears copyright notice, copyright holders are not able to use § 402(d) to defeat a claim of innocent infringement.

Innocent infringement is not a defense against liability. It is merely a qualifier to a finding of infringement that allows a reduction in the statutory penalty once infringement is established. Such a

claim is difficult for a defendant to sustain. By no means can it or should it be the standard by which all downloading is measured. However, the decision by the Seventh Circuit and now the Fifth creates havoc and renders nugatory the innocent infringement defense for all defendants alleged to have infringed over the internet.

There is nothing whatsoever in the statute, which was drafted before the internet, to suggest that innocent infringement was only an available defense to those who had conducted a search with the Copyright Office. § 402(d) was clearly intended to foreclose the innocent infringement defense for infringers copying from something that actually bore a copyright notice.

This case has broader implications than just an unfair result against one young woman. The total elimination of innocent infringement as a viable issue in infringement actions against individual, noncommercial infringers is the last step toward imposing strict liability on file sharers. It blights not only all free music on the net, deterring users from downloading music they cannot surely determine to be free of copyright, but free content in digital files of all sorts. From an internet user's point of view, the elimination of innocent infringement as a potential consideration for infringements arising from digital downloading makes copyright the customary assumption on all digital files in cyberspace.

Strict liability represents a deviation from the history of copyright infringement. In resisting this sea change, the Court would simply uphold the copyright system as exists literally in the statute, without any need for wild logical leaps. Anyone who copies copyrighted material without a Fair Use claim is an infringer, liable for something. The only remaining question is how much. In order to increase the maximum or decrease the minimum statutory penalties, an inquiry into the type of notice provided and the mental state of a defendant is requisite to establish both "willful infringement" and "innocent infringement" respectively. Upholding the statute as written prevents an unwarranted contraction that denies the innocent infringer defense to all internet users based on the fiction that they are sufficiently put on notice by notices in record stores.

We urge the court to grant certiorari in this case.

SIGNATURE PAGE

August 13, 2010 Respectfully Submitted

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* I gratefully acknowledge the assistance and support in preparing this document of Richard M. Stallman; Phillip Hill, HLS '13; and Lisa Carlivati.

CERTIFICATE OF WORD COUNT

I, CHARLES NESSON, declare as follows:

I am the attorney for *Amicus Curiae* in this matter. On August 13, 2010, I performed a word count of the above-enclosed brief, which revealed a total of 4,701 words.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of August in Cambridge, Massachusetts.

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