No. 21-869

IN THE

Supreme Court of the United States

ANDY WARHOL FOUNDATION
FOR THE VISUAL ARTS, INC.,

Petitioner,

v.

LYNN GOLDSMITH, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF AMICI CURIAE DOCUMENTARY FILMMAKERS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are prominent documentary filmmakers (listed in Appendix A) whose creations span an enormous range of subjects.[2] Their scholarship, analysis and commentary enable viewers to learn about their own culture and the culture of others, as well as to assess ideas, events and personalities. A successful documentary, whether it comforts, discomfits, annoys or emboldens, will stretch its viewers' thinking and enhance their understanding of the film's subject.

Amici have a strong interest in ensuring that the documentary film industry—those who make films, the companies that insure them, and the theaters, broadcasters and platforms that present them to the public—can confidently rely on fair use. Pre-existing, copyrighted material is a critical element of many documentaries. Using these materials with permission is

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1. Pursuant to Supreme Court Rule 37.6, Amici state that no counsel for any party authored this brief, in whole or in part, and no person or entity other than amici contributed monetarily to its preparation or submission. The parties have filed blanket consents with respect to the filing of amicus briefs.

2. Amici's documentaries' subjects have included the final days of the Vietnam War (*Last Days of Vietnam*); the Russian doping scandal (*Icarus*); the epidemic of rape within the U.S. military (*The Invisible War*); the decline of the city of Detroit (*Detropia*); the gay activists' campaign to remove homosexuality from the American Psychiatric Association's manual of mental illnesses (*Cured*); the pre-pandemic rebirth of the Broadway theater (*On Broadway*); and biographies of Fred Rogers (*Won't You Be My Neighbor*), Ai Weiwei (*Ai Weiwei: Never Sorry*), Julia Child (*Julia*) and Ruth Bader Ginsburg (*RBG*).

not always practicable for a range of reasons, and many documentary projects would be impossible to complete absent their creators' ability to use copyrighted content in conformance with the fair use doctrine.

Amici submit this brief out of concern that the fair use *terra firma* on which their industry has largely stood over the past decades is at risk in the wake of the Second Circuit's ruling. It threatens (and already has been applied in at least one case) to impose a new, inappropriate test for transformativeness in the documentary film context. The ruling also diminishes the importance of the constitutionally-based fact/expression dichotomy, which is particularly relevant to documentary films.

SUMMARY OF ARGUMENT

If the Second Circuit's new test for assessing transformativeness is applied to documentaries, filmmakers will not be able to rely safely on the fair use doctrine to justify their use of pre-existing copyrighted material. Prior to *Warhol*, documentary uses typically satisfied this Court's transformativeness inquiry, as articulated in *Campbell* and *Oracle*, because they combine comment, criticism, news reporting and scholarship and are thus presumptively transformative under Section 107. The Second Circuit's *Warhol* decision effectively alters this inquiry by instructing lower courts to view the borrowed and second works side-by-side to ascertain whether the second work impermissibly retains "the essential elements of its source material" without "comment[ing] on or relat[ing] back to the original." *Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 41-42 (2d Cir. 2021).

The Second Circuit's constrictive side-by-side test poses a serious risk of rendering fair use off-limits to documentary filmmakers, who frequently utilize pre-existing copyrighted works for purposes other than to comment on the borrowed works themselves. Instead, as set forth in Section I, *infra*, filmmakers typically combine borrowed works with other content to provide historical, cultural or social context that offers viewers new perspectives on the films' subjects. Documentaries thereby "add something new, with a further purpose or different character, altering the first with new expression, meaning, or message." *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579-580 (1994). But the borrowed works themselves are necessarily recognizable and often largely unchanged.

Accordingly, documentary programming (and indeed many other works that fall within the favored categories listed in Section 107's preamble) often will fail the Second Circuit's test for transformativeness. This concern is not hypothetical. Relying on *Warhol*, at least one trial court has already held that brief uses of a photojournalist's footage in documentary programming were not transformative as a matter of law because they were not altered and were thus "even less transformative than the use at issue in Andy Warhol." *Fioranelli v. CBS Broad., Inc.*, 551 F. Supp. 3d 199, 236–37 (S.D.N.Y. 2021).

The Second Circuit's approach also threatens to diminish the importance of the fact/expression dichotomy that inheres in the second and third fair use factors. The fact/expression dichotomy, which has First Amendment underpinnings, is of fundamental importance to documentary filmmakers' uses of works that are wholly or partially factual. Lower courts should be instructed,

as part of their case-by-case review, to carefully assess the fact/expression dichotomy as an essential element of the second and third factor analysis.

ARGUMENT

I. Reliance On Fair Use is Vital to the Documentary Film Genre

Documentary films use pre-existing, copyrighted material in their films for a variety of purposes. Sometimes, the material is the focus of the documentary's commentary, such as the unlicensed inclusion of a 15-second excerpt of John Lennon's song "Imagine" to critique Lennon's "secular [anti-religion] utopian vision." *Lennon v. Premise Media Corp.*, 556 F. Supp. 2d 310, 322-23 (S.D.N.Y. 2008) (use of song was fair).

Other times, borrowed works—including photos, television news reports, print accounts, home videos and fictional movie clips—provide context to the filmmaker's narrative. *See, e.g.*, *Nat'l Center for Jewish Film v. Riverside Films LLC*, No. 5:12-cv-00044, 2012 WL 4052111, at *3 (C.D. Cal. Sept. 14, 2012) (documentary's unlicensed inclusion of fictional movie clips depicting 19th-century Jewish life was fair because the "documentary aims to teach and enlighten its audience about … Jewish history"); *Monster Commc'ns, Inc. v. Turner Broadcasting Sys., Inc.*, 935 F. Supp. 490 (S.D.N.Y. 1996) (unlicensed footage of Muhammad Ali's 1974 trip to Zaire for his heavyweight "Rumble in the Jungle" with George Foreman in a television biography was fair use); *Hofheinz v. AMC Prods., Inc.*, 147 F. Supp. 2d 127, 138-39 (E.D.N.Y. 2001) (documentary's use of unlicensed movie clips and photographs of film studio founder was fair), *aff'd by*

summary order, No. 01-7060 (2d Cir. May 20, 2002). And sometimes archival material is captured incidentally in the course of filming, such as a song being played on a float in a television news story about a parade. *See Italian Book Corp. v. Am. Broad. Co.*, 458 F. Supp. 65 (S.D.N.Y. 1978) (inclusion of a song played in background in news report on New York City's San Gennaro Festival was fair).

Many documentary projects would be impossible to complete absent their creators' ability to incorporate some pre-existing material in conformance with the fair use doctrine. It is often not practicable, or even possible, for documentary filmmakers to obtain permission to use these materials. Some owners will set unreasonable prices, *see, e.g.*, A. Falzone and J. Urban, *Demystifying Fair Use: The Gift of the Center For Social Media Statements of Best Practices*, 57 J. Copyright Soc'y U.S.A. 337, 340 (2009-10) (hereafter "Falzone & Urban"), or impose other conditions that are overly burdensome.

Other owners will not license their works on any terms, such as when they disapprove (or likely would, if asked) of the filmmakers' point of view. *See, e.g., Katz v. Google, Inc.,* 802 F.3d 1178 (11th Cir. 2015) (landlord obtained copyright ownership of unflattering photograph and sued to prevent its use by a tenant criticizing his business practices); *Lennon*, 556 F. Supp. 2d at 316 (Lennon's family sought to require the total recall and a bar on all further distribution of the documentary containing "Imagine," not merely compensation for the use, suggesting that the impetus for the lawsuit was their objection to the filmmaker's message).[3]

3. In other instances, the copyright owner of a particular photograph or other copyrighted material may be impossible to communicate with or even to identify.

Given their reliance on fair use and their limited financial resources, most documentary filmmakers obtain errors and omissions insurance to protect them in the event of content claims. Indeed, most distributors require that the filmmakers purchase coverage for them, as well. For some years now, insurers had confidence in covering, at a reasonable premium cost, content that complied with fair use case law as it had developed after this Court's decision in *Campbell*. *See* Falzone & Urban at 346-47 (discussing the importance of established fair use principles in securing insurance and distribution for documentary films).

If these longstanding fair use principles are disrupted, insurance companies likely will decline to extend coverage to documentary filmmakers. Because distributors are unlikely to assume the risk of uninsured projects, the inevitable result will be that many significant documentaries will not get made, and the public will be deprived of important scholarship and commentary.

II. Documentary Films Fit Squarely within Section 107's Preamble List of Paradigmatic Examples of Fair Use

"From the infancy of copyright protection, some opportunity for fair use of copyrighted materials has been thought necessary to fulfill copyright's very purpose, '[t]o promote the Progress of Science and useful Arts....'" *Campbell*, 510 U.S. at 575 (quoting U.S. Const., Art. I, § 8, cl. 8). As the Second Circuit has noted:

> The ultimate goal of copyright is to expand public knowledge and understanding ....

> [W]hile authors are undoubtedly important intended beneficiaries of copyright, the ultimate, primary intended beneficiary is the public, whose access to knowledge copyright seeks to advance by providing rewards for authorship.
>
> For nearly three hundred years, since shortly after the birth of copyright in England in 1710, courts have recognized that, in certain circumstances, giving authors *absolute* control over all copying from their work would tend in some circumstances to limit, rather than expand, public knowledge.

Authors Guild v. Google, Inc., 804 F.3d 202, 212 (2d Cir. 2015). Indeed, this Court has repeatedly characterized the fair use doctrine as a "built-in First Amendment accommodation[]." *Golan v. Holder*, 565 U.S. 302, 328 (2012) (quoting *Eldred v. Ashcroft*, 537 U.S. 185, 219 (2003)). *See also Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560 (1985) (First Amendment protections are "embodied in the Copyright Act's … latitude for scholarship and comment safeguarded by the fair use defense").

In line with these principles, the preamble to Section 107 lists paradigmatic examples of permitted fair use: "criticism, comment, news reporting, teaching ..., scholarship, or research." 17 U.S.C. § 107. A number of courts have interpreted this language as creating "a *strong presumption* that factor one [of the fair use analysis] favors the [second user] if the allegedly infringing work fits the description of uses described in section 107."

Wright v. Warner Books, Inc., 953 F.2d 731, 736 (2d Cir. 1991) (emphasis added) ("scholarly biography" falls under Section 107's preamble). *Accord New Era Publications Int'l, ApS v. Carol Pub. Grp.*, 904 F.2d 152, 156 (2d Cir. 1990), *cert denied*, 498 U.S. 921 (1990) ("[I]f a book falls into one of these categories [*i.e.*, criticism, scholarship or research], assessment of the first fair use factor should be at an end" (quotes omitted)).

This "strong presumption" regularly has been applied to documentaries. *See, e.g., Brown v. Netflix, Inc.,* 855 Fed. App'x 61, 62-63 (2d Cir. 2021) (documentary about burlesque dancers "fits the description of uses described in section 107," entitling it to "a strong presumption that factor one favors the defendant"); *Bouchat v. Baltimore Ravens Ltd. P'ship*, 737 F. 3d 932, 944 (4th Cir. 2013) (recognizing that documentaries satisfy Section 107's standards because they combine comment, criticism, news reporting and scholarship); *Hofheinz v. Discovery Commc'ns, Inc.*, No. 00 CIV. 3802 (HB), 2001 WL 1111970 (S.D.N.Y. Sept. 20, 2001) ("[d]ocumentaries and biographies fall within the protected categories . . . and are entitled to the presumption"); *Monster Commc'ns*, 935 F. Supp. at 493-94 (TV network's television biography of Muhammad Ali "undeniably constitute[d] a combination of comment, scholarship and research, all of which enjoyed favored status under § 107").

The preamble categories are rightly favored, because they most centrally embody the kind and degree of transformativeness that this Court declared "lie[s] at the heart of the fair use doctrine's guarantee of breathing space." *Campbell*, 510 U.S. at 579. Informed by this First Amendment concern, courts have afforded

documentarians significant latitude to use materials from copyrighted works, in many cases unaltered, to give context to, and broaden their viewers' understanding of, their films' narratives. *See* Section I, *supra*.

III. Application of the Second Circuit's *Warhol* Ruling Could Devastate the Documentary Film Genre

Relying on the principles set forth in Section II, *supra*, Amici and others who create and release documentary films have long understood that the fair use doctrine protects their reasonable use of pre-existing copyrighted materials. The Second Circuit's *Warhol* opinion would upend fair use law insofar as it has been applied to documentaries.

A. Under the Second Circuit's new test for transformativeness, documentaries may fail to qualify as fair use

The Second Circuit's decision requires a court to assess transformativeness by comparing the original and second works side-by-side to ascertain whether the second work impermissibly retains "the essential elements of its source material" without "comment[ing] on or relat[ing] back to the original." 11 F.4th at 41-42.[4] The Second Circuit seemingly adopted this procedure as a means of rationalizing its "conflicting guidance" in a number of cases involving the use of photographs,[5] concluding that

4. Notably, Google's copying of Oracle's code, which was held to be fair use by this Court, 141 S. Ct. at 1202, would fail under this version of the transformativeness test.

5. The court specifically referenced *Roger v. Koons*, 960 F.2d 301 (2d Cir. 1992), *Blanch v. Koons*, 467 F.3d 244, 251 (2d Cir. 2006),

"matters become simpler" in such cases by "compar[ing] the works at issue in each case against their respective source materials." *Id.*

Whether or not the Second Circuit's methodology can stand in the wake of *Oracle* where the second work is a drawing, painting or illustration, it is highly unreasonable in the case of documentary films and other favored works listed in Section 107's preamble. For one thing, if the "high level of generality" the Second Circuit applied to the "purpose" of Warhol's and Goldsmith's works—*i.e.*, that they are both works of visual art, 11 F.4th at 40—is embraced by other courts, many documentaries could be deemed to have a similar "informative" purpose as the borrowed content.

For another, as described above, many copyrighted excerpts in documentaries are clearly recognizable, and the new work often does not comment on or directly relate back to them. Rather, the borrowed works are generally presented in combination with other archival sources, original content, and commentary via narration or interviews. This is done to provide viewers with historical, cultural or social context, for the purpose—different from the originals'—of enhancing viewers' comprehension of the films' subject matter. For example, in Amicus Joseph Dorman's documentary about author Sholem Aleichem's work and Jewish history, the motion picture clips were unaltered, but "voiceovers, editing, and overall production add[ed] something new" to the underlying works." *See Riverside Films LLC,* 2012 WL 4052111 at *3.

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and *Cariou v. Prince,* 714 F.3d 694 (2d Cir. 2013), *cert. denied*, 571 U.S. 1018 (2013).

Many of these uses would fail the Second Circuit's "side-by-side" comparison test. Given that at least one court has adopted the Second Circuit's reasoning to reject fair use in the documentary film context, Amici's concern is not academic. In *Fioranelli*, the district court reviewed more than a dozen disparate documentary programs that used brief excerpts of a photojournalist's 9/11 footage about that day's carnage. Because the excerpts were not altered, the court held, as a matter of law, that these uses were "even less transformative than the use at issue in *Andy Warhol*." 551 F. Supp. 3d at 236-37.

This Court has made clear in its prior rulings that, when considering fair use, "context is everything." *Campbell*, 510 U.S. at 589. For documentary films, the context includes filmmakers' reasonable practice of incorporating and building upon pre-existing forms and images for new purposes. If the test for transformativeness—which has so often been outcome-determinative with respect to fair use[6]—is one that documentary films will invariably flunk, documentaries will effectively be shorn of the favored status they are entitled to under Section 107.

Amici therefore urge the Court to reject the Second Circuit's side-by-side methodology and reaffirm the approach this Court applied in *Campbell* and *Oracle*.

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6. One recent empirical study found that, among a sample of 238 district and circuit court decisions, whether a secondary work was transformative correlated with the ultimate fair use outcome 94% of the time. *See* Jiarui Liu, *An Empirical Study of Transformative Use in Copyright Law*, 22 Stan. Tech. L. Rev. 163, 180 (2019).

B. The Second Circuit's analysis of the second and third factors fails to properly account for the fact/expression dichotomy

The *Warhol* decision demonstrates the need for a renewed focus on the fact/expression dichotomy, which inheres in the second and third fair use factors. In *Golan v. Holder*, the Court defined the idea/expression dichotomy as one of the "'traditional contours' of copyright protection." 565 U.S. at 328. That is, as earlier explained in *Harper & Row*, First Amendment protection is embodied in "the Copyright Act's distinction between copyrightable expression and uncopyrightable facts and ideas." 471 U.S. at 560. And, most recently, this Court referred to instances where courts have found copyright protection to be thin "where copyrightable material is bound up with uncopyrightable material." *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1198 (2001).

Specifically, the second fair use factor—*i.e.*, "the nature of the copyrighted work"—focuses on this dichotomy by requiring courts to consider "the 'value of the materials used.'" *Campbell*, 510 U.S. at 586 (quoting *Folsom v. Marsh,* 9 F.Cas. 342, 348 (No. 4,901) (CCD Mass. 1841)). As the Second Circuit acknowledged below, this requires:

> courts to consider the nature of the copyrighted work, including … whether it is expressive or creative ... or more factual, with a greater leeway being allowed to a claim of fair use where the work is factual or informational.

Warhol, 11 F. 4th at 45 (internal quotations omitted).

The third factor also embodies the fact/expression dichotomy by analyzing "whether 'the quantity and value of the materials used,' are reasonable in relation to the purpose of the copying." *Campbell*, 510 U.S. at 586 (quoting *Folsom v. Marsh*, *supra*, at 348). Application of this factor "calls for thought not only about the quantity of the materials used, but about their quality and importance, too." *Id.* at 587.

We urge the Court to review the district court's careful analysis of whether Warhol impermissibly copied any protectible elements of Goldsmith's photograph. The district court concluded that Warhol "removed nearly all of the photograph's protectible elements [*i.e.,* the posing, cropping, background, lighting, etc.] in creating the Prince series." 382 F. Supp. 3d at 329.

In contrast, the Second Circuit elided the issue, considering it sufficient simply to find that Goldsmith's photograph was recognizable in Warhol's artwork:

> [W]here, as here, the secondary user has used the photograph itself, rather than, for example, a similar photograph, the photograph's specific depiction of its subject cannot be neatly reduced to discrete qualities such as contrast, shading, and depth of field that can be stripped away, taking the image's entitlement to copyright protection along with it.

11 F.4th at 47. This essentially excises the fact/expression dichotomy from the fair use analysis.

We submit that the district court's opinion—unlike the Second Circuit's—is consistent with the Copyright

Act's First Amendment underpinnings, as well as cases from around the country that properly examine the fact/expression dichotomy. For example, in *Katz v. Google,* the Eleventh Circuit considered whether a candid photograph of a landlord taken in a public setting that was published in a blog by his unhappy tenant was fair use. 802 F.3d at 1180. In analyzing the second fair use factor, the court held that fortuitous photojournalistic timing is "not enough to make the creative gilt of [a photo] predominate over its plainly factual elements." *Id*. at 1183.

Similarly, in *Kienitz v. Sconnie Nation LLC* , the Seventh Circuit concluded that the use of a copyrighted photograph on a t-shirt was fair use largely because it incorporated only the non-protectible elements of that photograph. 766 F.3d 756, 759 (7th Cir. 2014). The photograph was posterized, the background was removed, and the subject's face was turned lime green and surrounded by multi-colored writing. *Id.* at 757. The court reasoned:

> Defendants removed so much of the original that, as with the Cheshire Cat, only the smile remains….[T]he original's background is gone; its colors and shading are gone; the expression in Soglin's eyes can no longer be read; after the posterization (and reproduction by silk-screening), the effect of the lighting in the original is almost extinguished. What is left, besides a hint of Soglin's smile, is the outline of his face, which can't be copyrighted.

Id. See also Fitzgerald v. CBS Broad., Inc., 491 F. Supp. 2d 177, 188 (D. Mass. 2006) (candid photograph of mobster

leaving police station was a primarily factual work for purposes of the second factor).

As this Court recognized in *Oracle*, "some factors may prove more important in some contexts than in others." 141 S. Ct. at 1197. For many documentary projects, the second and third factors–and their attendant fact/expression analyses—likely will be decisive of the fair use inquiry. Filmmakers often select the borrowed material for its factual component, rather than the original authors' creative expression.[7] Thus, in many documentary uses, the second factor favors fair use, since the creative elements will be only incidentally included. *See L.A. News Service v. CBS Broad., Inc.*, 305 F. 3d 924, 940 (9th Cir. 2002) (although news footage was "not without creative aspect," its factual nature strongly favored fair use in defendant's promotional video montage). *See also Mathieson v. Associated Press*, No. 90 CIV. 6945 (LMM), 1992 WL 164447 at *6-7 (S.D.N.Y. June 25, 1992) (second factor favored fair use where borrowed headshot was "less 'imaginative' or 'creative' than it might have been had plaintiff employed more dramatic artistic effects").

Additionally, in focusing on the factual content of borrowed works, documentary filmmakers often render the original author's creative contributions less evident through editing techniques such as camera moves,

7. Examples are the use of photographs and film clips showing what Times Square looked like 50 years ago, in the crime-filled 1970s (Amicus Oren Jacoby's *On Broadway*), to photos showing how interviewees looked when they participated in events that occurred decades in the past (Amici Bennett Singer and Patrick Sammon's *Cured*). *Cf. Time Inc. v. Bernard Geis Assocs.*, 293 F. Supp. 130, 139 (S.D.N.Y. 1968) (in book about the assassination, use of charcoal sketches that copied famous Zapruder footage "with no creativity or originality whatever" was fair).

blurring, montaging or the brevity of their display of the borrowed works. *See, e.g.*, *Wade Williams Distribution Inc. v. Am. Broad. Co.,* No. 00 CIV. 5002 (LMM), 2005 WL 774275, at *11 (S.D.N.Y. Apr. 5, 2005) (since soundtracks of feature motion picture clips in TV program about films featuring aliens were largely inaudible, movies' "qualitative essences" were unlikely to have been used). *See also Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 611 (2d Cir. 2006) (author of coffee table book "minimized the expressive value of the reproduced images" of Grateful Dead concert posters by combining them with other materials in a collage). For such uses, the third factor will also favor documentarians.

For these reasons, a proper inquiry under the second and third factors will likely weigh decisively in favor of fair use for many documentary filmmakers. But, if the *Warhol* decision is allowed to stand, it will encourage the movement that is particularly evident in connection with photos and footage used for their factual content, to reduce, if not erase,[8] the relevance of the second and third factors.[9] Such an outcome would inappropriately

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8. Some cases dispose of the second factor based on the proposition that the second factor "has rarely played a significant role" in fair use analysis. *Authors Guild v. Google*, 804 F.3d 202, 220 (2d Cir. 2015). *See also Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 803 (9th Cir. 2003) (describing second factor as "not . . . terribly significant in the overall fair use balancing"). This point of view, which appears to have morphed from a reference in *Campbell* to a reduced weight where transformativeness is present, was soundly rebuked by *Google v. Oracle*, which commenced its fair use analysis with the second factor. *Oracle*, 141 S. Ct. at 1201.

9. *See, e.g., Fioranelli*, 551 F. Supp. 3d at 243-44 (use of photojournalist's 9/11 footage was not fair use even though videographer did not conceive of the events, pose his subjects or

alter the analysis called for in Section 107 and this Court's precedents regarding the fact/expression dichotomy.

CONCLUSION

Amici urge the Court to reverse the Second Circuit's judgment and reaffirm the constitutional, statutory and common law principles that have enabled documentary filmmakers and other creators of commentary, criticism and reporting to rely upon fair use to "promote the Progress of Science and the useful Arts." U.S. Const., Art. I, § 8, cl. 8.

Respectfully submitted,

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arrange the composition of what he filmed, choose the lighting, etc., but instead let his camera roll so as to capture the fast-moving events at Ground Zero on 9/11); *Otto v. Hearst Commc'ns, Inc.*, 345 F. Supp. 3d 412, 430 (S.D.N.Y. 2018) (use of plaintiff's iPhone photograph was not fair use, even though photo was more factual than creative, and photographer "did not direct or pose the subjects of the photo, nor control the lighting or the background.").

APPENDIX — LIST OF *AMICI CURIAE*

Giselle Bailey: Hush Bailey

Mark Bailey & Rory Kennedy: Moxie Films

Amy Berg: Disarming Films

Alan Berliner: Experiments in Time, Light & Motion Inc.

Josh Braun: Submarine Entertainment

Dan Cogan & Liz Garbus: Story Syndicate

Christina Clusiau & Shaul Schwarz: Reel Peak

Bonni Cohen: Actual Films

Julie Cohen, Oren Jacoby & Betsy West: Storyville Films

Chris Collins & Lydia Tenaglia: Zero Point Zero Production, Inc.

Christi Cooper: Barrelmaker Productions LLC

Billy Corben & Alfred Spellman: Rakontur

Lisa Cortés: Cortés Filmworks

Marshall Curry: Marshall Curry Productions LLC

Carl Deal & Tia Lessin: Elsewhere Films

Eli Despres, Joshua Kriegman & Elyse Steinberg: Edgeline Films

Kirby Dick & Amy Ziering: Jane Doe Films

Joseph Dorman: Riverside Films LLC

Paula Eiselt: Malka Films

Heidi Ewing & Rachel Grady: Loki Films

Andrew Goldberg

Marie Therese Guirgis

Jessica Hargrave & Ryan White

Impact Partners

Jupiter Entertainment

Alison Klayman: AliKlay Productions

MakeMake, LLC

Nneka Onuorah: Nneka Productions

Andrew Rossi & Kate Novack: Abstract Productions

Patrick Sammon: Story Center Films, LLC

Bennett Singer: Singer & Deschamps Productions, Inc.

Marcia Smith & Stanley Nelson: Firelight Media

Kim Snyder: K.A. Snyder Productions, LLC

Strongman, LLC

Nanfu Wang: Little Horse Crossing the River, Inc.

Hao Wu