

No. 17-571

IN THE
Supreme Court of the United States

FOURTH ESTATE PUBLIC BENEFIT CORP.,

Petitioner,

v.

WALL-STREET.COM, LLC, AND JERROLD D. BURDEN,

Respondents.

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

**BRIEF OF WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

CORY L. ANDREWS
Counsel of Record
CORBIN K. BARTHOLD
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036
(202) 588-0302
candrews@wlf.org

October 18, 2018

QUESTION PRESENTED

Whether, under § 411(a) of the Copyright Act, a copyright owner may file an infringement suit after delivering the requisite deposit, application, and fee to the Copyright Office—but before the Register of Copyrights has acted on the application for registration.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTEREST OF *AMICUS CURIAE* 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT..... 4

ARGUMENT 7

I. THE REGISTRATION APPROACH BEST ACCOMPLISHES CONGRESS’S VITAL AIMS..... 7

 A. The Registration Approach Best Ensures a Robust Copyright Registry 8

 B. The Registration Approach Best Conserves Judicial Resources 11

 C. The Registration Approach Best Sustains the Library of Congress..... 15

II. THE PETITIONER’S PRACTICAL CONCERNS ARE OVERSTATED 16

CONCLUSION 21

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Am. Broad. Cos., Inc. v. Aereo, Inc.</i> , 134 S. Ct. 2498 (2014)	1
<i>Cosmetic Ideas, Inc. v. IAC/Interactivecorp</i> , 606 F.3d 612 (9th Cir. 2010)	3, 8, 9, 11
<i>Hallstrom v. Tillamook Cnty.</i> , 493 U.S. 20 (1989)	17
<i>Kernel Records Oy v. Mosley</i> , 694 F.3d 1294 (11th Cir. 2012)	3
<i>Kregos v. Associated Press</i> , 795 F. Supp. 1325 (S.D.N.Y. 1992)	19, 20
<i>La Resolana Architects, PA v. Clay Realtors Angel Fire</i> , 416 F.3d 1195 (10th Cir. 2005), abrogated on other grounds by <i>Reed Elsevier, Inc. v. Muchnick</i> , 559 U.S. 154 (2010)	3
<i>Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.</i> , 545 U.S. 913 (2005)	1
<i>M.G.B. Homes, Inc. v. Ameron Homes, Inc.</i> , 903 F.2d 1486 (11th Cir. 1990)	3, 4
<i>Petrella v. Metro-Goldwyn-Mayer, Inc.</i> , 134 S. Ct. 1962 (2014)	5, 14, 19

Page(s)

<i>Positive Black Talk, Inc. v. Cash Money Records Inc.</i> , 394 F.3d 357 (5th Cir. 2004), abrogated on other grounds by <i>Reed Elsevier, Inc. v. Muchnick</i> , 559 U.S. 154 (2010).....	3
<i>Psihoyos v. John Wiley & Sons, Inc.</i> , 748 F.3d 120 (2d Cir. 2014)	19
<i>Reed Elsevier, Inc. v. Muchnick</i> , 559 U.S. 154 (2010)	3
<i>Torres-Negón v. J & N Records, LLC</i> , 504 F.3d 151 (1st Cir. 2007)	11
<i>William A. Graham Co. v. Haughey</i> , 568 F.3d 425 (3d Cir. 2009)	19

Statutes:

Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (1976)	<i>passim</i>
17 U.S.C. § 407(b).....	15
17 U.S.C. § 408(b).....	15
17 U.S.C. § 408(f)	20, 21
17 U.S.C. § 410(c)	13
17 U.S.C. § 410(d).....	18
17 U.S.C. § 411(a).....	<i>passim</i>

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.