

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT**

CHRISTOPHER PORCO,

Plaintiff-Appellant,

Case No. 522707

-against-

LIFETIME ENTERTAINMENT SERVICES, LLC,

Defendant-Respondent.

**NOTICE OF MOTION OF PROPOSED *AMICI*
FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANT-RESPONDENT**

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PLEASE TAKE NOTICE that, upon the annexed affirmation of Robert D. Balin, dated October 6, 2016, and the exhibit annexed thereto, Proposed *Amici* The Reporters Committee for Freedom of the Press, Advance Publications, Inc., the Association of American Publishers, Inc., CBS Broadcasting Inc., The Center for Investigative Reporting, Discovery Communications, LLC, First Look Media Works, Inc., Gannett Co., Inc., Home Box Office, Inc., the Investigative Reporting Workshop at American University, the Media Law Resource Center, MPA – The Association of Magazine Media, the National Press Photographers Association, National Public Radio, Inc., NBCUniversal Media, LLC, The New York Times Company, Online News Association, PEN America, Radio Television Digital News Association, The Seattle Times Company, Society of Professional

Journalists, Time Inc., and the Tully Center for Free Speech (“Proposed *Amici*”) will move the Appellate Division, Third Department on October 24, 2016, at the Courthouse located at the Justice Building, 5th Floor, Empire State Plaza, Albany, New York 12223, for an order granting Proposed *Amici* leave to file the brief attached hereto as *amici curiae* in support of Defendant-Respondent in the above-captioned action, and for such other and further relief as the Court may deem just and proper in the circumstances.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, shall be served at least seven (7) days before the return date of this motion.

Dated: New York, NY
October 6, 2016

Respectfully submitted,

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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT**

CHRISTOPHER PORCO,

Plaintiff-Appellant,

Case No. 522707

-against-

LIFETIME ENTERTAINMENT SERVICES, LLC,

Defendant-Respondent.

**AFFIRMATION OF ROBERT D. BALIN IN SUPPORT OF MOTION FOR
LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANT-RESPONDENT**

Robert D. Balin, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms under penalties of perjury as follows:

1. I am a partner at the law firm of Davis Wright Tremaine LLP, attorneys for Proposed *Amici* The Reporters Committee for Freedom of the Press, Advance Publications, Inc., the Association of American Publishers, Inc., CBS Broadcasting Inc., The Center for Investigative Reporting, Discovery Communications, LLC, First Look Media Works, Inc., Gannett Co., Inc., Home Box Office, Inc., the Investigative Reporting Workshop at American University, the Media Law Resource Center, MPA – The Association of Magazine Media, the National Press Photographers Association, National Public Radio, Inc., NBCUniversal Media, LLC, The New York Times

Company, Online News Association, PEN America, Radio Television Digital News Association, The Seattle Times Company, Society of Professional Journalists, Time Inc., and the Tully Center for Free Speech (“Proposed *Amici*”). I submit this affirmation in support of the Motion of Proposed *Amici* for Leave to File Brief as *Amici Curiae* in Support of Defendant-Respondent in the above-captioned action.

2. Attached hereto is a copy of the brief that Proposed *Amici* wish to submit to the Court (the “brief”). Proposed *Amici* have duly authorized me to submit this brief on their behalf.
3. Proposed *Amici* are some of the most significant media companies and trade organizations representing media companies in the United States. They publish, broadcast, produce, and distribute news, information, and entertainment in New York to millions of New Yorkers on a regular basis.
4. Proposed *Amici* seek leave to file this brief because this appeal presents questions of law that are of great importance to them. Specifically, Proposed *Amici* are deeply concerned that the arguments advanced by Plaintiff-Appellant in this case, if accepted, would impose unwarranted constraints on the most deeply held constitutional values in our society (that government cannot restrain or censor publication of speech, let alone speech about the criminal justice system), and may invite similar applications for

prior restraints in commercial misappropriation cases against the media. The interests of Proposed *Amici* are set forth in greater detail in the attached brief.

5. Given Proposed *Amici*'s substantial interest and expertise as described above and in the attached brief, I respectfully submit that the brief will be of special assistance to the Court. The brief presents law and arguments that might otherwise escape the Court's consideration on the precise issue of the applicability of New York Civil Rights Law §§ 50–51 by expanding and elaborating upon the arguments in support of affirming the decision below.
6. Defendant-Respondent has consented to the filing of this brief by Proposed *Amici*. Proposed *Amici* have not attempted to obtain permission from Plaintiff-Appellant, since Plaintiff-Appellant is incarcerated and seeking permission in the short time frame afforded by the Court's briefing schedule would have been futile.
7. Accordingly, I respectfully request that the instant motion be granted in all respects and that Proposed *Amici* be given leave to file the attached brief in this appeal.

Dated: New York, NY
October 6, 2016



Robert D. Balin

Exhibit A

New York Supreme Court

APPELLATE DIVISION—THIRD DEPARTMENT

CHRISTOPHER PORCO,

Plaintiff-Appellant,

—against—

LIFETIME ENTERTAINMENT SERVICES, LLC,

Defendant-Respondent.

**BRIEF OF REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
AND 22 ADDITIONAL MEDIA ORGANIZATIONS AS
AMICI CURIAE IN SUPPORT OF DEFENDANT-RESPONDENT**

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici, filing in support of Defendant-Respondent Lifetime Entertainment Services, LLC (“Lifetime”), urge this Court to affirm the Supreme Court’s dismissal of Plaintiff’s commercial misappropriation claim under New York Civil Rights Law §§ 50–51 (“Section 51”). *Amici* believe the trial court correctly found that the Lifetime film about Plaintiff’s crime, *Romeo Killer: The Christopher Porco Story*, is not actionable.

Amici are: Advance Publications, Inc., Association of American Publishers, Inc., CBS Broadcasting Inc., The Center for Investigative Reporting, Discovery Communications, LLC, First Look Media Works, Inc., Gannett Co., Inc., Home Box Office, Inc., Investigative Reporting Workshop at American University, Media Law Resource Center, MPA – The Association of Magazine Media, National Press Photographers Ass’n, National Public Radio, Inc., NBCUniversal Media, LLC, The New York Times Company, Online News Association, PEN America, Radio Television Digital News Association, The Reporters Committee for Freedom of the Press, The Seattle Times Company, Society of Professional Journalists, Time Inc., and the Tully Center for Free Speech. *Amici* publish, broadcast, produce, and distribute constitutionally protected expressive works in New York and to millions of New Yorkers on a regular basis.¹

¹ A full description of each of the *amici* is listed in Appendix A of this brief.

Amici are profoundly concerned about Plaintiff's attempt to expansively apply Section 51 to the use of a person's name or likeness in an expressive work merely because the producer or distributor is a for-profit entity. *Amici* are also concerned by any attempt to narrow the newsworthiness exception to Section 51, which New York courts have consistently held is to be broadly construed.

More generally, *amici* believe that docudramas, including the one at issue here, are fully protected under both the First Amendment and under Section 51's newsworthiness exception, even if some details are added or composite characters created for simplicity's sake in scripting.

For these reasons, as set forth in greater detail below, *amici* are keenly interested in the outcome of these proceedings.

SUMMARY OF ARGUMENT

This case involves a docudrama, which tells the story of Plaintiff's crime, a crime that was "subject to extensive media coverage." Complaint at 1, *Porco v. Lifetime*, No. 2013-190 (N.Y. Sup. Ct. Clinton Cnty. filed Jan. 29, 2013). The television movie also tells the story of Plaintiff, a prisoner, who was convicted of murdering his father and bludgeoning his mother with an ax. This lawsuit appears to *amici* as nothing more than an attempt to suppress speech and compel anyone who tells or reports on the story of Plaintiff's crimes to do so in a way with which he agrees. A finding in favor of Plaintiff would blur the clear line between

protected and unprotected expression, and could serve to “chill” countless works that otherwise would be created, produced, and distributed by *amici* in the future.

The commercial misappropriation tort set forth in Section 51 is narrowly written and interpreted because it otherwise would clash with the First Amendment and Article I, § 8 of the New York State Constitution, which is more protective of speech than its federal counterpart. Extending Section 51 liability beyond uses “for advertising or for purposes of trade” to expressive and newsworthy works merely because they may make a profit could threaten the vitality of the First Amendment and the vibrant marketplace of ideas that is a cornerstone of American society.

The public obtains its information through various sources who present it in many different ways. Narratives told through made-for-TV movies often expose the audience to stories and information of which they would not otherwise be aware, in a way that for some may be easier to comprehend. Section 51, by contrast, is designed to prevent only the unauthorized use of someone’s name or likeness in connection with the advertisement of a product or service. There is no basis for extending the reach of the statute beyond the realm of traditional commercial speech, and *amici* respectfully urge this Court not to do so.

ARGUMENT

I. SECTION 51 IS STRICTLY LIMITED TO USES OF NAME OR LIKENESS FOR ADVERTISING OR FOR PURPOSES OF TRADE

Expressive works were never intended to be subject to the restrictions created by New York Civil Rights Law § 51. The legislature’s objective in enacting Section 51 was to provide a narrow right of publicity to individuals whose “name, portrait, or picture” is employed ““for advertising purposes or for the purposes of trade’ *only* and nothing more.” *Finger v. Omni Publ’ns Int’l, Ltd.*, 77 N.Y.2d 138, 141 (1990) (“[C]ourts have consistently refused to construe these terms [trade and advertising] as encompassing publications concerning newsworthy events or matters of public interest.”). *See also, e.g., Krupnik v. NBC Universal, Inc.*, 39 Media L. Rep. (BNA) 1634, 1639 (Sup. Ct. N.Y. Cnty. 2010) (“New York courts have repeatedly ruled that the use of a person’s likeness in movies or other entertainment media . . . does not constitute use for advertising or purposes of trade, and are not actionable under section 51, because works of fiction do not fall within the narrow scope of the statutory definitions of ‘advertising’ or ‘trade.’”); *Frank v. NBC*, 506 N.Y.S.2d 869, 870–71 (2d Dep’t 1986) (dismissing Section 51 claim because “nothing in th[e] record in any way suggest[ed] that the plaintiff’s name ha[d] been” used for advertising or trade purposes when *Saturday Night Live* aired skit about tax consultant with same name as plaintiff’s giving “ludicrously inappropriate” tax advice); *Messenger ex rel. Messenger v. Gruner +*

Jahr Printing & Publ'g, 94 N.Y.2d 436, 441 (2000) (“[A] newsworthy article is not deemed produced for the purposes of advertising or trade.”). “A person’s name is used ‘for advertising purposes’ if it ‘appears in a publication which, taken in its entirety, was distributed for use in, or as part of, an advertisement or solicitation for patronage of a particular product or service.’” *Sch. of Visual Arts v. Kuprewicz*, 771 N.Y.S.2d 804, 812 (Sup. Ct. N.Y. Cnty. 2003) (citing *Beverley v. Choices Women’s Med. Ctr., Inc.*, 78 N.Y.2d 745, 751 (1991)). “‘Trade purposes’ is defined as ‘use which would draw trade to [defendant’s] firm.’” *Kuprewicz*, 771 N.Y.S.2d at 812 (citing *Kane v. Orange Cnty Publ’ns*, 649 N.Y.S.2d 23, 25 (2d Dep’t 1996)).

In drafting these statutory provisions, the New York legislature was solely concerned with nonconsensual commercial use of names or likenesses in response to *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538 (1902), in which approximately 25,000 unauthorized copies of an infant’s photograph were circulated throughout the country to market defendant’s flour. *Arrington v. N.Y. Times Co.*, 55 N.Y.2d 433, 439 (1982). “In no other respect did it undertake to roll back the court-pronounced refusal to countenance an action for invasion of privacy.” *Id.* In other words, the legislature restricted its “departure” from the status quo only to particular situations such as that in *Roberson*. *Id.*

The New York Court of Appeals also has consistently held that Section 51 does not apply to publications about “newsworthy events or matters of public interest.” *Messenger*, 94 N.Y.2d at 441; *see also Howell v. N.Y. Post Co.*, 81 N.Y.2d 115, 123 (1993); *Finger*, 77 N.Y.2d at 141–42; *Stephano v. News Grp. Publ’ns, Inc.*, 64 N.Y.2d 174, 184 (1984). In *Messenger*, the Court of Appeals expounded upon this broad definition of “newsworthiness,” finding that it “includes not only descriptions of actual events but also articles concerning political happenings, social trends or any subject of public interest.” 94 N.Y.2d at 441–42 (citing *Freihofer v. Hearst Corp.*, 65 N.Y.2d 135, 140–41 (1985) (publication of information pertaining to matrimonial action was newsworthy); *Stephano*, 64 N.Y.2d at 185–86 (finding article reviewing bomber jacket, accompanied by a photograph of a model wearing the jacket, to be newsworthy)).

That the producer, publisher, or distributor of an expressive work has a profit-based business model does not in any way change the inapplicability of Section 51 or remove the First Amendment protections accorded those works. *See, e.g., Messenger*, 94 N.Y.2d at 442; *Arrington*, 55 N.Y.2d at 440; *Freihofer*, 65 N.Y.2d at 141. It is legally irrelevant that one of the incentives in publishing is to “increase profits”; that, by itself, “does not mean that the name or likeness has been used for trade purposes within the meaning of the statute.” *Messenger*, 94 N.Y.2d at 442; *see also Delan v. CBS, Inc.*, 458 N.Y.S.2d 608, 613 (2d Dep’t

1983) (“While the very term ‘purposes of trade’ encompasses use for the purpose of making profit (since most publications perforce are profit making and the subject matter of such publications are designed with a view to being profitable), a literal construction of the statutory provision would violate the constitutional protection of free speech and free press when such publication involves a matter of public interest.”) (citations omitted).

In this case, Lifetime telecast an expressive work about an event of significant public interest, a fact that Plaintiff does not deny, and only used Plaintiff’s name and likeness as part of a dramatization of the newsworthy event that was his crime. *See Murray v. N.Y. Magazine Co.*, 27 N.Y.2d 406, 409 (1971) (citing *Gautier v. Pro-Football*, 304 N.Y. 354, 360 (1952) (“[S]ince ‘some newsworthy incident affecting him [was] taking place, [his] right of privacy is not absolute, but limited.’”)). While not a traditional news report, the docudrama communicated information about a horrific crime to its viewers. It was not an advertisement or solicitation for a product or service. Allowing Plaintiff’s claim to proceed here would transform the right of publicity into a right of censorship to prevent dissemination of information on matters of public interest by individuals involved. That is precisely why Section 51 does not apply to expressive or newsworthy works, and why Plaintiff’s claims here must fail.

II. THERE IS A LONG TRADITION OF TELEVISION MOVIES AND DOCUDRAMAS THAT BOTH ENTERTAIN AND EDUCATE, AND THAT HAVE LONG RECEIVED FIRST AMENDMENT PROTECTION

If Plaintiff's theory of the law were correct, many acclaimed films about or inspired by real people and events likely would never have been able to be made.² Many of the *amici* have produced and distributed works inspired by true events or people. Some are meticulously detailed historical depictions; others include composite characters, fictionalized conversations, or compressed timelines, which are often necessary within a particular genre. These "docudramas" have been produced for decades and have long included some fictionalization. *See, e.g., Alfano v. NGHT, Inc.*, 623 F. Supp. 2d 355, 359 (E.D.N.Y. 2009) (noting the newsworthiness of *Inside the Mafia*, a docudrama featuring the trial of John Gotti, notwithstanding its lack of strict historical accuracy, since the "activities of organized crime in the United States have long been a matter of public interest, even fascination"). They nevertheless have entertained, inspired, and educated the viewing public by drawing on actual events and people. *Id.*

Argo, the 2013 Academy Award best picture, illustrates this point. The film is based on a significant historical event, and while it contains fictionalizations, it

² For example, the award-winning films *Saving Private Ryan* and *Schindler's List* might never have been made were permission needed from (and, practically speaking, editorial control had to be given to) every living individual involved in the events depicted in those films.

won universal plaudits for being both educational and entertaining. It informed the public about the Iranian hostage crisis, the experiences of the six Americans who barely escaped being hostages, the risk Canadian officials took to assist those Americans, and the daring and crafty escape plan hatched and implemented by the CIA. Whether one calls it history, art, a fictionalized movie, or a docudrama, a work such as this has always received full First Amendment protection. It clearly is—and ought to be—far beyond the reach of Section 51.

In recent years, there has been no shortage of works based on important historical events. *Amicus* Home Box Office, Inc. produced and distributed *Recount*, which examined the torturous recount process in Florida following the 2000 presidential election by mixing news footage and verbatim dialogue into fictionalized re-creations (and which won the Emmy Award for Outstanding Made for Television Movie); *Game Change*, which follows John McCain's 2008 presidential campaign, from his selection of former Alaska Governor Sarah Palin as his running mate to their ultimate defeat in the general election (which won the Emmy for Outstanding Miniseries or Movie and The Golden Globe Award for Best Television Film); and *Too Big to Fail*, which addressed the complex and esoteric subject of the financial crisis of 2008 (nominated for 11 Emmys). All three works told true stories but included some fictionalized elements to allow for a

more condensed and viewer-friendly experience, and all educated as well as entertained the viewing public.

Further along the continuum of fictionalization is *In Cold Blood*, based on Truman Capote's book of the same name. The book was called a non-fiction novel by its author, and the Academy Award-nominated film included a fictional character who helped give the plot coherence. Despite such fictionalization, the movie certainly educated viewers about the criminal justice system and the controversial issue of capital punishment.

Along the same lines, one of the most watched television mini-series ever was the original *Roots*, a work of historical fiction, which both entertained and educated millions about the history of slavery. The 2016 retelling by defendant Lifetime on three networks over four nights was described by *amici The New York Times* as “aim[ing] to deliver a visceral punch of the past to a younger demographic, consumed anew by questions of race, inequality and heritage.” See Melena Ryzik, ‘*Roots*,’ *Remade for a New Era*, N.Y. Times (May 18, 2016), http://www.nytimes.com/2016/05/22/arts/television/roots-remade-for-a-new-era.html?_r=0. All of these works were produced for profit, and none of them is—or should be—within the ambit of Section 51.

Sixty years ago, in *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501, 502 (1952), the U.S. Supreme Court confirmed that films—whether fact or fiction—are

“a significant medium for the communication of ideas” entitled to full First Amendment protection, just like books, newspapers, and other expressive works. The Court made clear that these constitutional protections are not diminished by the fact that the work may be properly labeled as “entertainment,” noting that “[t]he importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.” *Id.* at 501; accord *Winters v. New York*, 333 U.S. 507, 510 (1948) (explaining that both entertainment and news are fully protected by the First Amendment because “[t]he line between the informing and the entertaining is too elusive for the protection of that basic right [of a free press]”).

Following this rationale, courts across the country have held that the First Amendment protects all forms of expressive works from commercial misappropriation claims, whether those expressive works be entirely fictional, semi-fictional, “based on” or “inspired by” real events and people, entirely factual news reporting or documentaries. See e.g., *Matthews v. Wozencraft*, 15 F.3d 432, 438 n.5, 440 (5th Cir. 1994) (holding that First Amendment protects use of persona in novel, including plaintiff’s “character, occupation and the general outline of his career, with many incidents in his life”); *Meeropol v. Nizer*, 560 F.2d 1061, 1066–67 (2d Cir. 1977) (finding fictionalized account of Julius and Ethel Rosenberg trial not actionable under misappropriation theory since both “historical” and “fictional”

works are fully protected by the First Amendment); *Seale v. Gramercy Pictures*, 949 F. Supp. 331, 337 (E.D. Pa. 1996) (concluding that use of plaintiff's persona in dramatized film about Black Panthers was protected expression); *Hicks v. Casablanca Records*, 464 F. Supp. 426, 432–33 (S.D.N.Y. 1978) (finding use of name and characteristics of Agatha Christie in fictional film protected under First Amendment); *Tyne v. Time Warner Entm't Co., L.P.*, 901 So.2d 802, 810 (Fla. 2005) (protecting the film, *The Perfect Storm*, a dramatized account of the disappearance of a fishing vessel and crew during a powerful storm); *Guglielmi v. Spelling-Goldberg Prods.*, 603 P.2d 454, 458–59 (Cal. 1979) (finding constitutional protection for unauthorized use of Rudolph Valentino's name and likeness in a semi-fictional movie); *Rosemont Enters. v. McGraw-Hill Book Co.*, 380 N.Y.S.2d 839, 844 (Sup. Ct. N.Y. Cnty. 1975) (holding that unauthorized, fictionalized biography of Howard Hughes could not provide the basis for a misappropriation claim and noting that "Howard Hughes is no different from any other person in that he cannot have a monopoly, nor can he give a monopoly to any entity, with respect to works concerning his life").

A dramatized retelling of a story like that in the present case both entertains and educates viewers. As with all these other works, it is, at bottom, a work of combined art and non-fiction, which, no matter how it is characterized, has long

been viewed as beyond the scope of Section 51 and fully protected by the First Amendment.

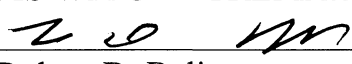
CONCLUSION

Section 51 must not be permitted to become a tool for censoring expression on matters of public interest. It should instead be limited to its intended purpose: curtailing the unauthorized use of one's name or likeness for advertising or trade purposes—*i.e.*, commercial speech. *Amici* urge this Court to affirm the Supreme Court's ruling in light of the First Amendment freedoms at stake and preserve this State's tradition of protecting free expression by narrowly interpreting and strictly limiting the reach of Section 51.

Dated: New York, NY
October 6, 2016

Respectfully submitted,

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APPENDIX A: DESCRIPTION OF AMICI

Advance Publications, Inc., directly and through its subsidiaries, publishes more than 20 print and digital magazines with nationwide circulation, local news in print and online in 10 states, and leading business journals in over 40 cities throughout the United States. Through its subsidiaries, Advance also owns numerous digital video channels and internet sites and has interests in cable systems serving over 2.3 million subscribers.

The Association of American Publishers, Inc. (“AAP”) is the national trade association of the U.S. book publishing industry. AAP’s members include most of the major commercial book publishers in the United States, as well as smaller and nonprofit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary and professional markets, scholarly journals, computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

CBS Broadcasting Inc. produces and broadcasts news, public affairs and entertainment programming. Its CBS News Division produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine shows, such as “60 Minutes” and “48 Hours.” CBS Broadcasting Inc. also directly owns and operates television stations across the country, including WCBS-TV in New York City.

The Center for Investigative Reporting (“CIR”) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we’re upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

Discovery Communications LLC satisfies curiosity and engages superfans with a portfolio of premium nonfiction, sports and kids programming brands. Reaching 3 billion cumulative viewers across pay-TV and free-to-air platforms in more than 220 countries and territories, Discovery’s portfolio includes the global brands Discovery Channel, TLC, Investigation Discovery, Animal Planet, Science and Turbo/Velocity, as well as OWN: Oprah Winfrey Network in the U.S.,

Discovery Kids in Latin America, and Eurosport, the leading provider of locally relevant, premium sports content across Europe. Discovery reaches audiences across screens through digital platforms, as well as over-the-top and TV Everywhere offerings, including Eurosport Player, Dplay, Discovery Kids Play and Discovery GO.

First Look Media Works, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

Home Box Office, Inc. ("HBO") is the world's most successful premium television company. With its HBO and Cinemax services, HBO is at the vanguard of creating and delivering groundbreaking original programming and hit Hollywood films to consumers worldwide across a wide range of platforms and offerings. HBO's original productions are some of the most innovative, honored and critically acclaimed programming on television, with wins in virtually every major programming award category.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

The Media Law Resource Center, Inc. ("MLRC") is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law, as well as policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. The MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. The MLRC was founded in

1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment.

MPA – The Association of Magazine Media (“MPA”) is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

National Public Radio, Inc. (“NPR”) is an award-winning producer and distributor of noncommercial news, information, and cultural programming. A privately supported, not-for-profit membership organization, NPR serves an audience of more than 26 million listeners each week via more than 1,000 noncommercial, independently operated radio stations, licensed to more than 260 NPR Members and numerous other NPR-affiliated entities. In addition, NPR is reaching an expanding audience via its digital properties, including NPR.org and NPR’s applications, which see more than 30 million unique visitors each month. National Public Radio, Inc. has no parent company and issues no stock.

NBCUniversal Media, LLC is one of the world’s leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations, including WNBC in New York, that produce substantial amounts of local news, sports and public

affairs programming. NBC News produces the “Today” show, “NBC Nightly News with Lester Holt,” “Dateline NBC” and “Meet the Press” and operates NBCNews.com.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

Online News Association (“ONA”) is the world’s largest association of online journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. ONA’s more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA hosts the annual Online News Association conference and administers the Online Journalism Awards. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

PEN America stands at the intersection of literature and human rights to protect open expression at home and abroad. Our mission is to unite writers and their allies to celebrate creative expression and defend the liberties that make it possible. PEN America has over 4,400 members, a nationwide community of novelists, journalists, editors, poets, essayists, playwrights, publishers, translators, agents, and other professionals, and an even larger network of devoted readers and supporters.

Radio Television Digital News Association (“RTDNA”) is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper *The Seattle Times*, together with *The Issaquah Press*, *Yakima Herald-Republic*, *Walla Walla Union-Bulletin*, *Sammamish Review* and *Newcastle-News*, all in Washington state.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Time Inc. (NYSE:TIME) is one of the world’s leading media companies, with a monthly global print audience of over 120 million and worldwide digital properties that attract more than 150 million visitors each month, including over 60 websites. Our influential brands include People, Sports Illustrated, InStyle, Time, Real Simple and Southern Living, as well as more than 50 diverse titles in the United Kingdom.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University’s S.I. Newhouse School of Public Communications, one of the nation’s premier schools of mass communications.