No. 13-461

IN THE

Supreme Court of the United States

AMERICAN BROADCASTING COMPANIES, INC., *et al.*,
Petitioners,

v.

AEREO, INC., F/K/A BAMBOOM LABS, INC.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP), BROADCAST MUSIC, INC. (BMI), THE NATIONAL MUSIC PUBLISHERS' ASSOCIATION (NMPA), THE RECORDING INDUSTRY ASSOCIATION OF AMERICA (RIAA), SESAC, INC., THE RECORDING ACADEMY, THE SONGWRITERS GUILD OF AMERICA, INC. (SGA), THE CHURCH MUSIC PUBLISHERS ASSOCIATION (CMPA), THE NASHVILLE SONGWRITERS ASSOCIATION, INTERNATIONAL (NSAI), AND SOUNDEXCHANGE, INC. IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

Amici Curiae are associations and organizations whose members create and disseminate a wide variety of copyrighted musical compositions and sound recordings. *Amici* and their members depend heavily on royalties from public performances of their copyrighted works through digital services, including television retransmission services. Collectively, *Amici* represent hundreds of thousands of songwriters, composers, music publishers, recording artists, record labels, and others, who rely on the payments they receive from the commercial exploitation of their music and who will be harmed if the opinion below stands.[2]

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[1] No party or counsel for any party authored any part of this brief or made a monetary contribution intended to fund the preparation and submission of this brief. All parties consent to *Amici* filing this brief.

[2] Through their robust protection and "blanket licensing" activities, ASCAP, BMI, and SESAC play a crucial role in giving practical effect to the public performance right granted to songwriters, composers, and music publishers. *See generally Broad. Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1 (1979). Likewise, SoundExchange, on behalf of record labels and recording artists, collects and distributes performance royalties, and enforces the statutory license under which those royalties are paid. NMPA and RIAA work on behalf of music publishers and record labels, respectively, to protect, promote, and advance their interests on legislative, litigation, and regulatory matters. CMPA is an organization of religious music publishers that works to support and promote worldwide copyright protection and education. SGA and NSAI are not-for-

Royalties from digital transmissions are rapidly becoming among the most important sources of revenue for *Amici* and their members, with the number of digital streams growing at an increasingly rapid pace as more consumers turn to online streaming services for their primary source of music.[3] *See* Press Release, Nielsen, *U.S. Music Industry Year In Review: 2013*, Jan. 22, 2014 ("While overall music sales (including albums, singles, music videos, digital tracks) were down 6.3 percent year over year, streaming consumption grew a whopping 32 percent since 2012.").[4] And soon, almost everyone will be able to watch "television" through on-demand and individualized programming services that enable consumers to enjoy tailored and targeted viewing experiences. *See* Brian Stelter, *Netflix Hits Milestone And Raises Its Sights*, N.Y. TIMES, Oct. 22,

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profit trade associations for songwriters. The Recording Academy, known for the GRAMMY awards, is the trade association that represents all music creators – performers, songwriters, and studio professionals. The Appendix to this brief provides more detailed descriptions of *Amici*.

[3] "'Streaming' generally involves compressing a file to a size small enough to be transmitted over the Internet and then allowing the receiving computer to start playing packets of the file while the remaining packets are being transmitted." *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 277 n.1 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 1585 (2013).

[4] *Available at*:
http://www.nielsen.com/us/en/reports/2014/u-s-music-industry-year-end-review-2013.html (last visited Feb. 26, 2014).

2013, at B1;[5] Shalini Ramachandran, *Evidence Grows On TV Cord-Cutting*, WALL ST. J., Aug. 7, 2012, at B3.[6] For many consumers, the availability of subscription-based, remote access to perfect digital copies of music, television shows and motion pictures that can be accessed on demand will likely reduce the need to purchase copies of those works. Thus, the exclusive right to license the public performance by streaming of music and audiovisual works that contain music is now imperative to the vitality – and the economic survival – of *Amici*, their members, and others involved in creating and distributing music.

The Second Circuit's incorrect interpretation of the statutory language defining the contours of the public performance right threatens to undo the emerging success of legitimate licensed streaming services. As first promulgated in *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir. 2008), *cert. denied*, 129 S. Ct. 2890 (2009) [hereinafter "*Cablevision*"], and then expanded in *WNET Thirteen v. Aereo, Inc.*, 712 F.3d 676, *reh'g denied*, 722 F.3d 500 (2d Cir. 2013), the Second Circuit's test focuses on whether ***the same copy of a***

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[5] *Available at*: http://www.nytimes.com/2013/10/22/business/media/netflix-hits-subscriber-milestone-as-shares-soar.html?_r=0 (last visited Feb. 26, 2014).

[6] *Available at*: http://online.wsj.com/news/articles/SB10000872396390443792604577574901875760374 (last visited Feb. 26, 2014).

work is used to deliver transmissions to each consumer, rather than whether ***performances of the same work*** are transmitted to members of the public, including in some cases to thousands or millions of consumers.

Amici and their members will be severely harmed if the Second Circuit's opinion stands. Opportunistic companies could use the *Aereo* model to try to orchestrate mechanisms for avoiding copyright licensing payments for online services. *See* Jane C. Ginsburg, *Copyright 1992-2012: The Most Significant Development*, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 465, 476-77 (2012) ("As the cost of digital storage drops, the prospects for redundant individually-dedicated copies increase, potentially spawning a host of new copyright-avoiding business models, particularly as that storage moves to the 'cloud.'"). If such efforts were successful, they would undermine the ability of *Amici* and their members to license online services to disseminate their works and to receive fair remuneration in return. The result would be to severely limit the incentives necessary for investments in creativity provided by the copyright laws. *See Golan v. Holder*, 132 S. Ct. 873, 889 (2012) ("Our decisions . . . recognize that 'copyright supplies the economic incentive to create *and disseminate* ideas.'") (original emphasis) (citation omitted).

The Second Circuit's tortured interpretation of the public performance right could harm musicians, songwriters and their business partners in other

ways as well. For example, *Amici* and their members will receive lower payments from broadcasters whose revenues will decrease because fewer and fewer companies that retransmit television programming will pay retransmission consent fees. *See Am. Broad. Cos. v. Aereo, Inc.*, 874 F. Supp. 2d 373, 398 (S.D.N.Y. 2012). *See also* 47 U.S.C. §325(b) (requiring multi-channel video programming distributors ("MVPDs") to license retransmissions of broadcast signals). In addition, *Amici* may receive lower payments from cable and satellite television providers, under sections 111 and 119 of the Copyright Act, respectively, because unlicensed competition from Aereo and others will decrease revenues earned by licensed retransmitters. These licensed retransmitters may themselves ultimately argue that they can adopt Aereo's "unique copy" scheme and avoid licenses. *See Aereo,* 722 F.3d at 502 (denying rehearing; Chin, J., dissenting) ("Time Warner Cable has already announced its intention to look into adopting an Aereo-like system to avoid [retransmission] fees entirely, and Dish Network is in talks to acquire Aereo itself.").

If it is not reversed, Artful Dodgers like Aereo will continue to use the Second Circuit's opinion to deprive not only television broadcasters, but also artists, copyright owners, and authorized distributors of entertainment content of fair compensation for the commercial use of their creative works. Already, enhanced cloud music services offered by Internet giants like Amazon have

objected to paying public performance royalties, citing *Cablevision*. Aereo's practice has a domino effect on *Amici*, their members, and millions of others who earn their livings through the creation, distribution, and public performance of copyrighted content. *See* ROBERT LEVINE, FREE RIDE: HOW DIGITAL PARASITES ARE DESTROYING THE CULTURE BUSINESS, AND HOW THE CULTURE BUSINESS CAN FIGHT BACK 3 (2011) ("[T]he easy, illegal availability of all kinds of content has undermined the legal market for it, in a way that affects the entire media business. . . . This devaluation could also hurt the Internet, since professional media provides much of the value in a broadband subscription.").

Starving the creative industries will not encourage innovation and will not benefit anyone other than companies like Aereo that seek to profit in the short run by selling unauthorized access to works they had no hand in creating and that otherwise are made available to the public through legitimate, licensed sources. This Court should reverse.

SUMMARY OF ARGUMENT

In *Aereo*, the Second Circuit held that, under its precedent in *Cablevision*, the Copyright Act provides only a dramatically limited public performance right for on demand transmissions, the parameters of which are defined by arbitrary and illogical technical distinctions between how delivery methods function. *See Aereo*, 712 F.3d at 689. By

doing so, the court engaged in a form of copyright policy making that conflicts with Congress' technologically neutral approach to the exclusive public performance right. *See Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984) ("[I]t is Congress that has been assigned the task of defining the scope of the limited monopoly that should be granted to authors . . . in order to give the public appropriate access to their work product.").

In the Second Circuit, courts now must "consider the potential audience of [each] individual transmission." *Aereo*, 712 F.3d at 689. If an individual transmission can be received by only one household, it is private. *Id.* If multiple households can receive the individual transmission, it very likely is public. *Id.* Multiple individual transmissions of performances of the same work delivered by the same service provider are not public, ***unless*** the "private transmissions are generated from the same copy of the work. In such cases, these private transmissions should be aggregated, and if these aggregated transmissions from a single copy enable the public to view that copy, the transmissions are public performances." *Id.*

This convoluted application of the statutory definition of performing a work "publicly" (*i.e.*, the "Transmit Clause" of 17 U.S.C. §101) does violence to the plain language of that definition and to Congress' intent to provide a broad and flexible

public performance right. Contrary to the Second Circuit's construction, the statute does not focus on the manner in which a work is transmitted to members of the public; but on ***whether*** performances of a work are transmitted to members of the public ***in any manner***. *See id.* (transmission is public when delivered by "any device or process"). By emphasizing the manner in which a work is transmitted, the Second Circuit's reading of the statute has given free-riding opportunists a road map for how to design services providing thousands or millions of transmissions of performances of a work to paying subscribers and by that stratagem avoid compensating copyright owners because each such performance is deemed "private."

This case does not present a Hobson's choice between allowing Aereo (and copycat services) to function as an unauthorized television retransmitter of copyrighted content, or else eliminating access to such content on the Internet. Numerous licensed services, such as Hulu, iTunes and Netflix, already provide online access to the same works. *See* Graeme McMillan, *Viewers Are Flocking to Streaming Video Content – And So Are Advertisers*, WIRED.COM, Mar. 1, 2013.[7] Rather, the choice presented is whether to allow Aereo and others to illegitimately build businesses on the foundation of

[7] *Available at*: http://www.wired.com/underwire/2013/03/streaming-video-advertising/ (last visited Feb. 26, 2014).

copyrighted works and thereby to compete unfairly with licensed services, or whether to uphold the purpose of the Copyright Act, to comply with obligations of the United States under international treaties, and to provide fair compensation to copyright owners and their partners in return for their creative contributions.

ARGUMENT

I. In The Digital Age, The Public Performance Right Is Critically Important To The Music Industry.

Congress crafted the Copyright Act to provide broad protections in the form of exclusive rights in original works of authorship subject to specifically defined statutory exceptions. *See* H. Rep. on Copyright Law Revisions, H.R. REP. NO. 94-1476, 94th Cong., 2d Sess., at 61 (1976) ("The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications or exemptions in the . . . sections that follow."). The breadth of the enumerated exclusive rights has allowed the statute to adjust during decades of fast-paced technological progress. *See* 2 M.B. NIMMER & D. NIMMER, NIMMER ON COPYRIGHT §8.11[D][4][c], at 8-154.39 (2013) ("[T]he drafters of the current [Copyright] Act conceived its exclusive rights broadly, encouraging courts to interpret them so as to avoid their erosion as a result of unforeseen technological changes[.]").

The Second Circuit's interpretation of the public performance right ignores this construct and vitiates the efficacy of the statute in the digitally networked environment. If this Court endorses that approach, the repercussions could hobble the entertainment industry, and particularly the music sector, just when the online marketplace has started to produce licensed business models that enable consumers to obtain access to music and to audiovisual works, while permitting content creators and their business partners to generate the returns that allow them to produce new works.

Consumers are now rapidly embracing licensed services that stream music. "Last year, streaming and subscription services generated $1.03 billion in revenue, up 59 percent from the year before . . . " Ben Sisario, *As Downloads Dip, Music Executives Cast a Wary Eye On Streaming Services*, N.Y. TIMES, Oct. 21, 2013, at B3.[8] And one forecast estimates that streaming music services will jump from 29 million subscribers at the end of 2013 to 191 million by 2018. Andy Fixmer, *Beats Music Joins The Crowded Streaming Music Market*, BLOOMBERG BUSINESS WEEK.COM, Jan. 23, 2014.[9] This growth,

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[8] *Available at*: http://www.nytimes.com/2013/10/21/business/media/as-downloads-dip-music-executives-cast-a-wary-eye-on-streaming-services.html (last visited Feb. 26, 2014).

[9] *Available at*: http://www.businessweek.com/articles/2014-01-23/beats-music-joins-the-crowded-streaming-music-market (last visited Feb. 26, 2014).

and the consumer demand that drives it, have led to significant investments in legitimate streaming services. *See* Glenn Peoples, *Investors Put $2.4 Billion Into Music In 2013, Streaming Tops List*, BILLBOARD.COM, Jan. 31, 2014 ($406 million invested in streaming music services in 2013).[10]

As these services produce revenues for record labels, recording artists, music publishers, and song writers, increased productivity in the music industry will follow, resulting in increased public access to more and diverse music. *See* Press Release, Int'l Fed'n of the Phonographic Indus., *Record Labels Invest U.S. $4.5 Billion In New Music*, Nov. 12, 2012 ("Music companies invest a greater proportion of their global revenues in A&R [artists and repertoire] than most other sectors do in research and development (R&D)," including software and computing and the pharmaceutical and biotech sectors).[11] That economic philosophy is the very premise on which the Copyright Act is built. *See Mazer v. Stein*, 347 U.S. 201, 219 (1954) ("[E]ncouragement of individual effort by personal gain is the best way to advance public welfare

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[10] *Available at*: http://www.billboard.com/biz/articles/news/5893800/investors-put-24-billion-into-music-in-2013-streaming-tops-list (last visited Feb. 26, 2014).

[11] *Available at*: http://www.ifpi.org/news/record-labels-invest-us-4-5-billion-in-new-music (last visited Feb. 26, 2014).

through the talents of authors and inventors in 'Science and useful Arts.'").

II. The Plain Language Of The Copyright Act And Its Legislative History Require Reversal.

A. The Transmit Clause Is Broad, Technologically Neutral, And Adaptable.

The Second Circuit's erroneous restriction of the public performance right to instances where transmissions are either received by multiple households or streamed from the same copy resulted from its clear misreading of the Transmit Clause in the following way:

> To perform or display a work 'publicly' means – . . . to transmit or otherwise communicate a performance or display of the work . . . to the public, by means of any device or process, whether the members of the public capable of receiving ~~***the performance or display***~~ ***[an individual transmission]*** receive ~~***it***~~ ***[the transmission]*** in the same place or in separate places and at the same time or at different times.

17 U.S.C. §101 (emphasis and edits added).

The Second Circuit misinterpreted the statute when it erroneously read the pronoun "it" to refer to "the transmission," and required that each

individual transmission of a performance of a single, identical work be capable of reaching multiple households in order to qualify as a public performance. *See Aereo*, 712 F.3d at 689. Read correctly, "[t]here can be little doubt that the italicized word ***it*** in the [Transmit Clause] refers to 'performance or display,' not transmission, which in fact appears only as a verb, and not as a noun, in the definition." 2 PAUL GOLDSTEIN, GOLDSTEIN ON COPYRIGHT §7.7.2, at 7:168.1 (2013) (original emphasis). The plain language of the Copyright Act requires that any time a service uses "any device or process" to transmit performances of a work to members of the public (*i.e.*, not family or close acquaintances), it engages in public performances of that work, regardless of where or when the members of the public receive the transmissions. *See Columbia Pictures Indus., Inc. v. Prof'l Real Estate Investors*, 866 F.2d 278, 282 (9th Cir. 1989) ("A plain reading of the transmit clause indicates that its purpose is to prohibit transmissions and other forms of broadcasting from one place to another without the copyright owner's permission.").

Underlying the Second Circuit's error is its conclusion that the "transmission of a performance is itself a performance." *Aereo*, 712 F.3d at 687, *quoting Cablevision*, 536 F.3d at 134. That is, according to the Second Circuit, Congress used the words "performance" and "transmission" to mean the same thing. *See Fox TV Stations, Inc. v. FilmOn X LLC*, No. 13-758 (RMC), 2013 U.S. Dist. LEXIS 126543, at *49, n.12 (D.D.C. Sept. 5, 2013) ("*Aereo*

mistakenly substituted 'transmission' for 'performance' in its analysis"); Jane C. Ginsburg, *WNET v. Aereo: The Second Circuit Persists in Poor (Cable)Vision,* Media Inst., April 23, 2013 ("The Second Circuit conflated 'performance' with 'transmission.' . . . This reading does not work in terms of the statute."). The Second Circuit clearly was mistaken. Congress intentionally defined "performance" and "transmit" separately and differently. 17 U.S.C. §101. And "unless a contrary result is readily apparent, [courts] generally presume Congress intends different terms in the same statute to have different meanings." *Aereo*, 722 F.3d at 507 (denying rehearing; Chin, J., dissenting).

These definitions of "perform" and "transmit" make plain the crucial distinction between them. "To 'perform' a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible." 17 U.S.C. §101. "To 'transmit' a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent." *Id.* Thus, "transmission" is a term of art for a vehicle that delivers a "performance," and that vehicle can be "any device or process" whether "now known or later developed." *Id*. (defining "device" and "process"). *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an

expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"), *quoting* WEBSTER'S THIRD NEW INT'L DICTIONARY 97 (1976). *See also Aereo*, 722 F.3d at 510-11 (denying rehearing; Chin, J., dissenting) ("It is obvious from the text that Congress intended 'any device or process' to have the broadest possible construction so that it could capture technologies that were unimaginable in 1976.").

The legislative history confirms Congress' adaptable view of the public performance right:

> The definition of 'transmit' – to communicate a performance or display 'by means of any device or process whereby images or sound are received beyond the place from which they are sent' – ***is broad enough to include all conceivable forms and combinations of wired or wireless communications media***, including but by no means limited to radio and television broadcasting as we know them.

H.R. REP. NO. 94-1476, at 64 (emphasis added). *See* H. Rep. on Copyright Law Revision, H.R. REP. NO. 90-83, 90th Cong., 1st Sess., at 29 (1967) ("[A] performance made available by transmission to the public at large is 'public' even though . . . the transmission is capable of reaching different recipients at different times, ***as in the case of***

sounds or images stored in an information system and capable of being performed or displayed at the initiative of individual members of the public.") (emphasis added).[12]

Thus, the scope of the Transmit Clause is broad and technologically neutral. The delivery method – whether it uses thousands of copies and antennae or one – simply does not matter. *See Nat'l Cable Television Ass'n, Inc. v. Broad. Music, Inc.*, 772 F. Supp. 614, 651 (D.D.C. 1991), *quoting David v. Showtime/The Movie Channel, Inc.*, 697 F. Supp. 752, 759 (S.D.N.Y. 1988) ("[I]t would strain logic to conclude that Congress . . . intended the degree of copyright protection to turn on the mere method by which television signals are transmitted to the public.").

The Second Circuit's disregard of the plain language of the Transmit Clause and its legislative history inevitably leads to internal inconsistencies. The incorrect analytical focus on the potential audience of each specific transmission is directly at odds with the statute's instruction that a public performance of a work occurs "whether the members of the public capable of receiving the performance receive it . . . at the same time or at different times." 17 U.S.C. §101. This definition presupposes that

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[12] The 1967 House Report explains language that is almost identical to the Transmit Clause as enacted. *See* 4 WILLIAM F. PATRY, PATRY ON COPYRIGHT §14:16, at 14-36, 14-37 (2013).

performances are public when transmitted at different times and from different copies.

Forced to reconcile these antithetical concepts, the Second Circuit fashioned an illogical and unsupported new exception to its new rule, *i.e.*, that separate, "private" transmissions ***from the same copy*** of a work are "aggregated," and hence become "public," even when the transmissions occur at different times, whereas separate, "private" transmissions of the same work ***from different identical copies*** are not. *Aereo*, 712 F.3d at 689. Simultaneously, the court had to admit that "[a]ggregating private transmissions generated from the same copy is in some tension with the . . . conclusion that the relevant inquiry under the Transmit Clause is the potential audience of the ***particular transmission***." *Id.* at n.11 (emphasis added).

The *Aereo* court's novel reading is not just in "some tension" with the statute; it is flatly inconsistent with it. It ignores that nothing in the language of the Transmit Clause, and none of the relevant statutory definitions, reference the number of "copies" used to deliver transmissions of performances of a work to members of the public. If the number of copies used by a device or process to transmit a performance of a work were critical, Congress surely would have expressed that condition, as it did elsewhere in the Copyright Act. *See Aereo*, 722 F.3d at 509 (denying rehearing; Chin, J., dissenting) ("If Congress had intended the

definition to turn on whether a unique copy was used, it knew how to say so."). *See also, e.g.,* 17 U.S.C. §§101 (defining "copies"); 108 ("no more than one copy"); 109 ("owner of a particular copy"); 112 ("no more than one copy of a particular transmission"); 107 ("making of another copy").

As the District of Utah recently (and accurately) concluded, rather than follow the statutory language and legislative intent, "[t]he Second Circuit proceeded to spin the language of the Transmit Clause, the legislative history, and prior case law into a complicated web." *Cmty. TV of Utah, LLC v. Aereo, Inc.*, No. 2:13CV910 DAK, 2014 U.S. Dist. LEXIS 21434, at *15 (D. Ut. Feb. 19, 2014). This Court should free copyright owners from that web by applying the statute as Congress wrote it.

B. The Decision Below Threatens To Undermine Congress' Recognition That Online Interactive Streaming Services Engage In Public Performances Of Sound Recordings And Musical Works.

Prior to 1995, the Copyright Act did not grant owners of sound recordings public performance rights. *See SoundExchange, Inc. v. Librarian of Cong.*, 571 F.3d 1220, 1222 (D.C. Cir. 2009). In that year, Congress extended the public performance right to certain "digital audio transmissions" of sound recordings. In doing so, it specifically included individual transmissions by "interactive services" (*i.e.*, on-demand services) that allow

individual consumers to choose what song is played and when, regardless of whether there are separate transmissions to each consumer from separate copies. *See* 17 U.S.C. §§106(6), 114. Congress also reaffirmed that owners of rights in musical works already possessed, under section 106(4), the exclusive right to publicly perform their works, including by means of digital audio transmissions. *See* 17 U.S.C. §114(d)(4)(B).

In enacting the Digital Performance Right In Sound Recordings Act in 1995, Congress expressly emphasized that sound recording copyright owners (just as owners of copyrights in other works) require protection from unauthorized performances made possible by new digital transmission technologies:

> Trends within the music industry, as well as the telecommunications and information services industries, suggest that digital transmission of sound recordings is likely to become a very important outlet for the performance of recorded music in the near future. . . . These new digital transmission technologies may permit consumers to enjoy performances of a broader range of higher-quality recordings than has ever before been possible. . . . However, in the absence of appropriate copyright protection in the digital environment, the creation of new sound recordings and musical works could be

> discouraged, ultimately denying the public some of the potential benefits of the new digital transmission technologies.

H. Rep. on the Digital Performance Right in Sound Recordings Act of 1995, H.R. REP. NO. 104-274, 104th Cong., 1st Sess., at 12-13 (1995).

According to Congress, the 1995 amendment reaffirmed that transmissions to members of the public by new technological means, such as streaming transmissions, are public performances.

> ***Under existing principles of copyright law, the transmission or other communication*** to the public of a musical work constitutes a public performance of that musical work. . . . ***New technological uses of copyrighted sound recordings are arising which require an affirmation of existing principles*** and application of those principles to the digital transmission of sound recordings, to encourage the creation of and protect rights in those sound recordings and the musical works they contain.

Id. at 22 (emphasis added).

The Second Circuit's narrow view of the public performance right stands at odds with Congress' recognition that on-demand digital music services publicly perform musical works and sound recordings regardless of the delivery system, including where separate digital copies are used to deliver separate transmissions of performances of the same work.

III. Undoing The Second Circuit's Erroneous Approach To The Public Performance Right Will Encourage Technological Progress.

A. Aereo's Claim That Upholding Copyright Protections Will Discourage Innovation Is A Stale Argument That Has Been Proven Wrong.

A key underlying principle of the Copyright Act is that creation of copyrighted works will spur technological advancement which, in turn, will provide compensation to enable continued creation. *See Fox Film Corp. v. Doyal*, 286 U.S. 123, 127-28 (1932) ("A copyright, like a patent, is 'at once the equivalent given by the public for benefits bestowed by the genius and mediations and skills of individuals and the incentive to further efforts for the same important objects.'") (citation omitted). Without new copyrighted works, the technology will have nothing (or at least nothing new) to provide to the public. Thus, requiring fair compensation for the use of copyrighted works encourages innovation in both content ***and*** technology. As *Amici* and their

members well know, it is wrong both in theory and practice to contend that requiring services like Aereo to obtain and pay for the right to disseminate copyrighted works will chill development of technology.

In 2005, this Court decided the landmark case of *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). The question presented was whether record companies, music publishers, and motion picture studios could hold peer-to-peer software distributors secondarily liable when "the vast majority of users' downloads [we]re acts of infringement." *Id.* at 923. The Court unanimously held that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." *Id.* at 919.

Just as Aereo and its *amici* have done in this case, Grokster and its *amici* argued that a ruling in favor of the plaintiffs would crush innovation and discourage investment in new methods for disseminating content online. *See, e.g.*, Brief of Respondents, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), No. 04-480, 2005 U.S. S. Ct. Briefs LEXIS 234, at *14 (ruling for plaintiffs "would deter investment in innovation by subjecting innovators to standards that are unpredictable in application and expensive to litigate"); *Amicus Curiae* Brief of National Venture

Capital Association, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), No. 04-480, 2005 U.S. S. Ct. Briefs LEXIS 252, at 25 ("The virtual certainty of costly and time-consuming litigation, in which the judiciary, rather than the market, determines the economic viability of products, will have a chilling effect on venture funding."); *Amici Curiae* Brief of Consumer Electronics Association, Computer and Communications Industry Association and Home Recording Rights Coalition, *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), No. 04-480, 2005 U.S. S. Ct. Briefs LEXIS 237, at *4 (ruling for plaintiffs "would chill innovation and stifle growth"). *See also Grokster*, 545 U.S. at 929.

After the Court's ruling, skeptics derided the decision as a threat to innovation. *E.g.*, *"Ten Years of Chilled Innovation,"* BLOOMBERG BUSINESS WEEK.COM, June 28, 2005 (quoting Professor Lawrence Lessig: "The harm of what the Supreme Court did is totally independent of this particular case. It's about changing the way innovation happens.");[13] Katie Dean, *Grokster Loss Sucks For Tech*, WIRED.COM, June 27, 2005 (quoting "technology companies and consumer groups [who]

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[13] *Available at*: http://www.businessweek.com/stories/2005-06-28/ten-years-of-chilled-innovation (last visited Feb. 26, 2014).

warned that the ruling will chill innovation").[14] The same argument was made, unsuccessfully, to convince Congress, in attempts to minimize the impact of the *Grokster* decision. *See Hearing Before U.S. Senate Comm. On Science and Transportation, MGM v. Grokster: Balancing the Protection of Copyright and Technological Innovation*, 109th Cong., July 28, 2005, at 4 (Prepared Testimony of Adam Eisgrau and Fred Von Lohmann) ("The Supreme Court's opinion now leaves technology companies, their attorneys and their backers to pick their way through a dangerous minefield of legal uncertainties profoundly antagonistic to economic progress and deeply hostile to continued innovation.").

By contrast, content creators and their licensees predicted that the *Grokster* decision would lead to increased investment in legitimate online methods of dissemination. *E.g.*, Press Release, RIAA, *RIAA Statement on MGM v. Grokster Supreme Court Ruling*, June 27, 2005 ("This decision lays the groundwork for the dawn of a new day – an opportunity that will bring the entertainment and technology communities even closer together, with music fans reaping the rewards.");[15] Amy Schatz, *et*

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[14] *Available at*: http://www.wired.com/entertainment/music/news/2005/06/68018 (last visited Feb. 26, 2014).

[15] *Available at*: http://www.riaa.com/newsitem.php?id=DE79FC7C-A22E-931E-CF31-59E03950450C (last visited Feb. 26, 2014).

al., *Grokster, StreamCast Can Be Sued Over Online Piracy*, WALL ST. J., June 28, 2005, at B1 ("Steve Jobs, Apple Computer Inc.'s CEO and chief of Pixar Animation Studios, said in an interview that the ruling was positive for efforts, including Apple's own iTunes Music Store, to encourage users to purchase music over the Internet.").[16]

History has proven the skeptics wrong. Innovation has ***not*** been stifled by requiring licensing of copyrighted content. To the contrary, with the exception of the growing *Cablevision* loophole, almost ten years after the *Grokster* ruling, online content dissemination is succeeding to the benefit of technology companies ***and*** content creators. Licensed services like Spotify, iTunes Radio, Beats Music, Songza, Rdio, and Google Play are testimony to that fact. *See* Your Music Finder, http://www.whymusicmatters.com/ (listing over 70 licensed online music services as of February 24, 2014); Where To Watch, http://www.wheretowatch.org/ (listing licensed services for viewing movies and television shows online). The *Grokster* decision was an immensely helpful jumpstart for licensed services that otherwise could not compete with rampant piracy. *See* Peter Menell, *Indirect Copyright Liability and Technology Innovation*, 32 COLUM. J.L. & ARTS 375, 399 (2009) ("The Chilled Innovation conjecture

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[16] *Available at*: http://online.wsj.com/news/articles/SB111927666876564101 (last visited Feb. 26, 2014).

downplays the beneficial effects of indirect copyright liability on the development of balanced technologies (those that tend to balance incentives to create copyrighted works with advances in information dissemination) while ignoring the adverse effects of broad immunity, which fosters deployment of parasitic technologies that tend to drive out balanced technologies.").

This decidedly is not a case where the Court is confronted with a "tradeoff" between promoting creative expression and promoting innovative devices or services. *Cf. Grokster*, 545 U.S. at 928. Aereo cannot justify its own free riding and the harm it is inflicting on the entertainment industry simply by calling itself an innovator. *See Columbia Pictures Indus. v. Redd Horne*, 749 F.2d 154, 157 (3d Cir. 1984) ("A defendant . . . is not immune from liability for copyright infringement simply because the technologies are of recent origin or are being applied to innovative uses."). Aereo's technology is not innovative; it merely uses traditional antennae (albeit thousands of them) to capture and copy over-the-air broadcasts, and then retransmits those broadcasts over the Internet to paying subscribers. In the process of trying to capitalize on the erroneous reasoning of *Cablevision*, it has implemented a contrived technology that is patently ***inefficient*** in order to perform exactly the same works and provide exactly the same consumer experience as services *Amici* and other content owners license. *Cf.* RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 984 (2d

ed. 2001) (to "innovate" is "to introduce (something new) for or as if for the first time").

If Aereo truly wants to compete in the market for delivering copyrighted content online, it should seek out licenses, as others successfully have done. Instead, it attempts to circumvent the law and to profit from disseminating the works of others without compensating anyone but itself. No innovation will be chilled by putting a stop to this ruse. *See Aereo*, 712 F.3d at 697 (Chin, J., dissenting) ("Aereo's 'technology platform' is . . . a sham.").

B. Legitimate, Innovative Cloud Music Services Are Already Licensed By The Music Industry And Public Performance Rights Easily Can Be Obtained.

Aereo has asserted that requiring it to obtain licenses to deliver television programming over the Internet will prevent innovative services, specifically cloud music and movie services, from developing. Leaving aside the obvious differences between these services and Aereo's service, this unfounded claim is particularly disingenuous, since myriad licensed services delivering content already exist. The music industry has licensed cloud music services (and others) that enable consumers to purchase and to store copies of their sound recordings and musical works on remote servers and to access streams of those recordings at the time and place of their

choosing. Companies like Amazon, Apple, and Google all offer licensed cloud-based music services. *See* Ben Sisario, *Amazon Revamps Its Cloud Music Player to Compete With iTunes*, N.Y. TIMES BLOGS, July 31, 2012.[17]

These services also must pay for mechanical reproductions of musical works (*i.e.*, for multiple copies of musical works made by the cloud services to facilitate their transmissions). Ethan Smith, *Music Industry, Online Services Strike Deal*, WALL ST. J., Ap. 12, 2012, at B3.[18] And, under an agreement between the music industry and these services, the mechanical licensing formula used to determine the amount paid for making these copies expressly anticipates the obligation also to pay royalties for the right to stream performances of songs from those copies (*i.e.*, to engage in public performances via individualized transmissions). *See* 37 C.F.R. §385.22(b)(2) ("***Subtract applicable performance royalties*** to determine the payable [mechanical] royalty pool, which is the amount payable for the reproduction and distribution of all musical works used by the service provider by virtue of its licensed . . . activity . . . .") (emphasis added).

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[17] *Available at*: http://mediadecoder.blogs.nytimes.com/2012/07/31/amazon-revamps-its-cloud-music-player-to-compete-with-itunes/ (last visited Feb. 26, 2014).

[18] *Available at*: http://online.wsj.com/news/articles/SB10001424052702303624004577338180584755836 (last visited Feb. 26, 2014).

While some are objecting to payment of public performance right fees, citing *Cablevision*, licenses to engage in public performances via such services are readily available through *Amici* ASCAP, BMI, and SESAC.

In short, a robust public performance right is not a threat to cloud music and movie services. These services need new and quality content to attract and keep subscribers. Providing a legal means for payments to creators and to copyright owners is the best way to ensure the future success of these (and other) services. At the end of the day, this case is not about cloud services. Nor is it about Aereo's technology per se. It is about Aereo's use of a "sham" technology as the means of operating a pirate television retransmission service in competition with established, licensed cable and satellite services. *Aereo*, 712 F.3d at 697 (Chin, J., dissenting).

IV. Affirmance Could Place The United States Out Of Compliance With Its International Obligations And Could Harm Domestic Copyright Owners By Reducing Payments For Foreign Exploitation Of Their Works.

In order to facilitate the cross-border protection and dissemination of copyrighted materials, in the last half century the United States has largely harmonized its copyright law with those of its trading partners. *See Eldred v. Ashcroft*, 537 U.S. 186, 205-06 (2003); *Golan*, 132 S. Ct. at 889. More than that, the United States is now required

by international copyright treaties and trade agreements to provide a broad public performance right (also known as the "communication to the public" right).[19] Member nations must accord public performance rights regardless of the means of transmission of the performance, whether the transmission emanates from a single or multiple copies, or whether it is to multiple or individual recipients. *See* 1 SAM RICKETSON & JANE C. GINSBURG, INT'L COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND 702-54 (2d ed. 2006) [hereinafter "RICKETSON"].

Compliance with obligations under the Berne Convention ("Berne"),[20] the World Trade Organization Agreement on Trade-Related Aspects

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[19] The *amici curiae* brief submitted by the International Federation of the Phonographic Industry (IFPI), *et al.*, analyzes in detail issues related to the international obligations of the United States from the perspective of international and foreign associations. *Amici* ASCAP, BMI, and SESAC, through their respective reciprocal licensing agreements with over 90 foreign performing rights societies, represent in the United States virtually all of the world's writers and publishers of music. *Amicus* SoundExchange collects and distributes performance royalties for foreign record labels and recording artists when their sound recordings are streamed online in the United States.

[20] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886 (Paris Text 1971, as amended Sept. 28, 1979), 25 U.S.T. 1341, 828 U.N.T.S. 221.

of Intellectual Property Rights ("TRIPS"),[21] and the World Intellectual Property Organization Copyright Treaty ("WCT")[22] is an issue of significant importance to *Amici* and their members. It ensures the reciprocal payment of royalties for the use abroad of the works of American songwriters and recording artists, and for the use in the United States of works of foreign rightholders under the principle of "national treatment." However, if the Second Circuit's opinion stands, the United States runs a substantial risk of being out of compliance with its treaty obligations and out of step with international norms. Foreign laws can and do authorize retaliation against U.S. copyright owners in such circumstances. As a result, the United States and its content creators and disseminators would be disadvantaged and harmed, and *Amici* and their members could lose income from licensing their content outside the United States.[23] Moreover, the

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[21] Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, 1867 U.S.T. 154, 33 I.L.M. 81.

[22] WIPO Copyright Treaty, Dec. 20, 1996, 36 I.L.M. 65.

[23] For example, because the federal Copyright Act currently does not provide owners of rights in sound recordings an exclusive, federal public performance right with respect to terrestrial radio broadcasts, certain trading partners withhold payments for U.S. sound recordings when they are played on terrestrial radio in those countries. *See* U.S. Department of Commerce Internet Policy Task Force, *Green Paper on Copyright Policy, Creativity and Innovation in the Digital Economy*, at 11 (July 2013) ("While broad public performance rights are enjoyed by owners of sound recordings in most other

United States itself could be the subject of enforcement actions and sanctions at the World Trade Organization if it fails to comply with its obligations under TRIPS. *See* 1 RICKETSON at 158.[24]

The obligations of the United States to provide a broad and meaningful public performance right are manifest. Berne Article 11 requires that "[a]uthors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (i) the public performance of their works, including such public performances by any means or process; [and] (ii) any communication to the public of the

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countries, U.S. sound recording owners and performers have been unable to collect remuneration for the broadcasting of their works in those countries, due to the lack of reciprocal protection here."); John R. Kettle III, *Dancing to the Beat of a Different Drummer: Global Harmonization - And the Need for Congress To Get in Step with a Full Public Performance Right for Sound Recordings*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1041, 1075 (2002) ("The foreign countries that collect public performance royalties under their laws only make such royalties available to nationals of member countries that provide an equivalent right. Since the United States does not provide a full public performance right for sound recordings, American recording artists and record labels are not entitled to receive the millions of dollars in foreign royalties collected that would otherwise be payable.").

[24] This is not an abstract possibility. As a result of losing a TRIPS case because its public performance right was too narrow, the United States was required to financially compensate other countries. *See generally* Jo Oliver, *Copyright in the WTO: The Panel Decision on the Three-Step Test*, 25 COLUM. J.L. & ARTS 119 (2002).

performance of their works."[25] Berne's requirements are incorporated into TRIPS (Art. 9, incorporating Berne Arts. 1-21) and the WCT (Art. 1, incorporating Berne Arts. 1-21). The WCT extends even further: as part of the exclusive right of communication to the public, right holders control "the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them." WCT, Art. 8. In addition to the public performance right, Berne and TRIPS require member states to provide copyright owners with an exclusive right to authorize retransmissions of broadcasts containing underlying works, including musical works. 1 RICKETSON, *supra* at 737.[26] Thus, Berne, TRIPS and the WCT require United States law to afford to creators broad, technology-neutral, exclusive rights that embrace services of the type undertaken by Aereo.

These treaties and agreements are not self-executing. Therefore, the United States' accession to these treaties and compliance with these agreements is based on a determination by the President, ratified by the Senate, that U.S. law (including the scope of exclusive rights) was fully compliant with

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[25] Article 14*bis* of Berne provides similar rights for owners of copyright in cinematographic works.

[26] The treaties allow for equitable remuneration to right holders via statutory licensing schemes, as provided for by the United States in 17 U.S.C. §§111 and 119.

the obligations in those treaties and agreements. In some cases, these determinations followed the enactment by Congress of implementing legislation amending U.S. copyright law in order to bring it into full compliance.[27] In the case of the public performance right, the President and Congress determined that no changes to U.S. law were needed because then-existing law, including then-existing case law, was fully compliant with the treaties. *See, e.g.*, Rep. of the Comm. on the Judiciary of the U.S. H. of Rep. on the WIPO Copyright Treaties Implementation and On-Line Copyright Infringement Liability Limitation Act, H.R. REP. NO. 105-551, pt. 1, 105th Cong., 2d Sess., at 9 (1998) ("The treaties do not require any change in the substance of copyright rights or exceptions in U.S. law."); Rep. of the Comm. On the Judiciary of the U.S. Senate on the Digital Millennium Copyright Act of 1998, S. REP. NO. 105-90, 105th Cong., 2d Sess., at 11 (1998) (no changes to U.S. law necessary for "recognition of a broad right of communication to the public that includes the Internet"). That determination would be undermined were the Second Circuit decisions in *Cablevision* and *Aereo* to be confirmed as correct interpretations of U.S. law.

[27] *See generally* Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (implementing WCT); Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (implementing TRIPS); Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (implementing Berne).

Outside of the United States, countries do not assign any import to whether separate copies are used to make transmissions of performances to individual members of the public. The conclusions of the Legislative and Executive Branches that the U.S. public performance right meets these global norms is supported by the text and legislative history of the Copyright Act. Even if this Court were to conclude that Congress' intent is ambiguous, it should read the Copyright Act in a manner that avoids conflict with international obligations binding on the United States. *See United States v. Weingarten*, 632 F.3d 60, 64-65 (2d Cir. 2011) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."), *quoting Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

"Where fairly possible, a United States statute is to be construed so as not to conflict with international law or an international agreement of the United States." Restatement (Third) of Foreign Relations Law of the U.S. §114 (1987). Not only is it "fairly" possible to interpret the Transmit Clause of the Copyright Act to be consistent with the United States' treaty and other foreign obligations, but it is the most reasonable option – if that clause is interpreted in accordance with its plain language and the intent of Congress.

CONCLUSION

Amici respectfully submit that the Court should reverse.

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APPENDIX

APPENDIX

DESCRIPTIONS AND INTERESTS OF

AMICI CURIAE

1. The American Society of Composers, Authors and Publishers (ASCAP), the first performing rights organization (PRO) in the United States, was formed in 1914 at the behest of composing legends Victor Herbert, Irving Berlin, and John Phillip Sousa. Its mission is to enable American music authors to receive fair remuneration for the public performance of their work. ASCAP's over 500,000 songwriters, lyricists, composers, music publishers, and foreign society members grant the society a nonexclusive right to license non-dramatic public performances of their many millions of copyrighted works. ASCAP in turn offers blanket licenses to parties seeking to perform these works, conferring the right to perform, for the stated term, any and all of the millions of musical works composed by ASCAP members. ASCAP licenses public performance rights to a wide variety of users, including Internet service providers, wireless providers and websites, television and radio stations, restaurants, hotels, and sports arenas.

2. Broadcast Music, Inc. (BMI) is also a PRO as defined in the Copyright Act, 17 U.S.C. §101. BMI issues blanket licenses to music users for the public performance rights of its affiliated songwriters', composers', and music publishers'

musical works, collects license fees on behalf of its affiliates, and distributes those fees as royalties to BMI affiliates whose works have been performed on media such as cable television, radio, and the Internet. BMI licenses the non-dramatic public performance right in approximately 8.5 million musical works on behalf of its affiliates, which comprise over 600,000 songwriters, composers, lyricists, and music publishers. Through affiliation with foreign performing rights societies, BMI also represents in the U.S. thousands of works of many of the world's foreign writers and publishers of music. Typical BMI licensees include Internet music services and websites, mobile entertainment services, television and radio broadcasting stations, broadcast and cable/satellite television networks, cable system operators and direct broadcast satellite services, concert promoters, background music services, municipalities, sports arenas, and others that publicly perform music.

3. The Church Music Publishers Association (CMPA) is an organization of religious music publishers founded in 1926 that works to support and promote worldwide copyright protection and education. Among CMPA's 55 member companies are nondenominational independent publishers, as well as the major denominational publishing companies for various churches. The wide range of sacred, gospel and contemporary Christian music products created and licensed by CMPA companies include hymnal and praise songs,

and choral, instrumental, handbell, keyboard and children's music.

4. The Nashville Songwriters Association International (NSAI), established in 1967, is a trade organization of approximately 6,500 members dedicated to serving songwriters of all genres of music. NSAI advocates for the legal and economic interests of songwriters, who derive income from licensing their copyright works. NSAI includes songwriter members who directly publish and license their own music.

5. The National Music Publishers' Association (NMPA) is the largest U.S. music publishing trade association with over 2,500 members. Its mission is to protect, promote, and advance the interests of music's creators. The NMPA is the voice of both small and large music publishers, the leading advocate for publishers and their songwriter partners in the nation's capital and in every area where publishers do business. The goal of NMPA is to protect its members' property rights on the legislative, litigation, and regulatory fronts.

6. Established in 1957, The Recording Academy is an organization of musicians, songwriters, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards - the preeminent peer-recognized award for

musical excellence and the most credible brand in music - The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture

7. The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major recorded music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States. In support of its members, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conduct consumer, industry and technical research; and monitor and review state and federal laws, regulations and policies. The RIAA protects the ability of the music business to invest in new bands and new music and, in the digital arena, to give online services space to continue to prosper.

8. SESAC, Inc. (SESAC) is a musical performing rights society that services both the creators and the users of non-dramatic musical works through licensing, royalty collection and

distribution. SESAC licenses the public performance of 400,000 songs on behalf of its 30,000 affiliated songwriters, composers, and music publishers. SESAC, established in 1930 and recognized in the U.S. Copyright Act, is the second oldest and the fastest growing PRO in the United States.

9. The Songwriters Guild of America, Inc. (SGA) is the nation's oldest and largest organization run exclusively by and for songwriters, with more than five thousand members nationwide and over eighty years of advocacy experience concerning songwriters' rights. SGA is a voluntary association comprised of composers and the estates of deceased members. It provides a variety of services to its members, including contract analysis, copyright renewal and termination filings, and royalty collection and auditing to ensure that members receive proper compensation for their creative efforts. SGA's initiatives on behalf of all U.S. music creators includes advocacy before the U.S. Congress to obtain favorable legislation for songwriters, and participating as a party or as *amicus curiae* in litigation of significance to the creators of the American canon of popular music.

10. SoundExchange, Inc. is a non-profit performing rights organization representing tens of thousands of recording artists and record labels. SoundExchange was designated by the Copyright Royalty Board to collect and distribute statutory royalties owed by service providers for the public performance of sound recordings made via satellite

radio, Internet radio, cable television's music channels and similar platforms. Pursuant to the Copyright Act, SoundExchange collects royalties, not just for the owners of copyrights in sound recordings, but also for both featured and non-featured performers on those sound recordings. SoundExchange also works with many foreign performance rights organizations to collect and distribute sound recording performance royalties throughout the world on its members' behalf. Digital music services are a major source of revenue for the music industry as a whole and a crucial source of income for artists and rights owners. The statutory royalties for streaming radio on the Internet – also known as webcasting – are substantial and have been growing by leaps and bounds. These royalties currently represent a crucial portion of the revenues earned by recording artists and rights owners.