In the

# Supreme Court of the United States

FOURTH ESTATE PUBLIC BENEFIT CORPORATION,

Petitioner,

v.

WALL-STREET.COM, LLC, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

### BRIEF OF AMICUS CURIAE THE INTERNATIONAL TRADEMARK ASSOCIATION IN SUPPORT OF PETITIONER

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Clonus Assocs. v. Dream Works, LLC, 417 F. Supp. 2d 248 (S.D.N.Y. 2005)19
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Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804)8
Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962, 188 L. Ed. 2d 979 (2014)17
Robinson v. Shell Oil Co., 519 U.S. 337, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997)7



Subafilms, Ltd. v. MGM-Pathe
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banc)8
Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc., 618 F.3d 417 (4th Cir. 2010)
Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 115 S. Ct. 2333, 132 L. Ed. 2d 462 (1995)
Washingtonian Publ'g Co. v. Pearson, 306 U.S. 30, 59 S. Ct. 397, 83 L. Ed. 470 (1939)
Statutes
Copyright Act of 1976, Pub. L. No. 94-553, § 101, 90 Stat. 2541 (17 U.S.C. 101 et seq.)
15 U.S.C. § 112514
17 U.S.C. § 302(a)11, 13, 25
17 U.S.C. § 408(a)11, 13, 25
17 U.S.C. § 410(c)
17 U.S.C. § 411(a)passim
17 U.S.C. § 50717



### **Other Authorities**

Annual Report 4,	
https://www.copyright.gov/reports/a	
nnual/2017/ar2017.pdf	21
Fees,	
https://www.copyright.gov/about/fees	
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Melville B. Nimmer, NIMMER ON	
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70 [ ][ ][ ]	
Note, The Charming Betsy Canon,	
Separation of Powers, and	
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Registration Processing Times,	
https://www.copyright.gov/registrati	
on/docs/processing-times-faqs.pdf	
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, , , , , , , , , , , , , , , , , , ,	
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Relations Law of the United States	
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