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Attorney for Defendant
Internet Archive

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANTHONY MARTINO, an individual,

Plaintiff,

v.

INTERNET ARCHIVE, a California
501(c)(3) non-profit organization,

Defendant.

Case No. 3:25-cv-10538-RFL

**DEFENDANT INTERNET ARCHIVE'S
ANSWER TO PLAINTIFF ANTHONY
MARTINO'S FIRST AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

ANSWER

1
2 Defendant Internet Archive (“IA” or “Defendant), by and through its
3 attorneys, hereby submits the following Answer to the First Amended Complaint
4 (“FAC”) (Dkt. No. 16) of Plaintiff Anthony Martino’s (“Martino” or
5 “Plaintiff”). The headings contained in the FAC are not substantive allegations
6 to which an answer is required, and to the extent that the headings are repeated
7 in this Answer, it is solely for ease of reference; to the extent the headings
8 require a response, they are denied. The screenshots contained in the FAC are
9 not substantive allegations to which an answer is required; to the extent any
10 response is required, Defendant lacks knowledge or information as to the
11 screenshots and their source and authenticity and on that basis denies them. If
12 any allegation is not expressly admitted, it is denied. Defendant answers the
13 allegations in the FAC as follows:

14 **NATURE OF THE ACTION**

15 1. Defendant admits Plaintiff brings this civil action seeking damages
16 for alleged copyright infringement. Defendant lacks knowledge or information
17 sufficient to form a belief as to the truth of the allegations regarding Plaintiff’s
18 alleged copyrighted works and on that basis denies them. Defendant denies the
19 remaining allegations in Paragraph 1.

20 1(b). Defendant admits Plaintiff asserts a claim for contributory
21 copyright infringement. Defendant lacks knowledge or information sufficient to
22 form a belief as to the truth of the allegations about third parties in Paragraph
23 1(b) and on that basis denies them. Defendant denies the remaining allegations
24 in Paragraph 1(b).

25 2. Defendant denies infringement. Defendant lacks knowledge or
26 information sufficient to form a belief as to the remainder of the allegations in
27 Paragraph 2 and on that basis denies them.

28 2(b). Defendant lacks knowledge or information sufficient to form a

1 belief as to the truth of the allegations in Paragraph 2(b) and on that basis denies
2 them.

3
4 **PARTIES**

5 3. Admitted.

6 3(b). Defendant lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations in Paragraph 3(b) and on that basis denies
8 them.

9 4. Admitted.

10 4(b). Internet Archive admits that it is a library. Internet Archive admits
11 that it operates the website archive.org. Defendant admits that archive.org offers
12 access to certain materials in digital form without charging a fee including
13 certain websites, software, sound recordings, and print materials. Defendant
14 admits that the Wayback Machine allows users to access certain archival website
15 records. Defendant admits that archive.org includes the mission statement
16 “Universal Access to All Knowledge.” Defendant denies the remaining
17 allegations in Paragraph 4(b).

18 **JURISDICTION AND VENUE**

19 5. Defendant admits that this Court has federal question jurisdiction
20 over Plaintiff’s claims of putative copyright infringement.

21 6. Denied.

22 7. Defendant admits that venue is proper in this district.

23 8. Denied.

24 9. Defendant lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in Paragraph 9 and on that basis denies
26 them.

27 10. Defendant denies that Plaintiff is entitled to statutory damages or
28 attorney’s fees. Defendant lacks knowledge or information sufficient to form a

1 belief as to the truth of the remaining allegations in Paragraph 10 and on that
2 basis denies them.

3 **FACTUAL BACKGROUND**

4 11. Defendant admits that MySpace was a large social networking
5 website operating at times including between 2003 and 2010. Defendant lacks
6 knowledge or information sufficient to form a belief as to the truth of the
7 remaining allegations in Paragraph 11 and on that basis denies them.

8 12. Defendant admits that MySpace has at certain times allowed users
9 to voluntarily upload digital copies of their sound recordings. Defendant lacks
10 knowledge or information sufficient to form a belief as to the truth of the
11 remaining allegations in Paragraph 12 and on that basis denies them.

12 13. Defendant admits that MySpace has at certain times allowed users
13 to voluntarily upload digital copies of their sound recordings and allowed third
14 parties to permanently download copies of those recordings. Defendant lacks
15 knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations in Paragraph 13 and on that basis denies them.

17 14. Defendant denies that any license granted as a result of uploading
18 recordings to MySpace was fully and immediately revocable. Defendant denies
19 that any license granted as a result of uploading recordings to MySpace did not
20 allow for distribution of the recordings to third parties for use outside
21 MySpace's immediate online platform. Defendant lacks knowledge or
22 information sufficient to form a belief as to the truth of the remaining
23 allegations in Paragraph 14 and on that basis denies them.

24 15. Defendant lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in Paragraph 15 and on that basis denies
26 them.

27 15(b). Defendant lacks knowledge or information sufficient to form a
28 belief as to the truth of the allegations in Paragraph 15(b) and on that basis

1 denies them.

2
3 15(c). Defendant denies that Plaintiff did not provide a license or
4 permission to make recordings available. Defendant denies that Plaintiff did not
5 make any of the recordings and musical compositions at issue in this suit
6 publicly available on MySpace. Defendant lacks knowledge or information
7 sufficient to form a belief as to the truth of the remaining allegations in
8 Paragraph 15(c) and on that basis denies them.

9 16. Defendant admits that the article attached as Exhibit 2 includes a
10 statement from MySpace regarding an error causing a loss of sound recordings;
11 the article and statement speak for themselves. Defendant lacks knowledge or
12 information sufficient to form a belief as to the truth of the remaining
13 allegations in Paragraph 16 and on that basis denies them.

14 17. Defendant admits that Jason Scott is an employee working as an
15 archivist for the Internet Archive. Defendant lacks knowledge or information
16 sufficient to form a belief as to the truth of the remaining allegations in
17 Paragraph 17 and on that basis denies them.

18 18. Defendant lacks knowledge or information sufficient to form a
19 belief as to the truth of the remainder of the allegations in Paragraph 18 and on
20 that basis denies them.

21 19. Defendant admits that the comment section of the MySpace
22 collection includes the quoted statement. Defendant lacks knowledge or
23 information sufficient to form a belief as to the truth of the remainder of the
24 allegations in Paragraph 19 and on that basis denies them.

25 20. Defendant admits that the MySpace MP3 files were transmitted to
26 Defendant by an anonymous party or parties and stored at their direction on
27 archive.org. Defendant admits that the title of the website
28 http://archive.org/details/myspace_dragon_hoard_2010 is “The Myspace

1 Dragon Hoard (2008-2010).” Defendant lacks knowledge or information
2 sufficient to form a belief as to the truth of the allegations regarding the
3 resolution and other specific details of the MP3 files and on that basis denies
4 them. Defendant denies the remaining allegations of Paragraph 20.

5 20(b). Defendant lacks knowledge or information sufficient to form a
6 belief as to the truth of the allegations in Paragraph 20(b) and on that basis
7 denies them.

8 21. Denied, except Defendant lacks knowledge or information
9 sufficient to form a belief as to the truth of the allegations regarding the specific
10 details of the MP3 files and on that basis denies them.

11 22. Defendant admits that certain items in the MySpace MP3 collection
12 have been available to the general public for free download via multiple
13 download options. Defendant denies that Plaintiff has identified eleven works.
14 Defendant lacks knowledge or information sufficient to form a belief as to the
15 truth of the remaining allegations in Paragraph 22 and on that basis denies
16 them.

17 23. Defendant lacks knowledge or information sufficient to form a
18 belief as to the truth of the allegations in Paragraph 23 and on that basis denies
19 them.

20 24. Defendant lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations in Paragraph 24 and on that basis denies
22 them.

23 24(b). Defendant lacks knowledge or information sufficient to form a
24 belief as to the truth of the allegations in Paragraph 24(b) and on that basis
25 denies them.

26 24(c). Defendant lacks knowledge or information sufficient to form a
27 belief as to the truth of the allegations in Paragraph 24(c) and on that basis
28 denies them.

1 25. Defendant denies that it created and launched
2 www.lostmyspace.com. Defendant lacks knowledge or information sufficient to
3 form a belief as to the truth of the remaining allegations in Paragraph 25 and on
4 that basis denies them.

5 25(b). Defendant admits that lostmyspace.com was developed by third
6 parties. Defendant denies the remaining allegations in Paragraph 25(b).

7 25(c). Defendant denies direct involvement in building tools specifically
8 designed to enable infringement. Defendant lacks knowledge or information
9 sufficient to form a belief as to the truth of the remaining allegations in
10 Paragraph 25(c) and on that basis denies them.

11 26. Defendant lacks knowledge or information sufficient to form a
12 belief as to the truth of the allegations in Paragraph 26 and on that basis denies
13 them.

14 27. Defendant denies that Plaintiff did not ever make any of his works
15 available to the general public for free permanent download on MySpace.
16 Defendant lacks knowledge or information sufficient to form a belief as to the
17 truth of the remaining allegations in Paragraph 27 and on that basis denies
18 them.

19 28. Defendant denies that Plaintiff did not ever make any of his works
20 available in any capacity anywhere in the world including on MySpace.
21 Defendant lacks knowledge or information sufficient to form a belief as to the
22 truth of the remaining allegations in Paragraph 28 and on that basis denies
23 them.

24 29. Defendant lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations in Paragraph 29 and on that basis denies
26 them.

27 30. Denied, except Defendant admits that information about
28 Defendant's copyright agent is available on Defendant's website.

1 31. Defendant lacks knowledge or information sufficient to form a
2 belief as to the truth of the allegations in Paragraph 31 and on that basis denies
3 them.

4 32. Denied, except Defendant lacks knowledge or information
5 sufficient to form a belief as to the truth of the allegations about and in the
6 USPS website and on that basis denies them.

7 33. Defendant admits that Plaintiff sent an email to info@archive.org in
8 January 2025, and that info@archive.org is listed on archive.org as a way to
9 contact Defendant. Defendant lacks knowledge or information sufficient to
10 form a belief as to the remaining allegations in Paragraph 33 and on that basis
11 denies them.

12 34. Defendant admits that Chris Butler, Office Manager, emailed
13 Plaintiff on January 28, 2025 confirming that access to the songs/files had been
14 disabled. Defendant denies the remaining allegations in Paragraph 34.

15
16 **ADDITIONAL INFRINGEMENTS INVOLVING 24 MUSICAL**
17 **COMPOSITIONS AND 24 SOUND RECORDINGS**
18

19 35. Defendant lacks knowledge or information sufficient to form a
20 belief as to the truth of the allegations in Paragraph 35 and on that basis denies
21 them.

22 35(b). Defendant admits that ArchiveCD is a tool used by IA for
23 digitization. Defendant lacks knowledge or information sufficient to form a
24 belief as to the truth of the in Paragraph 35(b) and on that basis denies them.

25 35(c). Defendant lacks knowledge or information sufficient to form a
26 belief as to the truth of the allegations in Paragraph 35(c) and on that basis
27 denies them.

28 35(d). Defendant lacks knowledge or information sufficient to form a

1 belief as to the truth of the allegations in Paragraph 35(d) and on that basis
2 denies them.

3 35(e). Denied.

4 35(f). Denied.

5 36. Defendant lacks knowledge or information sufficient to form a
6 belief as to the truth of the allegations in Paragraph 36 and on that basis denies
7 them.

8 36(b). Denied, except Defendant admits that some pages on its website
9 have included the text “available with audio samples only”.

10 37. Denied.

11 38. Denied, except Defendant admits that some accounts have elevated
12 privileges.

13 38(b). Defendant lacks knowledge or information sufficient to form a
14 belief as to the truth of the allegations in Paragraph 38(b) and on that basis
15 denies them.

16 39. Denied, except to the extent Plaintiff incorporates its allegations in
17 Paragraphs 20-22, Defendant incorporates its responses to Paragraphs 20-22 as
18 if fully set forth herein.

19 40. Denied, except Defendant admits that the url is of a YouTube video
20 which includes comments from Defendant’s founder which are not accurately
21 characterized in Paragraph 40.

22 41. Denied, except Defendant admits that the identified letter was sent
23 to Brewster Kahle, and the letter speaks for itself.

24 42. Denied.

25 42(b). Denied.

26 42(c). Denied.

27 43. Denied.

28 44. Denied.

1 45. Denied, except Defendant admits that as a 501(c)(3) nonprofit
2 public charity it accepts and receives monetary donations from the general
3 public.

4 46. Denied, except Defendant admits that its former Director of
5 Finance Jacques Cressaty testified under oath in an unrelated matter, and that
6 his testimony speaks for itself.

7 47. Denied, except Defendant admits that it occasionally displays
8 banners requesting donations.

9 47(b). Denied.

10 48. Denied.

11 49. Denied, except Defendant admits that the “Views” for the MySpace
12 collection is in excess of 200,000.

13 50. Denied, except Defendant lacks knowledge or information
14 sufficient to form a belief as to the truth of the allegations regarding the actions
15 of “some members of the general public” and on that basis denies them.

16 51. Defendant lacks knowledge or information sufficient to form a
17 belief as to the truth of the allegations in Paragraph 51 and on that basis denies
18 them.

19 52. Defendant lacks knowledge or information sufficient to form a
20 belief as to the truth of the allegations in Paragraph 52, which also contain legal
21 conclusions to which no response is required, and on that basis denies them.

22 52(b). Denied.

23 53. Defendant lacks knowledge or information sufficient to form a
24 belief as to the truth of the allegations in Paragraph 53 and on that basis denies
25 them.

26 54. Defendant lacks knowledge or information sufficient to form a
27 belief as to the truth of the allegations in Paragraph 54 and on that basis denies
28 them.

1 55. Defendant lacks knowledge or information sufficient to form a
2 belief as to the truth of the allegations in Paragraph 55 and on that basis denies
3 them.

4 56. Defendant lacks knowledge or information sufficient to form a
5 belief as to the truth of the allegations in Paragraph 56 and on that basis denies
6 them.

7 57. Defendant lacks knowledge or information sufficient to form a
8 belief as to the truth of the allegations in Paragraph 57 and on that basis denies
9 them.

10 58. Defendant lacks knowledge or information sufficient to form a
11 belief as to the truth of the allegations in Paragraph 58 and on that basis denies
12 them.

13 59. Denied.

14 60. Defendant lacks knowledge or information sufficient to form a
15 belief as to the truth of the allegations in Paragraph 60 and on that basis denies
16 them.

17 61. Denied.

18 62. Denied.

19 63. Denied, except Internet Archive admits that it is a library.

20 64. Denied.

21 65. Denied.

22 65(b). Denied.

23 **CLAIMS FOR RELIEF**

24 **FIRST CAUSE OF ACTION**

25 **Infringing Reproduction against IA**

26 66. Defendant repeats and realleges all preceding paragraphs as if fully
27 set forth herein.

28 67. Paragraph 67 contains legal conclusions to which no response is

1 required. To the extent a response is required, denied.

2 68. Paragraph 68 contains legal conclusions to which no response is
3 required. To the extent a response is required, denied.

4 69. Paragraph 69 contains legal conclusions to which no response is
5 required. To the extent a response is required, denied.

6 70. Paragraph 70 contains legal conclusions to which no response is
7 required. To the extent a response is required, denied.

8 71. Paragraph 71 contains legal conclusions to which no response is
9 required. To the extent a response is required, denied.

10 72. Paragraph 72 contains legal conclusions to which no response is
11 required. To the extent a response is required, denied.

12 73. Paragraph 73 contains legal conclusions to which no response is
13 required. To the extent a response is required, denied.

14 **SECOND CAUSE OF ACTION**

15 **Infringing Public Performance by Means of a Digital Audio Transmission**
16 **against IA**

17 74. Defendant repeats and realleges all preceding paragraphs as if fully
18 set forth herein.

19 75. Paragraph 75 contains legal conclusions to which no response is
20 required. To the extent a response is required, denied.

21 76. Paragraph 76 contains legal conclusions to which no response is
22 required. To the extent a response is required, denied.

23 77. Paragraph 77 contains legal conclusions to which no response is
24 required. To the extent a response is required, denied.

25 78. Paragraph 78 contains legal conclusions to which no response is
26 required. To the extent a response is required, denied.

27 79. Paragraph 79 contains legal conclusions to which no response is
28 required. To the extent a response is required, denied.

1 80. Paragraph 80 contains legal conclusions to which no response is
2 required. To the extent a response is required, denied.

3 81. Paragraph 81 contains legal conclusions to which no response is
4 required. To the extent a response is required, denied.

5
6 **THIRD CAUSE OF ACTION**

7 **Infringing Distribution against IA**

8 82. Defendant repeats and realleges all preceding paragraphs as if fully
9 set forth herein.

10 83. Paragraph 83 contains legal conclusions to which no response is
11 required. To the extent a response is required, denied.

12 84. Paragraph 84 contains legal conclusions to which no response is
13 required. To the extent a response is required, denied.

14 85. Paragraph 85 contains legal conclusions to which no response is
15 required. To the extent a response is required, denied.

16 86. Paragraph 86 contains legal conclusions to which no response is
17 required. To the extent a response is required, denied.

18 87. Paragraph 87 contains legal conclusions to which no response is
19 required. To the extent a response is required, denied.

20 88. Paragraph 88 contains legal conclusions to which no response is
21 required. To the extent a response is required, denied.

22 89. Paragraph 89 contains legal conclusions to which no response is
23 required. To the extent a response is required, denied.

24 **FOURTH CAUSE OF ACTION**

25 **Infringing Public Display against IA**

26 90. Defendant repeats and realleges all preceding paragraphs as if fully
27 set forth herein.

28 91. Paragraph 91 contains legal conclusions to which no response is

1 required. To the extent a response is required, denied.

2 92. Paragraph 92 contains legal conclusions to which no response is
3 required. To the extent a response is required, denied.

4 93. Paragraph 93 contains legal conclusions to which no response is
5 required. To the extent a response is required, denied.

6 94. Paragraph 94 contains legal conclusions to which no response is
7 required. To the extent a response is required, denied.

8 95. Paragraph 95 contains legal conclusions to which no response is
9 required. To the extent a response is required, denied.

10 96. Paragraph 96 contains legal conclusions to which no response is
11 required. To the extent a response is required, denied.

12 97. Paragraph 97 contains legal conclusions to which no response is
13 required. To the extent a response is required, denied.

14 **FIFTH CAUSE OF ACTION**

15 **Infringing Derivative Work against IA**

16 98. Defendant repeats and realleges all preceding paragraphs as if fully
17 set forth herein.

18 99. Paragraph 99 contains legal conclusions to which no response is
19 required. To the extent a response is required, denied.

20 100. Paragraph 100 contains legal conclusions to which no response is
21 required. To the extent a response is required, denied.

22 101. Paragraph 101 contains legal conclusions to which no response is
23 required. To the extent a response is required, denied.

24 102. Paragraph 102 contains legal conclusions to which no response is
25 required. To the extent a response is required, denied.

26 103. Paragraph 103 contains legal conclusions to which no response is
27 required. To the extent a response is required, denied.

28 104. Paragraph 104 contains legal conclusions to which no response is

1 required. To the extent a response is required, denied.

2 105. Paragraph 105 contains legal conclusions to which no response is
3 required. To the extent a response is required, denied.

4 **SIXTH CAUSE OF ACTION**

5 **Contributory Infringement against IA**

6 106. Defendant repeats and realleges all preceding paragraphs as if fully
7 set forth herein.

8 107. Paragraph 107 contains legal conclusions to which no response is
9 required. To the extent a response is required, denied.

10 108. Paragraph 108 contains legal conclusions to which no response is
11 required. To the extent a response is required, denied.

12 109. Paragraph 109 contains legal conclusions to which no response is
13 required. To the extent a response is required, denied.

14 110. Paragraph 110 contains legal conclusions to which no response is
15 required. To the extent a response is required, denied.

16 111. Paragraph 111 contains legal conclusions to which no response is
17 required. To the extent a response is required, denied.

18 112. Paragraph 112 contains legal conclusions to which no response is
19 required. To the extent a response is required, denied.

20 113. Paragraph 113 contains legal conclusions to which no response is
21 required. To the extent a response is required, denied.

22 114. Paragraph 114 contains legal conclusions to which no response is
23 required. To the extent a response is required, denied.

24 115. Paragraph 115 contains legal conclusions to which no response is
25 required. To the extent a response is required, denied.

26 116. Paragraph 116 contains legal conclusions to which no response is
27 required. To the extent a response is required, denied.

28 **PRAYER FOR RELIEF**

1 Defendant denies that Plaintiff is entitled to any relief whatsoever,
2 including as set forth in Paragraphs A – F of Defendant’s Prayer for Relief.

3 **DEFENSES**

4 **FIRST DEFENSE**

5 **(Failure to State a Claim)**

6 Plaintiff’s FAC, and each purported cause of action contained therein, fails to state a
7 claim for relief against Defendant.

8 **SECOND DEFENSE**

9 **(Statute of Limitations)**

10 The causes of action in the FAC are barred in whole or in part to the extent they were
11 not asserted within the applicable statutes of limitation, including without limitation 17 U.S.C.
12 507.

13 **THIRD DEFENSE**

14 **(License)**

15 Plaintiff’s claims are barred in whole or in part by express or implied licenses,
16 consents, or permissions that Plaintiff or other authorized persons have granted.

17 **FOURTH DEFENSE**

18 **(DMCA Safe Harbor)**

19 Plaintiff’s claims are barred in whole or in part by the safe harbor of the Digital
20 Millenium Copyright Act, 17 U.S.C. 501 *et seq.*

21 **FIFTH DEFENSE**

22 **(Fair Use)**

23 Plaintiff’s claims are barred, in whole or in part, because the acts alleged in the
24 Complaint are not an infringement of copyright, including because the alleged acts are fair
25 use.

26 **SIXTH DEFENSE**

27 **(Registration)**

28 Plaintiff’s claims are barred, in whole or in part, because the copyright registrations
DEF.’S ANSWER TO PL.’S
FIRST AM. COMPL.

1 purporting to cover some or all of the works in dispute are invalid and/or do not cover the
2 material alleged to have been infringed.

3
4 **SEVENTH DEFENSE**

5 **(Unclean Hands)**

6 Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

7 **EIGHTH DEFENSE**

8 **(Estoppel)**

9 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

10 **NINTH DEFENSE**

11 **(Laches)**

12 Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

13 **TENTH DEFENSE**

14 **(Lack of Standing)**

15 Plaintiff's claims are barred, in whole or part, because Plaintiff lacks standing to
16 pursue them.

17 **ELEVENTH DEFENSE**

18 **(Acquiescence/Agreement/Authorization/Ratification)**

19 Plaintiff's claims are barred, in whole or part, because of Plaintiff's acquiescence,
20 agreement, authorization, or ratification of Defendant's alleged conduct.

21 **TWELFTH DEFENSE**

22 **(Innocent Infringement)**

23 To the extent Plaintiff establishes any act of infringement, that infringement was
24 innocent, allowing for the Court to reduce any award of statutory damages to an amount as
25 low as \$200 per work infringed. 17 U.S.C. § 504(c)(2).

26 **THIRTEENTH DEFENSE**

27 **(No willful infringement)**

28 To the extent Plaintiff establishes any act of infringement, that infringement was not

1 willful. Internet Archive had and still has the reasonable, sincere belief that its activities are
2 not an infringement of copyright.

3 **FOURTEENTH DEFENSE**

4 **(Lack of volitional conduct)**

5 Internet Archive did not have the volition required to be liable for copyright
6 infringement.

7 **FIFTEENTH DEFENSE**

8 **(Waiver)**

9 Plaintiff's claims are barred, in whole or part, by the doctrine of waiver.

10 **SIXTEENTH DEFENSE**

11 **(Abandonment)**

12 Plaintiff's claims are barred, in whole or part, to the extent the copyrights at issue have
13 been abandoned.

14 **SEVENTEENTH DEFENSE**

15 **(First Sale Doctrine)**

16 Plaintiff's claims fail, in whole or in part, because Plaintiff is barred by the first sale
17 doctrine, and copyright exhaustion principles, under 17 U.S.C. § 109.

18 **EIGHTEENTH DEFENSE**

19 **(Limits to Statutory Damages Based on 17 U.S.C. § 504(c)(1))**

20 To the extent Plaintiff establishes any act of infringement, Plaintiff's remedies are
21 limited to the extent Plaintiff asserts works that have either been registered in or sold as a
22 compilation or collective work.

23 **NINETEENTH DEFENSE**

24 **(Limits to Statutory Damages Based on the Windfall Principle)**

25 To the extent Plaintiff establishes any act of infringement, Plaintiff is at most entitled
26 only to the minimum statutory damages on Plaintiff's claims because Plaintiff cannot
27 substantiate actual damages on a work-by-work basis and because the actual economic value
28 of an individual work is negligible.

1 **TWENTIETH DEFENSE**

2 **(Due Process and Other Constitutional Limitations)**

3 To the extent Plaintiff seeks damages that are disproportionately higher than
4 compensatory damages, Plaintiff's remedies are limited by the Due Process Clause of the
5 Fifth Amendment.

6 **TWENTY-FIRST DEFENSE**

7 **(De Minimis)**

8 Plaintiff's claims are barred, in whole or part, because any use of copyrighted material
9 was de minimis.

10 **TWENTY-SECOND DEFENSE**

11 **(Remittitur)**

12 Plaintiff's claims for damages are subject to remittitur pursuant to 17 U.S.C. 504(c)(2).
13

14 **ADDITIONAL DEFENSES**

15 Defendant reserves the right to assert additional affirmative defenses at such time and
16 to such extent as warranted by discovery and the factual developments in this case.
17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Defendant respectfully requests the following relief:

- 20 1. A judgment in favor of Defendant denying Plaintiff all relief requested in their
21 Complaint in this action and dismissing Plaintiff's Complaint with prejudice.
22 2. That Defendant be awarded its costs of suit, including reasonable attorney's fees; and
23 3. That the Court award Defendant such other and further relief as the Court deems just
24 and proper.
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26 **DEMAND FOR JURY TRIAL**

27 Defendant demands a trial by jury on all issues so triable.
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DATED: February 24, 2026

Respectfully Submitted,

INTERNET ARCHIVE

/s/ Peter M. Routhier

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Attorney for Defendant