No. 00-201

In the Supreme Court of the United States

The New York Times Company, Inc., Newsday, Inc., The Time Incorporated Magazine Company, Lexis/Nexis, and University Microfilms International,

Petitioners,

v.

Jonathan Tasini, Mary Kay Blakely, Barbara Garson, Margot Miffin, Sonia Jaffe Robbins, and Davis S. Whitford,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF AMICUS CURIAE INTERNATIONAL FEDERATION OF JOURNALISTS IN SUPPORT OF RESPONDENTS

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BRIEF OF AMICUS CURIAE
INTERNATIONAL FEDERATION OF JOURNALISTS
IN SUPPORT OF RESPONDENTS

I. INTEREST OF AMICUS CURIAE[1]

The International Federation of Journalists ("IFJ") is an international confederation of journalists' associations and trade unions. It was first formed in 1926 and today it is the largest journalists' group in the world, counting more than 450,000 journalists in over 100 countries among its membership.

The IFJ is based in Brussels, Belgium. Its overarching goal is the improvement of the social and professional conditions of journalists, including the protection of its members' intellectual property rights. It speaks for journalists within the United Nations system and elsewhere in the international political and legal arenas, and works closely with international bodies, such as the World Intellectual Property Organization ("WIPO"), the European Union, UNESCO, and others, towards the achievement of its goals.

II. SUMMARY OF ARGUMENT

Courts, journalists, and publishers in many nations have been dealing with the issues presented in this case. This brief draws attention to pertinent foreign court decisions and considers some of the implications that arise from the fact that the issues here do not rest in an insulated cocoon of U.S. copyright law.[2]

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[1] The International Federation of Journalists has obtained the written consent of all parties, through their respective counsel, for the filing of this brief. Those letters are on file with the Clerk's Office. No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus curiae, or their counsel, made a monetary contribution towards the preparation or submission of this brief.

[2] English-language translations of the foreign decisions discussed in this brief, other than those decisions that are available in on-line databases, are included in an Appendix to this brief. Citation to the Appendix is in the form "App. at __." Certifications for these

A. European courts have consistently ruled that, under their respective laws, an author's rights in original work take precedence over the much more limited copyright enjoyed by a publisher who is allowed by the author to include that original copyrighted work in a printed collective work, such as a newspaper or journal. Publication of work in electronic media (like CD-ROM or computer database) is quite distinct from publication in more traditional print media. Accordingly, European courts have ruled that an author's consent to initial publication of an original work in a printed collective work does not allow the publisher the right or privilege to include the author's work in CD-ROM's or on-line computer databases. Where blanket consent has been granted, it does not include electronic exploitation. Thus, European courts recognize that the author retains the right to exploit this new opportunity for publication, at least until the author has specifically contracted it away. *See, post,* section III.A.

B. Transnational uniformity in copyright law is a desirable objective in our technologically interconnected world. Uniformity should be achieved unless U.S. law or national interests dictate otherwise. European and U.S. copyright laws share common principles that counsel in favor of the parallel interpretation of those laws. *See, post,* section III.B.

C. In nations that recognize an author's continuing copyrights in electronic publications, and thus the author's right to compensation for the electronic publication of her works, methods have been devised to allow licensing, thereby assuring public access to copyrighted works appearing in electronic media. *See, post,* Section III.C.

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translations, and copies of the untranslated decisions themselves, have been lodged with the Clerk's Office. *See* "Lodgment of Materials Referenced In Brief of *Amicus Curiae* International Federation of Journalists In Support of Respondents," lodged concurrently with the filing of this brief.

III. ARGUMENT

A. Foreign Court Decisions Have Consistently Recognized That An Author Enjoys A Continuing Copyright In The Electronic Publication Of Her Works Even Though She Has Agreed To Include Her Work In A Printed Collective Work

Berlin to Buffalo and Paris to Peoria, the basic transaction is similar. An author enjoys a copyright in her original work. She allows her article to be published in a printed compilation, say, a newspaper. She is paid by the newspaper's publisher for the privilege of using the article to enhance the financial success of the newspaper and, thus, enrich the publisher. The author's contract with the publisher does not address other uses of the article, beyond its publication in the newspaper.

Technology has brought electronic media, and with it fresh opportunities to publish and exploit copyrighted works. Publishers have sold copyrighted materials for electronic publication, by way of such media as CD-ROM, NEXIS, and the like. Authors have sued, contending that they never bargained away electronic publication rights when they agreed to allow their original works to be included in printed collective works, like the newspapers or journals where their articles first appeared. The publishers generally have defended these suits on the ground that exploitation in these electronic media is the exploitation of the publisher's pre-existing, printed collective work.

Courts in France, Belgium, Germany, and the Netherlands have rendered decisions addressing this kind of circumstance. These decisions consistently favor the authors.[3] They recognize that electronic publication is different from all prior forms of publication and distribution.

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[3] Two cases are pending in Canadian courts. These have not yet been decided on the merits. *See Robertson v. Thomson Corp.*, Case No. 96-CU-110595CP (Ontario Court Of Justice, General Division) (preliminary order, including a summary of the case, is available on Westlaw at 1999 CarswellOnt 301); *Association Des Journalistes Independants Du Quebec v. Cedrom-SNI*, Case No. C.S. Que. Montreal 500-06-000082-996 (Superior Court of Quebec) (preliminary ruling available on Westlaw (in French) at 1999 CarswellQue 3276).

These European decisions should inform the interpretation of U.S. copyright law: electronic publication in an on-line computer database or on CD-ROM is not a "revision" of the initial publication of a particular collective work; it is something fundamentally different; the right to publish electronically works of original authorship remains with the author, unless the author expressly contracts it away; a publisher's right to exploit a printed collective work does not include electronic-media exploitation which has the effect of usurping the author's copyright in her original work. As leading commentators have explained, there is a trend towards synchronization in international copyright law:

> "National laws have rather developed in response to the same media challenges worldwide and within overlapping legal cultures. Internationally, they have benefited from the 'more or less gentle and gradual pressure towards harmonization' which the Berne Convention has exercised." *See* Paul Edward Geller, *International Copyright: An Introduction* at 11-12, *in* 1 Paul Edward Geller & Melville B. Nimmer *International Copyright Law* (hereafter "Geller & Nimmer") (2000).[4]

* * *

France. *Le Figaro v. National Journalist Labor Union* (App. at 1-7). Le Figaro, a major French daily newspaper, began publishing an electronic edition accessible via the Internet. The web site also included an archive that allowed users to search for and obtain copies of articles published in earlier editions of the newspaper. Journalists (and their union) brought suit, claiming Le Figaro's electronic service violated the authors' copyrights in their works. Le Figaro contended that its newspaper was a collective work, for which it owned the copyright, and it therefore was entitled to publish an electronic edition. The lower court

[4] *See also* Paul Edward Geller, *From Patchwork To Network: Strategies For International Intellectual Property In Flux*, 31 Vand. J. Transnat'l L. 553 (1988) (hereafter "From Patchwork to Network") (arguing that intellectual property law should be harmonized from country to country, to the greatest extent possible, to keep pace with the globally networked marketplace).

enjoined Le Figaro from electronically accessing the plaintiffs' articles (without their permission), and awarded damages.

The Court of Appeals of Paris affirmed. The court's decision was based in part on its view that e-publication "cannot be compared to an extension of the print distribution ...." (App. at 5) The court also rejected Le Figaro's position on the ground that "what is published in this manner is not the entire newspaper but contributions, i.e. works of journalists, with the exclusion of pictures and certain graphics." (App. at 5-6). The court concluded that the journalists' grant of reproduction rights to Le Figaro ended after first publication, and Le Figaro was required to obtain further consent from the authors for e-publication.

French Journalist Labor Union CFDT et al. v. SDV Plurimedia (App. at 8-33). In this case, journalists brought suit against Plurimedia, a company that operated an Internet web site publishing articles licensed from a French newspaper, Dernieres Nouvelles d'Alsace ("DNA"), and works from a French television station ("FR 3"). The opinion reflects that Plurimedia essentially was the technical service provider for the electronic publication of DNA's newspaper. DNA and FR 3 determined the material that was to be published on the Plurimedia web site. (App. at 11).

The plaintiff journalists contended that DNA's license to Plurimedia for electronic publication of their works amounted to copyright infringement. Plurimedia contended that it properly licensed the works from DNA and FR 3, holders of the copyrights to their respective collective works. The departmental (lower) court of Strasbourg ruled that the journalists' copyrights had been infringed because DNA and FR 3 had not obtained the authors' electronic rights in the first place. The court enjoined Plurimedia from further electronic publication (without the journalists' consent), and awarded damages. Again, the

theory of the French court was that electronic publication was different from traditional publication. (App. at 16).[5]

Belgium. *Association Generale des Journalistes Professionnels de Belgique v. SCRL Central Station, et al.*, 1998 E.C.C. 40 (available on Westlaw, at 1996 WL 1093217). As succinctly described in the court's opinion, the defendant SCRL Central Station ("Central Station") operated a service much like LEXIS/NEXIS:

> "Every evening, when the various editions of the newspapers [of the principal Belgian publishers] are ready and are being sent for printing, they are transmitted at the same time to the Central Station server. A large database of press articles is then formed. By means of its different products, Central Station offers the selective electronic distribution of that information.… The public can use the Central Station server via the Internet." 1998 E.C.C. at 42.

The union for journalists whose articles were sent to Central Station sued, claiming the electronic publication of their works at Central Station was copyright infringement. Central Station contended that electronic publication at Central Station was no different than traditional print distribution, for which the journalists had licensed their works. *Ibid.*

The Belgian court enjoined Central Station from electronic publication without the authors' express consent, and awarded a liquidated sum as damages for any future violation of its judgment. *Id.* at 46. The court reasoned, much like the French courts, that electronic publication is different than prior forms of distribution:

> "The members of the public who use the Internet are not the same as those who read daily newspapers, being far more international and more numerous. The Central Station system enables articles to be selected by subject, but with all opinions represented, whereas a printed newspaper covers numerous subjects, but is characterized by a certain political and social shade of opinion. Central Station is not designed as a tool which is intended to replace

[5] Plurimedia appealed. The opinion of the Court of Appeals of Colmar reflects that the journalists and the newspaper, DNA, entered into an agreement regarding the electronic publication of the journalist's works during the pendency of the appeal. (App. at 26-28). *See, post,* Section III.C.

> newspapers, but as a selective distribution service.… Therefore the printed press is not the same as the Central Station network." *Id.* at 45.[6]

Germany. *Freelens Verein der Fotojournalistinnen v. Spiegel Verlag Rudolf Augstein* (App. at 38-64). Plaintiff, a society of freelance photojournalists, sued a magazine publisher over the latter's sale of a CD-ROM containing all issues of the magazine for a given year. The CD-ROMs contained complete issues of the magazine, including photographs, and excluding only advertisements. Thus, the electronic product at issue in *Freelens* appears similar to the NY Times OnDisc CD-ROM product at issue in *Tasini*. The freelance photojournalists claimed that the CD-ROMs infringed their copyrights in the photographs they submitted to the magazine.

Reversing a lower court's decision,[7] the appellate court concluded that "the overwhelming legal consensus [is] that the CD-ROM is a new, independent type of use in comparison with the magazine, the annual volume and even microfiche . . . ." (App. at 52). The court's analysis focused particularly on the unique features of e-media:

> "The search option in particular opens up new sales markets and thus increases the sales chances . . . . In addition, the economic interests of the author/photographer are especially endangered in the case of transmission of his photographs on CD-ROM, because once an image has been digitized, it can be processed without any loss of quality, even worldwide over data networks. Parallel use on multiple computers is even possible in server operation, unlike the annual volume of a magazine or microfiche." (App. at 53-54).

The German court rejected the publisher's argument that requiring it to locate and obtain electronic rights from innumerable photojournalists was unduly burdensome. (App.

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[6] The Brussels Court of Appeals affirmed. The decision is discussed in Jane C. Ginsburg, *Electronic Rights in Belgium and France*, 22 Colum.-VLA J.L. & Arts, 161-163 (1998), and an abridged version of the opinion is included in the appendix to the law review volume containing Professor Ginburg's article. *See* 22 Colum.-VLA J.L. & Arts, 177, 195-197. The Court of Appeals also ruled that "the electronic distribution that the appellant proposes is a distinct and parallel one, and brings a new and added value.…" *Id*. at 197.

[7] The lower court accepted the publisher's argument that the CD-ROM compilation was merely a substitution for the microfiche anthologies previously put out by the magazine, to which the photojournalists did not protest.

at 59). The court noted that "to prevent countless additional agreements, a solution to the problem must be achieved with the help of the performing rights companies." (*Ibid*.) The court remanded the case to the lower court for a determination of damages.

Netherlands. *Heg, et al. v. De Volkskrant.*[8] Three freelance authors, and the Netherlands Association of Journalists, sued the large Dutch newspaper De Volkskrant, contending that electronic publication of their works on the De Volkskrant Internet web site, and in a quarterly CD-ROM compilation of the newspaper, violated their copyrights. As in *Tasini*, there were no written license agreements, and the plaintiffs contended that implicit licenses were granted only for first-run traditional print rights. *See* Hugenholtz, *supra*, 22 Colum.-VLA J.L. & Arts at 155. De Volkskrant defended on the grounds that the electronic publication and electronic archiving of plaintiffs' works were no different than the microfilm volumes previously published by the newspaper, to which the plaintiffs had not objected. *Ibid.*

The Amsterdam District Court ruled in favor of the authors. The court viewed the CD-ROM as a new compilation of separate articles "by which circumstance the cohesion which makes these articles a newspaper in the paper edition is lacking in the CD-ROM." *Id.* at 186. The court also ruled that the De Volkskrant Internet web site differed substantially from the newspaper's print version, both in content and in its global reach. *Ibid.* The court concluded that the CD-ROM and Internet versions of De Volkskrant were not simply

[8] This decision is summarized in P. Bernt Hugenholtz, *Electronic Rights and Wrongs In Germany and The Netherlands*, 22 Colum.-VLA J. L. & Arts 151, 155-159 (1998). An abridged version of the decision is included in the appendix to the law review volume containing Professor Hugenholtz's article. *See* 22 Colum.-VLA J.L. & Arts 177, 181-189.

extensions or substitutes of existing archival or documentary media, but rather amounted to "independent form[s] of reproduction and publication." *Ibid.* [9]

* * *

These decisions are based on the judicial recognition that electronic publication is different than other, more traditional forms of publication and distribution of original works of authorship.[10] This distinction applies equally well in the U.S. and it should guide the Court's construction of provisions of the Copyright Act:

> "The reason that newspapers and magazines have traditionally settled only for the right to be first to publish an author's article is because the value of publishing the article lies almost entirely in being the first publisher to put it into print …"
>
> "The principle has been turned on its head as newspapers and magazines now publish electronically to a potential worldwide audience and the stories they publish have more lasting value in online databases. Individual articles, though they previously had a lasting value in libraries, are now far more accessible through online databases and even represent a profit center …" Matthew Hoff, *Tasini v. New York Times: What The Second Circuit Didn't Say*, 10 Alb. L.J. Sci. & Tech. 125, 161 (1999).

There is another feature of the European decision decisions that should be considered. European courts have relied on the way in which the electronic media are used when considering the question whether they: (a) are akin to the traditional print publications, including microfilm and microfiche, that the authors agreed to license, or (b) are something significantly different, for which the publishers must be required to remit a portion of their

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[9] Professor Hugenholtz notes at the conclusion of his article that De Volkskrant filed an appeal in this case. *Id.* at 158. Neither amicus curiae nor their counsel have been able to locate any further court decision.

[10] Notably, the European decisions are not based on violations of the authors' "moral rights." Some European jurisdictions afford copyright holders both a "moral right," which may be defined roughly as paternity of a work and a right to object to its derogatory treatment, and an "economic right," which more closely parallels the bundle of exploitation rights afforded under U.S. copyright law. In the European cases we have described in this brief, the courts have reasoned that electronic publication violates the authors' economic rights.

electronic publication license fees to the authors. Like Central Station in Belgium, LEXIS/NEXIS and the CD-ROM products are "not designed as a tool which is intended to replace newspapers, but as a selective distribution service ...." LEXIS and the CD-ROMs are used for research purposes, by searching for individual journalists' articles by subject matter or other criterion.[11] The products do not substitute for the hard-copy newspaper delivered to the doorstep each morning. Indeed, these products have substantial economic value *precisely because* they are not merely "revisions" of traditional printed newspapers. Similarly, they represent an economically valuable improvement over microfilm and prior generations of research tools.

B. United States Copyright Law Should Be Construed In Harmony With The Similarly Minded Laws Of Other Nations Unless Congress Has Clearly Dictated Differently

In an electronic world, where technology defies traditional borders, it is important that transnational intellectual property laws maintain a cohesion and uniformity to the maximum extent consistent with vital national interests. *Cf.* Geller, *supra, International Copyright: An Introduction*, at 11-12 *in* Geller & Nimmer.

A "primary objective" of the Berne Convention, to which the United States has subscribed, is "to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works."[12] Irene Segal Ayers, *Comment: International Copyright Law And The Electronic Media Rights of Authors and Publishers*, 22 Hastings Comm/Ent L.J. 29, 58 (1999). "The aim of most international initiatives in the field of

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[11] *See, e.g.*, Brief of Amicus Curiae of Ken Burns, et al. In Support Of Petitioners

[12] The Berne Convention for the Protection of Literary and Artistic Works is "the highest internationally recognized standard for the protection of works of authorship of all kinds." It "has been the major multilateral agreement governing international copyright relations" for more than 100 years. *See* S. Rep. No. 100-352 (regarding P.L. 100-568, Brene Convention Implementation Act of 1988), 100th Cong., 2nd Sess. 2 (1988).

copyright law is to achieve a mosaic or 'seamless web' of territorially-bound, national systems of copyright protection." Graeme W. Austin, *Domestic Laws and Foreign Rights: Choice of Law In Transnational Copyright Infringement Litigation*, 23 Colum.-VLA J.L. & Arts 1, _ (1999); *cf.* Geller, *supra*, From Patchwork To Network, 31 Vand. J. Transnat'l L. at 569 ("[I]n the field of intellectual property generally, international treaties, such as the Berne and Paris Conventions, have proved effective in forestalling many, though far from all, of the conflicts to which patchwork law is susceptible.").

European and U.S. copyright laws are similar in important respects. Both recognize a hierarchy between an author's copyright and that of the publisher of a collective work. *Compare Warren Publishing, Inc. v. Microdos Data Corp.*, 115 F.3d 1509, 1514, n. 16 (11th Cir. 1997) ("There are three types of work that are entitled to copyright protection – creative, derivative, and compiled . . . . A creative work is entitled to the most protection, followed by a derivative work, and finally by a compilation.") *and Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 349, 111 S.Ct. 1282, 1289, 113 L.Ed.2d 358 (1991) ("This inevitably means that the copyright in a factual compilation is thin.") *with, e.g.,* Dr. Adolf Dietz, *Germany, in* 2 Geller & Nimmer, at 19 (noting how the "main purpose and noblest task of [German copyright] law is to furnish protection to writers, composers, visual artists, and other human creators.").

The copyright interest of the author/publisher of the compilation is limited to the selection and arrangement of the included works, and does not extend to the works themselves. *See Feist*, 499 U.S. at 348; Herman Cohen Jehoram, *Netherlands*, *in* 2 Geller & Nimmer, at 17 (noting that Dutch copyright law "does not give extensive rights" to publishers of compilations because publishers' rights are "subject to the copyright in each of the separate works."); Dietz, *Germany, in* 2 Geller & Nimmer, at 28 (explaining how, under German copyright law, "[c]ompilations are protected by copyright if, by virtue of the

selection or arrangement of their components . . .they are protected as independent works, without prejudice to the copyright in the works thus collected, if indeed any works as such are included.").

While European copyright regimes may not include statutory provisions like 27 U.S.C. § 201(c), affording a "privilege of reproducing and distributing … any revision of [a] collective work…," it is recognized that European publishers do have the right to publish revisions, new editions, and annual compilations of their compilation works – in print – without the need for further consent from contributing authors. Typically this is accomplished by virtue of the "purpose of grant" doctrine, which holds that, unless otherwise specified, an author grants those rights necessitated by the purpose pursued in the grant at issue. *See, e.g.,* Hugenholtz, *supra*, *Electronic Rights and Wrongs in Germany and the Netherlands*, 22 Colum.-VLA J. L. & Arts at 153-154 (describing the purpose of grant doctrine); *FreeLens* (App. at 52 ("CD-ROM is a new, independent type of use in comparison with the magazine, the annual volume and even microfiche in the sense of [the purpose of grant doctrine] . . . .").

Thus, working with similar concepts and basic copyright principles, European courts have concluded that electronic publication of copyrighted works differs so substantially from traditional forms of publication and distribution that additional consents from individual copyright holders are required. This suggests that, for purposes of interpreting 27 U.S.C. § 201(c), electronic publication should not be considered a "revision" of prior forms of print publication.

C. The European Experience Teaches That Court Rulings In Favor Of Authors' "Electronic Rights" Do Not Result In The Withdrawal Of Literary Works From The Electronic World

The practical issue here is whether, on the one hand, publishers may keep entirely for themselves the money they obtain by exploiting electronic publication or whether, on the other hand, the authors are entitled to share in the fruits of electronic publication because their original works of authorship are being exploited.

The publishers predict a bibliographic Armageddon where fear of copyright infringement liability to widely scattered authors, and the inability to construct an effective licensing system, "will require publishers and electronic database companies, nationwide, irreversibly to delete tens of thousands of freelance contributions currently stored in electronic achieves … [and] [i]t also will force the wholesale destruction of CD-ROMs containing periodicals…." Petition For A Writ of Certiorari, at 2.

"The proof of the pudding is in the eating."[13] The approaches taken in countries that have recognized authors' rights in electronic publication media should assuage the fears that have been expressed in this case.

In France, after the *Plurimedia* decision, the journalists' union and DNA entered into a negotiated agreement regarding compensation of the journalists for e-publication rights to their submitted works. (App. at 26-28; 34-37). The journalists are to receive ten per cent of the net profit earned by the publisher as a result of the freely available electronic publication of DNA, subject to an annual minimum compensation amount, and eight per cent of the gross income earned by the publisher for paid use of its electronic publications.

The Norwegian Union of Journalists and the Norwegian Newspapers Publishers' Association reached an agreement regarding compensation for electronic publication of the authors' works even in the apparent absence of a judicial decision. *See* Agreement on

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[13] *Darr v. Burford*, 339 U.S. 200, 232 (1950) (Frankfurter, J., dissenting).

Copyright Between NJ (Norwegian Union of Journalists) and NAL (Norwegian Newspapers Publishers' Association)/UA (Norwegian Weekly Magazines Employers' Association) <http://www.authorsrights.org/doc/agrnal.pdf > (as of 2/16/01). Authors receive a pre-determined compensation for some channels of electronic publication, (e.g., Internet publication), and some forms are left open to future, project-specific negotiation (e.g., CD-ROMs, DVDs).

There are also examples from Germany of agreements regarding electronic publication between authors and publishers. *See, e.g.,* MTV Zeitschriften <http://www.authorsrights.org/doc/agrmtvz.pdf> (as of 2/16/01). Under this agreement, for example, certain authors whose works are exploited electronically by the publisher are entitled to share in the publisher's profits from electronic publication.

In addition, clearinghouses similar to ASCAP[14] have developed to assist in the management of electronic rights. The Electronic Rights Licensing Agency ("TERLA") is a non-profit Canadian-based copyright collective organization that provides "a place where publishers can clear rights and . . . a service keeping track of and monitoring usage, collecting and distributing royalties." <http://www.terla.com/policy.html > (as of 2/16/01). The Authors' Licensing and Collecting Society ("ALCS") is a non-profit London-based organization also exploring ways to manage electronic rights licensing. <http://www.alcs.co.uk/introduction.html > (as of 2/16/01). ALCS is developing ByLine, an Internet syndication service. The service "offers both print syndication and licensing for

[14] "'ASCAP was organized as a 'clearing-house' for copyright owners and users to solve these problems" associated with the licensing of music . . . its 22,000 members grant it nonexclusive rights to license nondramatic performances of their works, and ASCAP issues licenses and distributes royalties to copyright owners in accordance with a schedule reflecting the nature and amount of the use of their music and other factors." *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 5, 99 S.Ct. 1551, 155, 60 L.Ed.2d 1.

electronic use in other databases, in multimedia and multi-author projects like CD-ROMs." <http://www.alcs.co.uk/depts_ByLine.html > (as of 2/16/01).

This is by no means a comprehensive listing of all electronic rights agreements, clearinghouses, or solutions to the management of electronic rights. These examples from outside the United States suggest that authors and publishers are capable of reaching agreement regarding electronic publication issues and compensation. They demonstrate that creative people can come up with creative solutions to the management of electronic rights. And, significantly, electronic resources have not completely disappeared in Europe in response to court rulings favoring the electronic rights of authors in their copyrighted works.

IV. CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Dated: February 16, 2001

Respectfully submitted,

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