

No. 18-1430

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In The  
**Supreme Court of the United States**

—◆—  
REDIGI INC., *et al.*,

*Petitioners,*

v.

CAPITOL RECORDS, LLC, *et al.*,

*Respondents.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Second Circuit**

—◆—  
**MOTION FOR LEAVE TO FILE AND BRIEF  
AMICUS CURIAE ON BEHALF OF OMNIQ  
IN SUPPORT OF PETITIONERS**

—◆—  
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JUNE 11, 2019

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**MOTION FOR LEAVE TO FILE  
BRIEF *AMICUS CURIAE***

Although Petitioners, ReDigi, Inc., *et al.*, have consented to the filing of this *amicus* brief by OmniQ, Respondent, Capitol Records, Inc., has not. OmniQ therefore moves pursuant to Supreme Court Rule 37.2(b), for leave to file this *amicus curiae* brief in support of Petitioners in the above captioned matter for the following reasons.

OmniQ is the assignee of patent-pending inventions that would rival those of ReDigi, and which provide a technologically different manner of shifting a work from one material object to another without reproduction. OmniQ's method was not before the District Court or the Second Circuit, however, and the Second Circuit's sweeping language threatens to stifle the development of OmniQ's method to the detriment of the public. OmniQ believes it would be helpful for this Court to understand the broader impact of the Second Circuit's holding, and why its error warrants *certiorari*.

OmniQ's patent-pending inventions were developed following extensive legal research, and rely on case law that was never considered below or in the instant Petition. OmniQ can show that the Second Circuit ignored the plain meaning of "reproduction," choosing instead a definition that directly conflicts with the plain language of the Copyright Act (when read as a whole) and the English-language interpretation of "reproduction" adopted by this Court and by the

Supreme Court of Canada (relying, in part, on U.S. case law). Also, OmniQ can demonstrate why the Second Circuit’s decision usurps the role of Congress by baselessly assuming that well-established jurisprudence in the United States and Canada with respect to the “analog” transfer of the fixation of a work from one material object to another would not carry over to a “digital” transfer of the same work from one material object to another. That assumption is in direct contravention of the Copyright Act’s plain language intended to apply to fixation “by any method now known or later developed,” (§ 101 definition of “copies” and “phonorecords”). By holding that established jurisprudence does not apply to this particular method that was later developed, the Second Circuit has, instead, developed a judicial “solution” to a problem best left to Congress, if it exists at all.

OmniQ was established to find a solution to the impact digital technology is having on the public benefits from the “first sale doctrine” and Sections 109 and 202 of the Copyright Act. The partnership includes veterans of the home video rental industry who were seeing the number of films available to the public shrink dramatically as the motion picture industry shifts from rental of physical DVDs (an exercise of the distribution right that is subject to Section 109 and the first sale doctrine) to digital delivery of the same work, but to a material object (e.g., the customer’s computer) owned by the customer, and that is not readily redistributable without parting with the entirety of the

hard drive's library of lawfully made copies of unrelated works.

Recognizing that a “copy and delete” means of transferring a copy from one person to another might infringe the reproduction right, the OmniQ invention navigates the path set out in the U.S. Copyright Act to move the work from one medium to another without reproduction. The result preserves the secondary market available to owners of lawfully made copies created by licensed reproduction to the owner's material object rather than by licensed reproduction to a plastic disc shipped by truck to the new owner.

THEREFORE, OmniQ hereby requests that this Court grant its Motion for Leave to File Brief *Amicus Curiae* and that the Court accept the attached proposed brief *amicus curiae* in support of the position of Petitioners, ReDigi, *et al.*

Respectfully submitted,

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