

No. 24-537

In the Supreme Court of the United States

Canadian Standards Association,

Petitioner,

v.

P.S. Knight Company, Limited, *et al.*,

Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether United States copyright law gives a Canadian standards development organization the right to prevent individuals from making and selling copies of material adopted as binding law in Canada.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, P.S. Knight Company, Limited and PS Knight Americas, Incorporated each state that it has no parent corporation and that no publicly held company owns ten percent or more of its stock.

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INTRODUCTION

This case involves a legal question that the Court already denied certiorari on back in 2002. *Veeck v. S. Bldg. Code Congress Int'l., Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) (cert. denied). There is no circuit split or conflict with this Court's holdings.

Petitioner argues that it should be able to use its Canadian copyrights to prevent individuals in the United States from reproducing and selling copies of materials that constitute binding law in Canada. Petitioner attempts to make the model codes at issue sound innocuous by characterizing them as being “incorporated by reference” into laws, but in reality the model codes are binding law in Canada and carry with them serious civil and criminal penalties. See *P.S. Knight Co. Ltd. v. Canadian Standards Association*, 2018 FCA 222, para. 185-186, (CanLII), <https://canlii.ca/t/hwj3l> (last visited December 11, 2024).

More specifically, petitioner argues that the decision below misapplied the government edicts and merger doctrines, and that it should have instead applied a fair-use analysis. But the court of appeals was correct that it does not need to reach a fair-use defense where precedent already establishes—through the government edicts doctrine, and independently through the merger doctrine—that reproduction of copyrighted materials that constitute binding law is not copyright infringement. The fair use doctrine is an affirmative defense to copyright infringement, while the government edicts and merger doctrines address petitioner's prima facie case.

In *Georgia*, this Court held that the “animating principle” behind the government edicts doctrine is

that “no one can own the law.” *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 256 (2020). The Fifth Circuit’s decision below merely reinforced that principle. Its application of the merger doctrine is also consistent with the language of the Berne Convention, Section 102(b) of the Copyright Act, and this Court’s precedent, and it does not implicate a circuit split. This Court should not entertain petitioner’s request that it reverse the decision below.

STATEMENT OF THE CASE

A. Factual Background

Petitioner is a Canadian standards development organization (SDO). It creates model codes, such as the electrical codes, propane storage and handling codes, and oil and gas pipeline system codes at issue in this case, for the purpose of those codes becoming laws in Canada. Petitioner sells copies of those codes. Pet. 7, 26; Pet. App. 2a–3a.

Respondents sell books that contain the language of petitioner’s codes that have been adopted as binding law in Canada. *See* Pet. App. 3a, 18a–19a.

Petitioner sued respondents in Canada for copyright infringement and won there. Respondents recognized that U.S. copyright laws do not allow copyright holders to prevent reproduction of laws, so respondents relocated to the United States. Respondents continued their sales of books containing Canadian law after relocating here. Petitioner then filed suit against respondents in the Western District of Texas for copyright infringement under U.S. copyright law. *See* Pet. App. 4a–5a.

B. Proceedings Below

Petitioner sued respondents in the Western District of Texas for copyright infringement under U.S. law. The district court granted summary judgment in favor of petitioner, and the court of appeals reversed.

1. Proceedings at the District Court

The district court granted summary judgment for petitioner, finding that petitioner possesses Canadian copyrights on the model codes, and that incorporation of those codes into law did not affect the enforceability of those copyrights. The district court explained that “[t]he fact that Canadian copyright law may be broader than United States copyright law on this topic does not present a barrier to protecting Canadian copyrights.” Pet. App. 31a–36a.

The district court also ruled against respondents’ fair use defense—despite the copied materials being drafted for the purpose of becoming laws and enforced as laws—primarily because respondents are a for-profit enterprise. Pet. App. 22a–23a, 44a–47a.

2. Proceedings at the Fifth Circuit

1. The court of appeals reversed the district court’s finding of copyright infringement based on the Fifth Circuit’s “explicit and controlling” precedent in *Veeck*, which held that copyrights in model codes adopted as law were not infringed. The court of appeals did not reach the issue of fair use. Pet. App. 2a, 11a, 15a.

In *Veeck*, the Fifth Circuit first dealt with copyright ownership, holding that the model code drafter “indisputably holds a copyright in its model building codes.” *Veeck*, 293 F.3d at 794. However, moving on to the question of infringement, *Veeck* held that

“[w]hen [model] codes are enacted into law, ... they become to that extent ‘the law’ of the governmental entities and may be reproduced or distributed as ‘the law’ of those jurisdictions.” *Id.* at 802. Consequently, when the defendant in *Veeck* copied the law “which he obtained from [the model code drafter’s] publication, and when he reprinted only ‘the law’ of those municipalities, he did not infringe [the model code drafter’s] copyrights in its model building codes.” *Id.* at 800. As such, once a model code is adopted as binding law, it is “not subject to the copyright holder’s exclusive prerogatives.” *Id.* at 793.

The Fifth Circuit in *Veeck* used two independent rationales to arrive at this holding: (1) the government edicts doctrine; and (2) the merger doctrine. Pet. App. 10a–11a.

This Court describes the government edicts doctrine as preventing judges and legislators (or “arm[s] of the legislature”) from being considered “authors” of materials created in the course of their official duties. The term “author” in the Copyright statute, according to the government edicts doctrine, is intended to prevent a monopoly on access to the law:

The animating principle behind this rule is that no one can own the law. “Every citizen is presumed to know the law,” and “it needs no argument to show . . . that all should have free access” to its contents. Our cases give effect to that principle in the copyright context through construction of the statutory term “author.”

Georgia, 590 U.S. at 265 (internal citations omitted).

This Court describes the merger doctrine as distinguishing between facts and expression for copyright protection. The Court reasons that “[t]he primary objective of copyright is not to reward the labor of authors but ‘to promote the Progress of Science and the useful Arts’” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991) (cleaned up).

2. The decision below addressed the difference between (1) copyright ownership, and (2) copyright infringement. While the Berne Convention requires the United States to recognize petitioner’s ownership of Canadian copyrights, infringement of those copyrights is analyzed under U.S. law. The decision below determined that the Canadian copyright cannot be enforced under U.S. law to prohibit reproduction of copies of model codes that have been adopted as binding law.

Under the Berne Convention, the United States provides the same protection for foreign copyrights as it does for U.S. copyrights—nothing more. This principle is referred to as “national treatment.” See *Murray v. British Broad. Corp.*, 906 F. Supp. 858, 862 (S.D.N.Y. 1995) (citing *London Film Prod. Ltd. v. Intercontinental Comm’ns, Inc.*, 580 F. Supp. 47, 50 n.6 (S.D.N.Y. 1984) (“National treatment ensures that the substantive law of the country in which infringement is alleged will govern a claim, even if the law of that country differs from the law of the country in which the work was created.”)). The Copyright Act also codified this principle in Section 104(c), which states that copyrights protected by Title 17 “shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the

adherence of the United States thereto.” Therefore, the district court erred by enforcing a Canadian copyright where it would be unable to enforce a U.S. copyright under U.S. copyright law. Pet. App. 8a–9a, 12a.

3. One judge on the court of appeals dissented from the majority opinion based on a different interpretation of the Fifth Circuit’s precedent. The dissent interpreted *Veeck* to hold that model codes incorporated into law are not copyrightable, rather than not enforceable. And because copyrightability under the Berne Convention is based on the laws of the foreign jurisdiction, the dissent determined that petitioner’s model codes are copyrightable under Canadian law and *Veeck* does not apply. Pet. App. 16a–17a.

The dissent agreed that U.S. copyrights cannot prevent reproduction of laws, but would have provided such protection under U.S. law for Canadian copyrights. Pet. App. 16a–17a. The Fifth Circuit majority opinion addressed this, emphasizing that the Berne Convention provides “the same copyright protection” to authors of foreign member states as it “accords to its own nationals.” Pet. App. 12a. So, the majority opinion explained, “we do not give foreign authors stronger copyright protection than that afforded to United States authors.” *Id.*

REASONS FOR DENYING THE PETITION

There is no circuit split, no conflict with this Court’s decisions, and no other reason for granting certiorari. The court of appeals came to the correct decision when finding that petitioner’s Canadian copyright cannot prevent reproduction of model codes that are adopted as binding law in Canada.

The Petition reflects a party's frustration with an appellate court's correct application of a properly stated rule of law, and does not allege any issues that are worthy of the Court's consideration.

I. There Is No Circuit Split

There is no circuit split. Petitioner argues that there is a circuit split based on *Oracle America, Inc. v. Google Inc.*, 750 F.3d 1339 (Fed. Cir. 2014), cert. denied, 576 U.S. 1071 (2015). *Oracle* held that the merger doctrine did not apply to computer code where there were alternative means of expressing the idea embodied in the computer code. *Oracle*, 750 F.3d at 1361–1362.

Here, there are no alternative means of expressing the facts or ideas. Canadian jurisdictions incorporate the entire model code into law, and respondents reproduced the code as Canadian law. Pet. App. 14a. There is no alternative means of expressing a model code that is incorporated verbatim into law. Therefore, petitioner's expression in the model code and the language of the law are exactly the same, and there is a full merger of the expression and the law.

Petitioner argues that the decision below is inconsistent with *Oracle* for two reasons: (1) that there are alternative means of expression; and (2) that merger should be assessed at the time of creation rather than at the time of incorporation into law. Pet. 18–20.

1. There is no alternative means for expressing language incorporated into binding law. If people want to ensure they are complying with the law of Canada, only the language incorporated by reference into the law will do, as it is the incorporated language

that would be asserted against them for any alleged violation. As recognized by the Fifth Circuit in *Veeck*, there is no alternative means for expressing the Constitution of the United States, and there is no other way to express the Internal Revenue Code, because they are facts. *Veeck*, 293 F.3d at 801. Like those documents, the model codes at issue in this case are not a way of describing the law or providing insight about the law, but instead they directly provide the bounds of the law and carry the force of law.

Petitioner’s argument that there is another way of expressing the law should be directed at the Canadian legislature, if anywhere, because it is the legislature that adopted the model codes by reference rather than paraphrasing the ideas from the model codes. But that would go against petitioner’s purpose for writing the codes. Petitioner wrote the model codes for the purpose of the model codes becoming law. Pet. App. 14a (“the 2015 version of CSA’s Electrical Code specifically states in its introduction that it is a ‘voluntary code for adoption and enforcement by regulatory authorities’”; CSA’s use of the word “voluntary” is deceptive—while the adoption into law was voluntary, abiding by the Code, because it is adopted into law, is mandatory).

2. Petitioner’s next argument—that merger should be assessed at the time of creation instead of the time of incorporation into law—is immaterial in this case. Each of the versions of codes at issue in this case are incorporated by reference prospectively, so they are created and become law simultaneously.

For example, the Electrical Code Regulations in the Province of Nova Scotia states that for purposes of

those regulations, “‘Code’ means the latest issue of the Canadian Electrical Code, Part I, published by the Canadian Standards Association, the current issue of which is CSA Standard C22.1 - 2002 and as supplemented, amended or added to from time to time by the Canadian Standards Association.” Electrical Code Regulations, N.S. Reg. 95/99, s. 2(c). This language is included in versions of the Nova Scotia law dating prior to 2015, including in the 2011 version of the law. Therefore, under the express language of the law of Nova Scotia, as soon as petitioner amended the Canadian Electrical Code to create the 2015, 2018, and 2021 versions at issue in this case, the Electrical Code Regulations of Nova Scotia immediately updated to those new versions.

Similarly, the Gas Inspection Regulations of Saskatchewan, implemented under The Gas Inspection Act, 1993, currently defines the Propane storage and handling code as “CSA-B149.2-20, as amended from time to time.” The Gas Inspection Regulations, Chapter G-3.2 Reg 1, § 16(1)(g). “CSA-B149.2-20” is the 2020 version of the Propane Storage and Handling Code at issue in this case, which became law when petitioner created it. In prior versions of G-3.2 Reg. 1, the Canadian government used other numbers after the decimal of “CSA-B149,” including the 2010 version specifying “CSA-B149.2-10” and the 2015 version (at issue in this case) specifying “CSA-B149.2-15.” But each version of the Canadian law clarifies that the version of the code enacted into law is the currently amended version (“as amended from time to time”).

And the Canadian Energy Regulator Onshore Pipeline Regulations define “CSA Z662” as “CSA

Standard Z662 entitled Oil and Gas Pipeline Systems, as amended from time to time.” Canadian Energy Regulator Onshore Pipeline Regulations, SOR/99-294, s. 1. CSA Z662 includes the 2015 and 2019 versions of petitioner’s model codes at issue in this case, which became law at the time petitioner created them.

For each of the codes at issue in this case, there is no difference between the date of creation and the date of adoption or incorporation into law. So even if there were a circuit split on whether merger should be analyzed at the time of creation or at some later time, such a split is not implicated here.

The Federal Circuit in *Oracle* held that facts underlying computer source code do not merge with the expression of that code because there are alternative means of expressing the functions performed by the source code. *Oracle*, 750 F.3d at 1361–1362. There is no need to resolve that holding with the Fifth Circuit’s decision here. There is no alternative means of expressing a model code that is incorporated by reference into law when that code immediately becomes law when it is created.

3. Even if the model codes did not become law immediately upon amendment, there is no material circuit split between the Fifth Circuit and the Federal Circuit. The computer code at issue in *Oracle* does not carry the force of law, and never will carry the force of law, so it makes sense to analyze merger at the time the computer code is created. In a different context, the Fifth Circuit analyzed merger at the time of creation of the work. See *Mason v. Montgomery Data, Inc.*, 967 F.2d 135, 138-41 (5th Cir. 1992) (analyzing merger in the context of mapmaking). Thus, the appellate

courts address the timing of the merger analysis based on the circumstances presented, and they are not in conflict. And petitioner has given no reason why a uniform rule for when to analyze merger is needed.

II. There Is No Conflict With This Court's Decisions

Petitioner argues that the Fifth Circuit's decision here conflicts with *Georgia*. But that argument has two flaws: *Georgia* and this case (1) address different issues; and (2) come to the same conclusion. Both cases rule in favor of the alleged infringer. The Court in *Georgia* ruled in favor of an alleged copyright infringer for copying non-binding annotations to the Georgia Code even though they did not carry "the force of law." *Georgia*, 590 U.S. at 263, 276. Here, the Fifth Circuit ruled in favor of an alleged copyright infringer over model codes that do carry the force of law. Pet. App. 10a–14a.

Georgia's holding is that carrying the "force of law" is sufficient to strike copyright protection but is not necessary. Because the model codes here carry the force of law, the decision below does not implicate *Georgia*'s holding regarding non-binding annotations. Carrying the "force of law" is enough to establish that the model codes do not have copyright protection. Indeed, the plaintiff in *Georgia* did not even attempt to argue that the binding portions of the Georgia Code were protected by copyright.

Both *Georgia* and the decision below ruled in favor of the alleged infringer. Petitioner argues that these cases are inconsistent because the decisions came to the same conclusion by applying the same rule in

different ways. Specifically, petitioner argues that the court of appeals erred by misapplying the government-edicts doctrine.

Petitioner focuses on language in the last paragraph of the *Georgia* opinion: “Instead of examining whether given material carries ‘the force of law,’ we ask only whether the author of the work is a judge or legislature.” *Georgia*, 590 U.S. at 276. *Georgia* involved non-binding annotations created by LexisNexis pursuant to a work-for hire agreement. *Id.* at 261–262. The Court ruled that those materials, though they do not carry the force of law, are nevertheless not copyright protected because those materials were authored by an arm of the legislature. *Id.* at 259. The Court’s holding in *Georgia*, therefore, expanded the government-edicts doctrine to extend beyond materials that have “the force of law,” to also reach materials that are otherwise created by legislatures and agents of legislatures.

Petitioner takes the wording of the Court’s holding as limiting rather than as expansive. But there is nothing limiting about the *Georgia* opinion. The opinion addresses the question of “whether [copyright] protection extends to the annotations contained in Georgia’s official annotated code,” and answers “no.” *Georgia*, 590 U.S. at 259. The opinion explains that the Court “previously applied [the government edicts] doctrine to hold that non-binding, explanatory materials are not copyrightable when created by judges who possess the authority to make and interpret the law,” and the Court “now recognize[s] that the same logic applies to non-binding, explanatory legal materials created by a legislative body vested with the

authority to make law.” *Id.* Thus, the Court’s decision in *Georgia* is non-limiting.

Furthermore, petitioner’s argument depends on it being a “private entity” to distinguish it from LexisNexis in the *Georgia* case. But petitioner, like LexisNexis, is also an arm of the legislature. Petitioner failed to disclose in its petition that in its last financial year, it received more than \$10 million in government funding. *See* Canadian Standards Association, Registry of Lobbyists, Office of the Commissioner of Lobbying Canada, <https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/vwRg?cno=5290®Id=953040#regStart> (last visited December 11, 2024). So, like LexisNexis, petitioner uses government funding to draft model codes for the purpose of those codes being incorporated into law, and the Canadian laws referenced above adopt petitioner’s model codes prospectively before they are created. The Canadian governmental bodies, therefore, outsource their legislative-drafting powers to petitioner. Petitioner falls within the category of authors whose works—under the government edicts doctrine, as interpreted by the Court in *Georgia*—cannot be protected by copyright.

III. The Fifth Circuit’s Decision Is Not Erroneous

The Fifth Circuit did not depart from the usual course of judicial proceedings. Its decision is not erroneous, but instead follows the well-established understanding that copyrights cannot prevent reproduction of the laws. *Georgia*, 590 U.S. at 265–266 (“no one can own the law,” and laws “must be ‘free for publication to all’”). The idea that reproduction of the laws cannot be prevented by copyright dates back to 1834, where

this Court interpreted the first U.S. copyright laws and unanimously held that “no reporter has or can have any copyright in the written opinions delivered by this Court.” *Wheaton v. Peters*, 33 U.S. 591, 668 (1834). In 1888, the Court further elucidated that the “question is one of public policy,” and that the “judicial consensus” since *Wheaton* was that the work of judges is “the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all.” *Banks v. Manchester*, 128 U.S. 244, 253 (1888). That a legislature cannot deny public access to statutes was first decided in Massachusetts in 1886. *Nash v. Lathrop*, 142 Mass. 29, 6 N.E. 559 (1886).

Furthermore, as explained in the prior sections, the Fifth Circuit’s decision is consistent with decisions of other appellate courts, and with this Court’s precedents.

Petitioner argues four additional reasons for the Court to hear this case: (1) the decision below impairs the ability for standards organizations to come up with model codes; (2) the decision below creates foreign relations issues under the Berne Convention; (3) the decision below should have applied the fair use doctrine or implied license doctrine instead of the merger doctrine or government edicts doctrine; and (4) the consequence of the decision below—that foreign copyright infringers can escape to the U.S.—should be avoided. Pet. 4, 13, 15, 24–27.

1. Petitioner’s first argument—that copyright law should compensate it for its efforts—is known in the field as “sweat of the brow.” This Court categorically dismisses that kind of argument. In *Feist*, the Court explained that “[i]t may seem unfair that much of the

fruit of the compiler's labor may be used by others without compensation." *Feist*, 499 U.S. at 349 (1991). But "this is not 'some unforeseen byproduct of a statutory scheme'"; instead, it is "the essence of copyright, and a constitutional requirement." *Id.* (internal citations omitted).

Furthermore, legislatures pass laws. If a holding that standards development organizations cannot have a monopoly on reproducing the law disincentivizes creation of the codes, then legislatures may need to pay standards organizations for that creation as they would pay their own employees. It is not the role of citizens to pay a monopoly holder for access to the laws, but it is the role of the legislature to create those laws or to outsource that creation. Under more than a century of consistent precedent from this Court, in neither case should there be a monopoly on access to the law.

Moreover, Petitioner offers nothing but vague and conclusory allegations that allowing third parties to copy the law will impede its ability to create these model codes. One would think that after litigating this issue for about a decade, petitioner could point to a concrete example of how respondents' activities have negatively affected petitioner, but petitioner is unable to do so. In fact, petitioner's own brief rebuts the suggestion that anyone has impeded the ability of SDOs, including petitioner, do their work. Petitioner claims that it published the first version of the Canadian Electrical Code in 1927 and "has published revised versions ever since." Pet., 7. And more broadly, petitioner noted that that as of 2003, "the Code of Federal Regulations contain[ed] more than 7,000 references to

privately developed codes and standards,” but never explained how those 7,000 references have been negatively affected by *Veeck*’s explicit holding in 2002 that the drafters’ copyrights cannot be infringed. Pet., 25. Unsupported allegations of harm are not sufficient at this stage.

Petitioner is in much the same circumstance as the other SDOs who have litigated copyright claims in the United States and been unable to show any harm done by the alleged infringement. Recently, in the District of Columbia federal court, SDO American Society for Testing & Materials (ASTM) litigated a copyright case against Public.Resource.Org, where the alleged infringer had been posting the ASTM standards for more than 14 years. The district court found that, under fair use factor 4, the model code drafters were unable to show that any market harm has occurred. See *Am. Soc’y for Testing & Materials v. Pub.Resource.Org, Inc.*, 597 F. Supp. 3d 213, 240 (D.D.C. 2022) (*ASTM I*), *aff’d* at *Am. Soc’y for Testing & Materials v. Pub.Resource.Org, Inc.*, 82 F.4th 1262 (D.C. Cir. 2023) (*ASTM II*). Specifically, according to the district court, the “fact that [the SDOs] do not provide any quantifiable evidence, and instead rely on conclusory assertions and speculation long after Defendant first began posting the standards, is telling.” *Id.* In affirming, the appellate court agreed that the record lacked any evidence of harm. *ASTM II*, 82 F.4th at 1271.

2. Petitioner’s second argument—that the decision could create foreign-relations issues based on the Berne Convention—is unfounded. Application of the

merger doctrine in this case is consistent with the Berne Convention and the U.S. Copyright Act.

The Berne Convention states that an author's enjoyment and exercise of rights in the United States "shall be independent of the existence of protection in the country of origin of the work" and that "the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed." Berne Convention for the Protection of Literary Works, Art. 5(2), Sept. 9, 1886, as revised Stockholm July 14, 1967, 828 U.N.T.S. 221, 233.

The U.S. Copyright Act explains that the "extent of protection" does not cover ideas: "In no case does copyright protection for an original work of authorship *extend* to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b) (emphasis added). Even though "facts" are not specifically listed in Section 102(b), this Court has held that "[i]n no event may copyright extend to the facts themselves" under Section 102(b) and that this is "universally understood". *Feist*, 499 U.S. at 351 (citing *Harper & Row, Publs. v. Nation Enters.*, 471 U.S. 539, 547, 556 (1985)).

The application of merger to model codes adopted as law under Section 102(b) is summarized in *Veeck*: "If an idea is susceptible to only one form of expression, the merger doctrine applies and § 102(b) excludes the expression from the Copyright Act." *Veeck*, 293 F.3d at 801. And again, the law of Canada is susceptible to only one form of expression, so under U.S.

statutory law, this Court's precedent, and the Berne Convention, copyright protection in the United States does not extend to model codes adopted as law.

The decision below merely affirmed that U.S. copyright law cannot be used to prevent reproduction of laws or facts, regardless of where the copyright originates, and that decision does not need to be revisited by this Court.

3. As to petitioner's third argument, the court of appeals did not need to reach fair use. The fair use doctrine is an affirmative defense to infringement, and affirmative defenses need to be reached only if the plaintiff wins on its *prima facie* case. Furthermore, this Court already explained in *Georgia* that fair use is something to fall back on, rather than something to lead with:

“Some affected parties might be willing to roll the dice with a potential fair use defense. But that defense, designed to accommodate First Amendment concerns, is notoriously fact sensitive and often cannot be resolved without a trial.”

Georgia, 275–276. This Court then went on to say “[t]hankfully, there is a clear path forward that avoids these [fair use] concerns.” *Id.* That path forward was the government-edicts doctrine. *Id.*

The court of appeals also did not need to apply the implied license doctrine. Petitioner argues that the doctrine of implied license “would protect certain uses of copyrighted works enacted into law.” Pet., 15. But allowing “certain uses” of the law is more restrictive than just giving people free access to the law, which is

required by this Court's precedent. Also, the availability of other possible remedies on these facts does not preclude the application of the merger doctrine or the government edicts doctrine. That respondent wins this case on other grounds is not a valid basis for certiorari.

4. Petitioner expresses a concern that copyright infringers in another country can come to the U.S. to continue infringing. But if the U.S. legislature wishes to expand copyright protection to match the protection of other countries, it should do so. Under current U.S. law, people here have free access to binding laws, and copyrights cannot be used to prevent reproduction of facts or laws.

Here, there are more concerning hypotheticals going in the other direction. If petitioner's arguments are to be favored, then all U.S. entities would be encouraged to obtain foreign copyrights before engaging in copyright litigation in the U.S. because U.S. courts would provide broader protection to foreign copyrights. U.S. copyright laws would effectively take on the scope of the Berne member providing the broadest copyright protection, thereby superseding the rules provided by the U.S. legislature and this Court. It is far better that the U.S. provide the same protection to foreign and U.S. copyright holders, and nothing more.

Additionally, if petitioner's position is adopted, all manner of private authors could claim copyright over ballot measures or lobbyist-drafted statutes or regulations that are passed into law by the government. That outcome would conflict with this Court's consistent position on private ownership of the law.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted.

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