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BY CM/ECF

Patricia S. Connor
Clerk of the Court
United States Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: *Sony Music Entertainment, et al. v. Cox Communications, Inc. and CoxCom, LLC*, No. 21-1168; argument heard March 9, 2022

Dear Ms. Connor:

Plaintiffs-Appellees submit this response to Cox's Rule 28(j) letter regarding *Twitter, Inc. v. Taamneh*, No. 21-1496, 598 U.S. __ (2023).

Twitter arose under the Justice Against Sponsors of Terrorism Act. Plaintiffs there identified "no duty" under that terrorism statute requiring defendants "to terminate customers after discovering that the customers were using the service for illicit ends." Slip Op. 25. This case arises under the Copyright Act. This Court has already held that an internet-service provider has a duty to "do something" about known infringers. *BMG Rts. Mgmt. (US) LLC v. Cox Commc'ns, Inc.*, 881 F.3d 293, 311-312 (4th Cir. 2018) ("[s]elling a product with both lawful and unlawful uses suggests an intent to cause infringement," when "the seller knows of *specific* instances of infringement"). So has the Supreme Court. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932-935 (2005).

Twitter also involved allegations "rest[ing] less on affirmative misconduct" and more on "passive nonfeasance." Slip Op. 23-24. The *Twitter* plaintiffs made no allegations connecting the terror attack to ISIS's use of the platforms. Nor had they alleged that defendants' relationship with ISIS was any different than defendants' "arm's length, passive, and largely indifferent" relationship with their other users. *Id.* at 24. Plaintiffs' allegations therefore did not meet the requirement of "conscious[,] culpable conduct" abetting the underlying tort. *Id.* at 28; *see id.* at 15-16.

Cox was not so passive. *See* Answering Brief 21-22, 27-32. Cox did not merely "provid[e] [its] services to the public" then "fail[] to take simple measures" to stop infringement, Cox Letter 1-2 (quotation marks and citations omitted); it set up sham policies ensuring infringement would

continue. Answering Brief 10-14, 21-22. Cox knew of specific instances of infringement occurring on its network, tied them to specific users, and chose not to terminate those users to avoid "losing revenue from paying subscribers." *BMG*, 881 F.3d at 305. Cox's material contribution to its users' infringement is nothing like the *Twitter* defendants' "passive nonfeasance." Slip Op. 24. Absolving Cox's conduct would immunize internet-service providers from contributory liability, contrary to decades of contributory-infringement law. Cox's conscious, culpable conduct compels affirmance here.

Respectfully submitted,

/s/ Catherine E. Stetson
Catherine E. Stetson

cc: All counsel of record (via CM/ECF)