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.

Appeal from the United States District Court
for the Central District of California
No. 2:11-cv-07098-AB-SH

AMICUS CURIAE BRIEF OF MOTION PICTURE ASSOCIATION OF AMERICA, INC. IN SUPPORT OF PETITION FOR REHEARING OR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

The Motion Picture Association of America, Inc. certifies that it has no parent or subsidiary corporations and that no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*

The Motion Picture Association of America, Inc. ("MPAA") respectfully submits this brief in support of appellant's petition for rehearing.[1] The MPAA is a not-for-profit trade association that addresses issues of concern to the United States motion picture industry. The MPAA's member companies[2] and their affiliates are the leading producers and distributors of audiovisual works in the theatrical, television, and home entertainment markets.

The MPAA's members use a wide variety of online and other distribution platforms to provide consumers access to content in more ways than ever before. Because it is not always possible to "enforce rights . . . effectively against all direct infringers," the MPAA's members often rely on theories of secondary liability, including vicarious liability, to combat the mass infringement of their works on the internet. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster*, *Ltd.*, 545 U.S. 913, 929-30 (2005). The MPAA has a strong interest in the proper interpretation of copyright owners' rights and remedies against those who vicariously infringe members' copyrighted works.

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[1] No counsel for a party has authored this brief in whole or in part, and no person or entity other than MPAA and its members made a monetary contribution intended to fund this brief's preparation or submission.

[2] Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

INTRODUCTION

The MPAA respectfully urges the court to grant rehearing to correct a significant, and potentially quite harmful, error in the panel's interpretation of the "direct financial benefit" prong of the test for vicarious copyright liability. 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.[3]

Vicarious liability exists where the defendant "profit[s] from direct infringement while declining to exercise a right to stop or limit it." *Grokster*, 545 U.S. at 930. This court has long recognized that a plaintiff can establish the direct financial benefit prong of this standard by showing that "the availability of infringing material" on the defendant's site or service "acts as a draw for customers," including by showing that "more users register with [a service] as the quality and quantity of available [copyrighted works] increases." *A&M Records,*

[3] By limiting its brief to this vicarious liability issue, the MPAA does not signify its agreement with the panel's resolution of other important copyright issues, some of which are discussed in appellant's petition and other amicus filings.

Inc. v. Napster, Inc., 239 F.3d 1004, 1023 (9th Cir. 2001) (quotation and citation omitted).

Prior to the district court and panel decisions in this case, neither this court nor any other the MPAA is aware of had held that a copyright owner was required to make the further showing that users were drawn to a defendant's site or service by the availability of "*the plaintiff's* copyrighted material" specifically. *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 673 (9th Cir. 2017) (emphasis added). Interpreting the direct financial benefit prong to require a plaintiff to make that showing conflicts with decades of precedent. This interpretation has no basis in *Ellison v. Robertson*, 357 F.3d 1072 (9th Cir. 2002), or principles of Article III standing. And, if extended in future cases, the panel's interpretation could significantly undermine the effectiveness of vicarious liability as a remedy—particularly for small copyright owners—against unscrupulous services that enable and profit from the mass infringement of copyrighted works.

ARGUMENT

I. A MEANINGFUL VICARIOUS LIABILITY REMEDY IS IMPORTANT TO THE PROTECTION OF COPYRIGHTED WORKS, PARTICULARLY IN THE ONLINE CONTEXT

The MPAA's members and other copyright owners use more distribution channels than ever before existed for the legal dissemination of copyrighted content.[4] Nevertheless, legitimate services must compete with free, making it more difficult for copyright owners to maintain the value of their works.

The harms from internet piracy are well known and documented. *See Grokster*, 545 U.S. at 923 ("probable scope of copyright infringement" on networks before the Court was "staggering"); Liye Ma, et al., *The Dual Impact of Movie Piracy on Box-Office Revenue: Cannibalization & Promotion* 2-3 (Feb. 2016), *available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=2736946 (eliminating piracy from theatrical windows could increase box office revenues up to 15%); David Price, *Sizing the Piracy Universe*, NetNames 3 (Sept. 2013), *available at* https://www.netnames.com/assets/shared/whitepaper/pdf/netnames-sizing-piracy-universe-FULLreport-sept2013.pdf (432 million unique users worldwide explicitly sought infringing content in one month alone).

The MPAA's members and other copyright owners rely on secondary liability doctrines, including vicarious liability, as an important tool to restrain and remedy internet piracy. *See, e.g.*, *Grokster*, 545 U.S. 913; *Napster*, 239 F.3d 1004; *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020 (9th Cir. 2013) (isoHunt); *Disney Enterprises, Inc. v. Hotfile Corp.*, No. 11-CV-20427, 2013 WL 6336286

[4] There are now well over 100 ways for consumers in the U.S. to legally access movies and television shows online. *See* https://www.wheretowatch.com/where-to-watch.

(S.D. Fla. Sept. 20, 2013); *Arista Records LLC v. Lime Grp. LLC*, 784 F. Supp. 2d 398 (S.D.N.Y. 2011); *Arista Records LLC v. Usenet.com, Inc.*, 633 F. Supp. 2d 124 (S.D.N.Y. 2009). It is important for copyright owners' ability to combat the substantial harms from online piracy that vicarious liability—as well as other doctrines of secondary liability and relief against direct infringers—remain effective remedies.

II. THE PANEL'S INTERPRETATION OF THE DIRECT FINANCIAL BENEFIT TEST IS INCONSISTENT WITH DECADES OF PRECEDENT

A. Courts Have Consistently Imposed Vicarious Liability Where A Defendant Derives A Direct Financial Benefit From Copyright Infringement Generally

The doctrine of vicarious copyright liability "was developed . . . as an outgrowth of the agency principles of *respondeat superior*" to allow for "enforcing copyrights against a defendant whose economic interests were intertwined with the direct infringer's, but who did not actually employ the direct infringer." *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 261-62 (9th Cir. 1996) (citing *Shapiro, Bernstein & Co. v. H.L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963) ("*Shapiro, Bernstein*")). The doctrine traces to "the so-called 'dance hall cases,' [where] the operator of an entertainment venue was held liable for infringing performances when the operator (1) could control the premises and (2) obtained a direct financial benefit from the audience, who paid to enjoy the infringing performance." *Id.* at

262; *see also Dreamland Ball Room, Inc. v. Shapiro, Bernstein & Co.*, 36 F.2d 354, 355 (7th Cir. 1929) (collecting cases).

Shapiro, Bernstein is the "landmark case on vicarious liability." *Fonovisa*, 76 F.3d at 262. The court there explained that the doctrine "plac[es] responsibility where it can and should be effectively exercised," namely, on the party with "the power to police carefully the conduct of [the direct infringer]." *Shapiro, Bernstein*, 316 F.2d at 308; *see also, e.g., Polygram Int'l Publ'g, Inc. v. Nevada/TIG, Inc.*, 855 F. Supp. 1314, 1325 (D. Mass. 1994) ("When an individual seeks to profit from an enterprise in which identifiable types of losses are expected to occur, it is ordinarily fair and reasonable to place responsibility for those losses on the person who profits . . . .").

The two prongs of the vicarious liability test—(1) the right and ability to supervise infringing conduct and (2) direct financial benefit—allow courts to "evaluate the defendant's ability to spread losses and police conduct within the enterprise, as well as the underlying fairness of holding the defendant liable." *Polygram*, 855 F. Supp. at 1326. Courts thus determine whether a defendant *can control* infringing conduct occurring through its premises (does the defendant have the "right and ability to supervise" infringing activity?) and whether the defendant has a *responsibility to exercise* its control because it profits from that infringement (does the defendant receive a direct financial benefit from the infringing conduct?).

See id. at 1325-26. If a defendant benefits directly from infringing activity occurring through its premises, can stop or limit the infringing activity, and fails to do so, the defendant can be held vicariously liable if the plaintiff's work is infringed as a result. *See Napster*, 239 F.3d at 1022.

B. Courts Have Never Required A Plaintiff To Show That Its Specific Works Were The Draw For Third-Party Infringers

Courts have long held that a plaintiff can satisfy the direct financial benefit prong by showing that the general availability of a particular type of infringing material on the defendant's premises—or, in the internet context, through the defendant's site or service—draws third-parties hoping to obtain infringing material. The panel, however, said that the plaintiff here had to show not just that users were drawn to the defendant's service because infringing material was available, but because of the availability of "*the plaintiff's* copyrighted material" specifically. *Giganews*, 847 F.3d at 673 (emphasis added). That interpretation cannot be squared with decades of case law from this court and others, and it imposes an unwarranted burden on injured parties.

In *Fonovisa*, for example, this court recognized that vicarious liability is appropriate where "infringing performances enhance the attractiveness of [a] venue to potential customers." *Fonovisa*, 76 F.3d at 263. The court held that the organizer of a swap meet, where vendors sold thousands of counterfeit recordings, could be held vicariously liable for those vendors' infringing sales. *Id*. Just as infringing musical performances increased the attractiveness of the vicariously liable dance halls, so did the "the sale of pirated recordings at the . . . swap meet [serve as] a 'draw' for customers" to the swap meet. *Id.* The court did not hold—much less suggest—that any plaintiff had to allege that customers were drawn to the swap meet because of any particular copyrighted works.

Similarly, in *Napster*, this court found a direct financial benefit where the availability of a large volume of infringing music—not just the plaintiffs' works—increased Napster's popularity with users. The court emphasized that Napster's future revenue was "directly dependent upon 'increases in user-base'" and that "[m]ore users register[ed] with the Napster system as the 'quality and quantity of available music increases.'" *Napster*, 239 F.3d at 1023.

And in *Fung*, the court found the defendant received a direct financial benefit from infringement occurring through his sites where he "promoted advertising by pointing to infringing activity; obtained advertising revenue that depended on the number of visitors to his sites; attracted primarily visitors who were seeking to engage in infringing activity, as that is mostly what occurred on his sites; and encouraged that infringing activity."[5] 710 F.3d at 1044-45.

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[5] This portion of *Fung* analyzed the "direct financial benefit" language in § 512(c)(1)(B) of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 512, which concerns a service provider's eligibility for the DMCA's limitations on monetary liability. *Fung's* analysis of this issue is relevant because this court

Fonovisa, *Napster*, and *Fung* are consistent with out-of-circuit precedent, which has similarly found a direct financial benefit where users are drawn to a particular service or attend a particular venue because of the availability of infringing works of a particular kind.

In the dance hall cases on which *Shapiro, Bernstein* relied, for example, where a venue owner benefitted financially from the playing of music, the courts held that the venue's operator was liable when the orchestra or band infringed the plaintiff's copyright. 316 F.2d at 307-08. The courts, however, did not base their rulings on whether the customers sought out a venue because they knew that specific songs would be played: the venue's owner received a financial benefit where the playing of music in general "br[ought] in customers and profits to the proprietor." *Shapiro, Bernstein*, 316 F.2d at 307 (citing *Dreamland Ball Room*, 36 F.2d at 355, and *M. Witmark & Sons v. Tremont Social & Athletic Club*, 188 F. Supp. 787 (D. Mass. 1960), among other cases); *see also Range Rd. Music, Inc. v. E. Coast Foods, Inc.*, 668 F.3d 1148, 1155 (9th Cir. 2012) (holding the defendant vicariously liable where it "derived a financial benefit from the musical

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has made clear "that 'direct financial benefit' [under the DMCA] should be interpreted consistent with the similarly-worded common law standard for vicarious copyright liability." *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1117 (9th Cir. 2007).

performances in the lounge," without analyzing whether the plaintiff's songs in particular were the source of that benefit).

In the internet context, courts similarly have held that increases in user base resulting from a service's large supply of infringing material, like music or movies, satisfies the direct financial benefit prong of vicarious liability. In *Usenet.com*, for example, the district court found that the defendants received a direct financial benefit from the infringement occurring through the USENET group that they offered to their subscribers where: (1) the defendants' revenues increased as the volume of users' downloads increased; and (2) "music files" constituted a "substantial portion" of the content made available, and "music groups" (*i.e.*, USENET bulletin boards devoted to music) "acted as a draw" for subscribers to the service. 633 F. Supp. 2d at 156-57 (quotation omitted).

Likewise, in *Lime Group*, the district court found that LimeWire's peer-to-peer file-copying service derived a direct financial benefit from its users' infringing activity: users were "drawn to LimeWire because the program permits infringement," and LimeWire profited "from its ability to attract infringing users, including through increased advertising revenue." 784 F. Supp. 2d at 435. The court noted that "nearly all of the files shared and downloaded by LimeWire users [were] copyrighted, and not authorized for free distribution through LimeWire," and that "the overwhelming majority of download requests through LimeWire

[were] for copyright-protected files, which [made] it nearly certain that most actual downloads involve[d] unauthorized content." *Id.* at 426, 435. The court did not require any plaintiff to show that users were looking for its works specifically.

Fonovisa, *Napster*, *Usenet.com*, and *Lime Group* (among other cases)[6] all make clear that, where users are drawn to a defendant's service or venue because of the availability of a particular type of infringing content, the defendant receives a direct financial benefit from such availability, regardless of whether the plaintiff can point to a direct link between that financial benefit and its own specific works.

III. NEITHER *ELLISON* NOR ARTICLE III STANDING PRINCIPLES SUPPORTS THE PANEL'S INTERPRETATION

A. *Ellison* Does Not Require Copyright Owners To Demonstrate A Direct Financial Benefit From Infringement Of Specific Works

Contrary to the panel's conclusion, *Ellison* did not require that a plaintiff prove that the ability to infringe its specific works, as opposed to the availability of infringing content more generally, was a draw for consumers.

[6] *See, e.g.*, *Hotfile*, 2013 WL 6336286, at *39 ("the law is clear that to constitute a direct financial benefit, the 'draw' of infringement need not be the primary, or even significant, draw—rather it only need be a draw") (internal quotations omitted); *Arista Records, Inc. v. MP3Board, Inc.*, No. 00-CIV-4660 (SHS), 2002 WL 1997918, at *10-11 (S.D.N.Y. Aug. 29, 2002) (service could be liable for vicarious copyright infringement where its advertising revenue was "directly tied to the number of users," an "extremely high proportion of the links on the [service's] site went to infringing works," and the site was "exclusively and consciously devoted to locating audio files"); *Polygram*, 855 F. Supp. at 1333 (organizers of a trade show benefitted financially when "exhibitors [at the trade show] performed music, some of it copyrighted, to attract attention to their booths").

In that case, author Harlan Ellison sued AOL after his short stories were posted on a USENET news-group to which AOL provided its subscribers access. That group was used "primarily to exchange unauthorized digital copies of works by famous authors, including [the plaintiff]." *Ellison*, 357 F.3d at 1075.

This court rejected Ellison's vicarious liability claim because there was no evidence that AOL's users subscribed to the service because of the availability of infringing material on the USENET group. Although the availability of infringing material may have been an "added benefit" for AOL's users, there was no evidence that "the infringing activity constitute[d] a draw for subscribers." *Id.* at 1079.

The panel here interpreted the *Ellison* court's use of the article "the" before some references to "infringement" and "infringing activity" to mean that the plaintiff had to show his or her works were themselves a draw for infringing users. *Giganews*, 847 F.3d at 673 (quoting *Ellison*, 847 F.3d at 1079 n. 10).

Ellison makes clear, however, that "the infringing material" to which the court was referring was *all* of the infringing material on the USENET group for copying books and stories by famous authors. *See Ellison*, 357 F. 3d at 1075, 1079 ("While a causal relationship might exist between AOL's profits from subscriptions and *the infringing activity taking place on its USENET servers*, [plaintiff] has not offered enough evidence for a reasonable juror so to conclude.")

(emphasis added). In parsing the language in *Ellison* so finely, the panel found a requirement where none exists.

B. Imposing Vicarious Liability On A Defendant Who Benefits Financially From Widespread Infringement On Its Service Does Not Create Standing Issues

In addition to misinterpreting *Ellison*, the panel also worried that imposing vicarious liability on a defendant who profits from the availability of infringing copyrighted works, without requiring the plaintiff to show profit from the infringement of the plaintiff's works, would be "difficult to reconcile with Article III's standing requirements." *Giganews*, 847 F.3d at 673. But because a copyright plaintiff would still have to show that it was injured (*i.e.*, that its copyrighted work was infringed) and that the injury was caused by the defendant's actions (*i.e.*, the defendant's failure to exercise its ability to stop or limit that copyright infringement), the panel's standing concerns are misplaced.

A plaintiff has Article III standing if she "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 1547 (2016); *accord Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

In a case alleging vicarious liability, a copyright plaintiff is injured when its works are infringed. If the defendant had the right or ability to stop or limit infringement occurring through its premises (or on its site), the plaintiff's injury was caused by the defendant's failure to exercise its right to stop or limit it. In such a case, the plaintiff's injury can be redressed by a ruling in its favor, *i.e.*, with a money judgment to redress the infringement and an injunction requiring the defendant to exercise its ability to stop or limit further infringement. This satisfies Article III.

In holding otherwise, the panel conflated the requirements for when a defendant can reasonably be held liable for the actions of another with the source of the plaintiff's injury. The direct financial benefit inquiry bears on the substantive question whether the law will place a duty on the defendant to exercise its right and ability to stop or limit infringement occurring on its site or through its service. The direct financial benefit inquiry does not bear on the Article III standing analysis.

IV. THE PANEL'S INTERPRETATION OF THE DIRECT FINANCIAL BENEFIT PRONG UNDERMINES THE EFFECTIVENESS OF VICARIOUS LIABILITY AS A MEANS OF COMBATTING ONLINE COPYRIGHT INFRINGEMENT

Not only is the panel's direct financial benefit test contradicted by decades of precedent, but it would also unjustifiably threaten to render the vicarious liability remedy largely illusory for copyright owners. Services that benefit directly from the availability of mass numbers of infringing files are exactly the types of services whose conduct the vicarious liability doctrine is intended to affect. Such services, however, are those most likely to try to take advantage of the panel's misinterpretation of the direct financial benefit prong, *i.e.*, by arguing that the plaintiff before the court cannot show that third-party infringers were drawn to the service by the plaintiff's particular works.[7] That result cannot be squared with precedent on vicarious liability or the rationale for having the doctrine.

Consider, for example, the *Napster* case. Napster was a peer-to-peer file sharing service devoted to mass copyright infringement: The court found that up to 87 percent of the files on Napster could have been copyrighted. *Napster*, 239 F.3d at 1013. In concluding that Napster received a direct financial benefit from that infringement, this court relied on evidence that the service's revenue depended on increasing its user base, and that increasing its user base, in turn, depended on the availability of a large quantity of high quality music. *Id.* at 1023. This court did not even ask whether any particular plaintiff could show that its music specifically (or the music of a specific artist) was a draw for Napster's users. It

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[7] For example, the district court here said that the plaintiff's evidence that the USENET is "awash in copyrighted material only supports the conclusion no reasonable juror could find a direct causal connection between infringing Perfect 10 content and Giganews' profits." *Perfect 10, Inc. v. Gigagnews, Inc.*, No. CV 11-07098, 2014 WL 8628031, at *4 (C.D. Cal. Nov. 14, 2014).

was enough that the availability of large quantities of popular music drew users to the service.

A finding that the plaintiff's specific works were a draw for infringers has never been required; it would unnecessarily burden all copyright owners, and could potentially foreclose smaller copyright owners from prevailing on any vicarious liability claim against a defendant whose site or service features a large volume of infringing works. For example, in a case like *Napster*, where plaintiffs owned or administered the copyrights in a significant percentage of the content available on the site, a court might infer that the availability of their works drew infringing users to the service. However, the same might not be true for individual or small copyright holders. That would be the case even against a service like Napster that derives a direct and substantial benefit from infringing activity that it has the right and ability to supervise, where infringement of the individual or small copyright holder's works is subsumed in a much larger pool of infringing activity. Accordingly, the panel's novel interpretation threatens to render the vicarious infringement remedy illusory to many copyright holders.

The panel here did not cite *Napster*, much less explain how its interpretation could be reconciled with *Napster*. Napster, however, was hardly the last service to facilitate mass online copyright infringement, *see, e.g.*, *EMI Christian Music Grp., Inc. v. MP3tunes, LLC*, 844 F.3d 79 (2d Cir. 2016) (MP3tunes.com and

Sideload.com); *Lime Group*, 784 F. Supp. 2d at 410 (listing Napster, Kazaa, Morpheus, and Grokster, in addition to the defendant's service, LimeWire). None of these courts interpreted the direct financial benefit prong of the vicarious liability standard as the panel did in this case.

This court should therefore grant the petition for rehearing to make clear that the direct financial benefit prong means what for decades this court and others have said it means. A copyright owner may pursue vicarious liability claims when users are drawn to a service because of the unauthorized availability of particular types of content that include plaintiff's works (*e.g.*, Napster (sound recordings), Grokster (sound recordings and movies), isoHunt (movies)), without having to show that the plaintiff's particular works were a draw for customers to the service.

CONCLUSION

For the forgoing reasons, the MPAA respectfully requests that the court rehear this case, at a minimum to amend the opinion as requested herein.

DATED: March 3, 2017 Respectfully submitted,

By: */s/ Benjamin S. Sheffner*
BENJAMIN S. SHEFFNER
Counsel for MPAA

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Cir. Rule 29-2(c) because it contains 3,941 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

DATED: March 3, 2017

Respectfully submitted,

By: *\/s/ Benjamin S. Sheffner*
BENJAMIN S. SHEFFNER
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9th Circuit Case Number(s) 15-55500, 15-55523, 15-56026

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PERFECT 10, INC., Plaintiff-Appellant, v. GIGANEWS, INC. and LIVEWIRE SERVICES, INC., Defendants-Appellees.	No. 15-55500 D.C. No. 2:11-cv-07098-AB-SH Central District of California, Los Angeles ORDER
PERFECT 10, INC., a California corporation, Plaintiff-counter-defendant-Appellant, v. GIGANEWS, INC., a Texas corporation and LIVEWIRE SERVICES, INC., a Nevada corporation, Defendants-counter-claimants-Appellees.	No. 15-55523 D.C. No. 2:11-cv-07098-AB-SH Central District of California, Los Angeles
PERFECT 10, INC., a California corporation,	No. 15-56026 D.C. No.

Plaintiff-counter-defendant-Appellee, v. Dr. NORMAN ZADA, Third party-Appellee, GIGANEWS, INC., a Texas corporation; LIVEWIRE SERVICES, INC., a Nevada corporation, Defendants-counter-claimants-Appellants.	2:11-cv-07098-AB-SH Central District of California, Los Angeles

Before: PREGERSON, D.W. NELSON, and OWENS, Circuit Judges.

The Motion for Leave to File Amicus Curiae Brief of Motion Picture Association of America, Inc., in Support of Petition for Rehearing or Rehearing En Banc is **GRANTED**. The Amicus Curiae brief submitted on March 3, 2017, shall be deemed filed as of the date of this order.

The Motion of Recording Industry Association of America, Inc., for Leave to File an Amicus Curiae Brief in Support of Petition for Rehearing or Rehearing En Banc is **GRANTED**. The Amicus Curiae brief submitted on March 3, 2017, shall be deemed filed as of the date of this order.

SO ORDERED.