

No. 22-15293

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ALEXIS HUNLEY; MATTHEW SCOTT BRAUER, individually and on behalf of all others
similarly situated,

Plaintiff-Appellants,

v.

INSTAGRAM, LLC,

Defendant-Appellee.

Appeal from the United States District Court for the District of Northern California,
San Francisco, No. 3:21-cv-03778-CRB, Hon. Charles R. Breyer

**INSTAGRAM, LLC'S RESPONSE TO PLAINTIFFS-APPELLANTS'
PETITION FOR REHEARING EN BANC**

LENA H. HUGHES
MORRISON & FOERSTER LLP
250 W. 55th Street
New York, NY 10019

JOSEPH GRATZ
JAMES R. SIGEL
ANNIE A. LEE
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Tel: (415) 268-6066
JGratz@mofo.com

ALLYSON R. BENNETT
MORRISON AND FOERSTER, LLP
707 Wilshire Boulevard
Los Angeles, CA 90017

Counsel for Defendant-Appellee Instagram, LLC

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INTRODUCTION

The Panel’s decision involves a straightforward application of this Court’s precedent interpreting the plain language of the Copyright Act. In *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007), this Court held that a website that merely provides instructions for a browser to find an image that a different website stores and transmits (a process known as “embedding”) has not itself directly infringed the copyright holder’s right to publicly display that image. This Court’s decision relied on a careful reading of the Copyright Act and built on pre-existing caselaw from this Court. It placed no weight on the fact that the defendant in *Perfect 10*—Google—happened to be a search engine.

In the decision here, the Panel said the obvious: *Perfect 10* is not limited to search engines. It applies to any website that “embeds” images from other websites but does not store them.

There is no reason to rehear this case en banc. *Perfect 10* and the Panel’s application of it are correct, and no conflict exists with Supreme Court precedent, other decisions of this Court, or any other circuit authority. Nor does this case present a question of exceptional importance. It involves a discrete question about direct infringement liability for a specific way of causing images to appear in a user’s web browser. Plaintiffs’ proposal to create a bespoke Copyright Act that applies

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