

No. _____

IN THE
Supreme Court of the United States

PERFECT 10, INC.,

Petitioner,

v.

GIGANEWS, INC., *et al.*,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Copyright Act grants copyright owners certain exclusive rights, including the rights to reproduce, distribute, and publicly display their copyrighted works. See 17 U.S.C. § 106. Direct copyright infringement occurs when a plaintiff proves ownership of the work at issue, and violation of at least one of the rights established by 17 U.S.C. § 106. 17 U.S.C. § 501(a). This Court has also recognized that a defendant may be vicariously liable for the direct infringement of another if that defendant “profit[s] from [such] direct infringement while declining to exercise a right to stop or limit it.” *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005).

This case presents two questions concerning liability under the Copyright Act:

1. Whether the Ninth Circuit correctly held—in conflict with the Second, Sixth, Seventh, and Eighth Circuits—that a defendant “profits from” direct infringement for purposes of vicarious copyright liability only if a plaintiff proves that its work, as opposed to the totality of the infringing content offered by defendants, was the reason customers were drawn to the defendant’s business.
2. Whether the Ninth Circuit correctly held—contrary to the decisions of this Court—that a defendant does not engage in direct copyright infringement when it displays, reproduces, or distributes infringing material, so long as that conduct is accomplished through an automated process.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the following entity was a party to the proceeding before the United States Court of Appeals for the Ninth Circuit and may therefore be considered a respondent under this Court's Rule 12.6: Livewire Services, Inc.

RULE 29.6 STATEMENT

Petitioner Perfect 10, Inc., has no parent corporation, and no publicly held company that owns 10% or more of its stock.

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