Mark L. Javitch (CA Bar No. 323729)
Admitted Pro Hac Vice
JAVITCH LAW OFFICE
3 East 3rd Ave., Ste. 200
San Mateo, CA 94401
Tel: (650) 781-8000
Fax: (650) 300-0343
mark@javitchlawoffice.com

Austin Champion (TX Bar No. 24065030)
Ryan J. Reynolds (TX Bar No. 24110268)
CHAMPION LLP
2200 Ross Avenue, Suite 4500W
Dallas, Texas 75201
Tel: (214) 225-8880

Counsel for Plaintiff Forum on Open Access to Government Records, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FORUM ON OPEN ACCESS TO GOVERNMENT RECORDS INC.,	§	
Plaintiff,	§	
v.	§	Civil Action No.: 3:25-CV-2034-B
DALLAS COUNTY HISTORICAL FOUNDATION, d/b/a THE SIXTH FLOOR MUSEUM AT DEALEY PLAZA, and NATIONAL ARCHIVES AND RECORDS ADMINISTRATION,	§	
Defendants.	§	

FIRST AMENDED COMPLAINT

FORUM ON OPEN ACCESS TO GOVERNMENT RECORDS, INC. ("Plaintiff" or the "Forum"), by and through the undersigned counsel, brings this FIRST AMENDED COMPLAINT for declaratory relief under the Copyright Act against DALLAS COUNTY HISTORICAL FOUNDATION d/b/a THE SIXTH FLOOR MUSEUM AT DEALEY PLAZA

(the "Sixth Floor Museum" or "Museum") and for declaratory and injunctive relief under the Freedom of Information Act ("FOIA") against the NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, an agency ("NARA"; together with the Museum, "Defendants"), and alleges as follows.

INTRODUCTION

1. The Museum claims to own the copyright in the Zapruder film and uses that claim to charge fees, silence critics, and block the public from inspecting the primary record of the assassination of President John F. Kennedy. The Museum's asserted copyright consists of a single registration — a 1995 renewal (RE 696-871) of a 1967 registration (Mu 7813) that Time, Incorporated obtained by representing to the Register of Copyrights that the film was an *unpublished* motion picture, of approximately ten seconds' duration, authored by Abraham Zapruder. Each of those representations was inaccurate.

2. Each of the following independently defeats the Museum's copyright claim as applied to the frames the Forum reproduced in its book *SCAM: The Zapruder Copyright* ("SCAM"):

a. Time waived any copyright in frames 207–212 (First Cause of Action);

b. the 1967 registration was procured by knowing, material misrepresentations (Second Cause of Action);

c. the copyright was waived and abandoned (Third Cause of Action);

d. the Museum never obtained the registrations on which any claim to the frames must rest (Fourth Cause of Action);

e. any copyright secured on publication in 1963–1964 expired for failure to timely renew (Fifth Cause of Action);

f. the registration describes a work of approximately ten seconds, could not reach frames already published when it issued, and does not reach matter in the frames that was fixed by persons outside the Museum's chain of title (Sixth Cause of Action); and

g. in all events, the Forum's use is fair use (Seventh Cause of Action).

3. The Museum's copyright claim also blocks public access to the primary record. The National Archives holds several versions of the film and its frames, and the Museum holds frames obtained from LIFE through the Zapruder family. The Forum requested copies of specified frames from the National Archives in 2024 — among them the frames it needs to examine, against copies of known provenance, whether the surviving film faithfully reproduces what Abraham Zapruder exposed — and its requests went unanswered. Of the millions of items in its collection, the National Archives applies to this one film a special rule, adopted decades ago at the copyright holder's request, under which it will not reproduce the frames without the Museum's permission. The camera-exposed film decays with time and the public may not inspect it, so these early copies are irreplaceable. The Museum's refusal to license the materials or to withdraw its objection, and the National Archives' deference to it, necessitated this suit.

4. The Forum therefore seeks to compel NARA to comply with its affirmative duty to make the Zapruder frames — frequently requested records — available in its electronic reading room (Eighth Cause of Action).

5. These grounds are pleaded in the alternative under Federal Rule of Civil Procedure 8(d). To the extent any valid copyright exists and is owned by the Museum through Abraham Zapruder, that copyright has been waived and abandoned, has expired, does not reach certain of the frames in SCAM, and cannot bar the Forum's fair use.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over the claims against the Museum under 28 U.S.C. §§ 1331 and 1338(a) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–

2202, and over the claim against NARA under 5 U.S.C. § 552(a)(4)(B). This Court has already held that an actual controversy exists between the Forum and the Museum and that it has subject-matter jurisdiction over the Forum's declaratory-judgment claims.

7. This Court has personal jurisdiction over the Museum, which maintains its principal place of business in this District. Venue is proper under 28 U.S.C. § 1391(b) and 5 U.S.C. § 552(a)(4)(B); Plaintiff resides in this District.

PARTIES

8. Plaintiff Forum on Open Access to Government Records, Inc. is a Texas corporation with its primary address in Dallas, Texas, dedicated to making public records more accessible to the public. Many of the records concerning the Zapruder film are held only in boxes at the National Archives and may be seen only by traveling to its facility in College Park, Maryland. The Forum researched those records, traveled to College Park, requested the relevant boxes, photographed each page, indexed the files chronologically, and published them. On its website, ZapruderFilm.com, the Forum maintains the largest free public collection of historical documents concerning the Zapruder film, comprising more than one hundred primary documents — from the 1963 agreement between Mr. Zapruder and Time, Incorporated governing the film, to pleadings from the 1968 *Geis* litigation, to the correspondence of the Assassination Records Review Board concerning the film's status as a public record — all available to the public free of charge. The Forum continues to locate and publish further Zapruder-related records on an ongoing basis. The Forum also published the book SCAM, described below, which reproduces seventy-three frames of the film and presents the Forum's analysis that the surviving film is not an unaltered original.

9. Defendant Dallas County Historical Foundation d/b/a The Sixth Floor Museum at Dealey Plaza is a Texas non-profit that operates a museum concerning the assassination and purports to own the copyright in the Zapruder film.

10. Defendant NARA is an agency of the United States within the meaning of 5 U.S.C. §§ 551, 552(f), and 702, with custody of several early copies of the Zapruder film.

FACTUAL BACKGROUND

The film, the copies, and the sale to Time

11. President Kennedy was assassinated on November 22, 1963. Abraham Zapruder filmed the motorcade on Elm Street with an 8mm Bell & Howell camera. The assassination sequence of the film comprises approximately 486 frames and runs approximately 26 seconds at 18.3 frames per second. As alleged in Paragraphs 85 through 87, the reel on which it was exposed contains further frames that are not part of that sequence.

12. On November 22, 1963, the film was developed and three copies were made. Mr. Zapruder delivered two copies to the United States Secret Service that day, specifying that they were for government use only.

13. On November 23, 1963, Mr. Zapruder granted Time, Incorporated exclusive worldwide print media rights in the film for $50,000, expressly retaining all motion picture rights, and delivered the original and one copy.

14. Two days later the parties replaced that grant. By agreement dated November 25, 1963, Mr. Zapruder sold, transferred and assigned to Time "all my right, title, and interest (whether domestic, foreign, newsreel, television, motion picture, or otherwise)" in the film, for $150,000 payable in installments, together with one-half of all gross receipts once Time had recovered $150,000. The agreement purported to convey the original and all three copies, two of which were noted as then in the possession of the Secret Service. It provided that any sale or transfer of all rights "shall be subject to the terms of this agreement and shall be binding upon the purchaser thereof."

15. In the same agreement Time undertook to "obtain, at its expense, such copyright protection, domestic and foreign, as it may deem necessary or proper for its own safety and to

prevent any infringement thereof." Time further agreed to "exercise its best business judgment in the presentation, sale, leasing, licensing, and rental of said film … for the production of gross receipts therefrom," and to furnish Mr. Zapruder each calendar year with "a certified audited report of the auditing firm of your company showing the total gross receipts derived from said film."

16. Time never obtained the Secret Service copies. On January 7, 1964, Life's bureau chief wrote to the Chief of the Secret Service requesting that those copies be turned over to Life once the Service had finished with them. On January 22, 1964, Special Agent Forrest Sorrels advised Chief James Rowley that the Secret Service had acquired its copies from Mr. Zapruder before the sale to Life. On January 27, 1964, Chief Rowley informed Life that the copies in the Service's possession were "part of the official Secret Service file of the investigation of President Kennedy." Time did not pursue the matter further.

Publication of the frames before the 1967 registration

17. Before Time registered the film in 1967, frames of the film had already been published in the publications described below. **Of the seventy-three frames the Forum reproduced in SCAM, forty-three were published before May 15, 1967, and thirty were not: frames 1 through 4, 131 through 135, 144, 154 through 157, 335 and 386, together with the fourteen frames of the pergola sequence, which bear no numbers in the Zapruder series.**

a. **Government publication, with Time's consent.** In 1964, with Time's consent and at its direction, the United States Government Printing Office published **160 individual frames** of the film — frames 171 through 334, omitting 208 through 211 — in Volume XVIII of the Warren Commission Hearings as Commission Exhibit 885, in black and white. Frame 210 was separately published in the Commission's reenactment comparison exhibits, printed from a copy lacking the intersprocket image. The Report and its accompanying volumes were printed by

the Government Printing Office and sold to the public. As alleged in Paragraph 19, Plaintiff does not contend that the absence of notice from these Government volumes worked any forfeiture.

b. **Time's own publication, with copyright notice.** Time published frames of the film, under its copyright notice, in LIFE on November 29, 1963 (black and white, at pp. 24–27); in the LIFE "John F. Kennedy Memorial Edition" (printing completed December 7, 1963, at pp. 5–8); in LIFE on October 2, 1964 (color, at pp. 43–46, published September 28, 1964); and in LIFE on November 25, 1966, at pp. 40–48. Those four publications had a combined domestic distribution exceeding 23,750,000 copies, and weekly issues of LIFE published outside the United States containing Zapruder frames circulated in excess of three million copies.

18. Publication of the frames constitutes publication of the work. Independently, and without regard to whether publication of the frames also published the motion picture as a whole, the frames themselves were published with notice in 1963 and 1964, and statutory copyright in those frames was secured on those dates.

19. Time consented to the Warren Commission's use and reproduction of the frames without charge. By letter of July 9, 1964, counsel for Time advised the Commission's General Counsel that Time consented provided a copyright notice appear reading "Copyright 1963 Time Inc. All rights reserved," and stated that if other news media were misled into believing they were free to use the frames, "it would be necessary for us to institute litigation against such news media." No such notice appeared in the Commission's publication, which was nonetheless made with Time's consent and at its direction.

20. The Commission's volumes reproduced more of the film than all of Time's own publications combined. Frames 171 through 334, omitting frames 208 through 211, were printed in Volume XVIII of the Commission's Hearings as Commission Exhibit 885 — approximately one hundred sixty frames, against approximately eighty-five across every issue Time published. Frame 283 was printed twice, the second time labelled as frame 284, so that frame 284 does not

appear; and frames 314 and 315 were printed in reverse order. Time supplied the Commission with three sets of one hundred sixty-nine transparencies without charge, brought the original film to Washington, and permitted republication of the Report and Hearings without any copyright charge to the Government. In the *Geis* litigation Time stipulated that all the frames of the film were reproduced in books published by the Government Printing Office, without demand for payment by Time.

Time's contemporaneous registrations of the frames as published works

21. **The Report itself reproduced six frames.** Separately from the Hearings, frames 166, 186, 210, 225, 255 and 313 were reproduced on six pages of the Warren Report, each alongside a photograph taken of the same frame during the reenactment of May 1964. Of those, frames 166, 210 and 313 are among the frames reproduced in SCAM.

22. The same claimant that would register the film as unpublished in 1967 had already registered the film's frames as **published** works:

a. Registration **A 673423** (LIFE "John F. Kennedy Memorial Edition"), claimant Time, Incorporated, registered as a published work, with a manufacturing affidavit sworn by Time reciting that printing was completed **December 7, 1963**, and with new matter expressly described as material **"previously published in LIFE Magazine"**; and

b. Registration **B 138324** (LIFE, October 2, 1964), claimant Time, Incorporated, registered as a published work with a date of publication of **September 28, 1964**, certified by Arthur W. Keylor, Associate Publisher of LIFE.

23. The three weekly issues of LIFE containing Zapruder frames were registered as periodicals, and the Memorial Edition was registered as a book, before Time registered the film as unpublished.

24. The first publication carried its copyright notice on the frame pages themselves. The November 29, 1963 issue of LIFE presented the frames in two captioned spreads: eighteen

photographs at pages 24 and 25 under the heading "Split-Second Sequence as the Bullets Struck," and thirteen photographs at pages 26 and 27 under the heading "Jackie Crawled for Help." A notice in the name of Time Inc., bearing the year 1963, appears with each spread — on the printed pages carrying the frames, rather than deferred to the masthead or the contents page.

25. On at least three further occasions Time fixed the same year. On November 27, 1963, Time released six frames to the Associated Press and United Press International for publication, on the condition that the credit read "Courtesy, LIFE Magazine, copyright 1963, Time Inc. All rights reserved." In July 1964, as alleged in Paragraph 19, Time's counsel specified a notice reading "Copyright 1963 Time Inc." for the Warren Commission's publication. And Time licensed one-time newspaper use of frame 206 on the express condition that the notice "Life Magazine — ©Time Inc." appear.

Time's knowledge of the damaged frames

26. In February 1964, at the Warren Commission's request, Life prepared color transparencies of the frames the Commission sought — but could not supply frames 207 through 212 from the original, because those frames had been damaged in handling. The Secret Service copies were used instead. Time therefore knew, no later than February 1964, that the original film was damaged at those frames.

27. On January 30, 1967, Time publicly released frames 207 through 212 without restriction on their use. The statement accompanying that release is set out in Paragraphs 42 through 45 below.

The 1967 registration as an "unpublished" work

28. On May 15, 1967, Time, Incorporated registered a claim to copyright in the film, titled "Kennedy Assassination," in Class L-M under Registration No. **Mu 7813**. The application and certificate:

a. named **Time, Incorporated** as the copyright claimant and **Abraham Zapruder** as the author;

b. checked the box for a "motion picture other than a photoplay" and described the deposit as **"Running time — approximately 10 seconds"**;

c. was made under the **unpublished-works** deposit provision;

d. left line 5 (date and place of publication) **blank**, in accordance with the printed instruction to leave line 5 blank "unless your work has been PUBLISHED";

e. left line 6 (previous registration or publication) **blank**; and

f. was certified by Hugh R. H. Smith as agent for the claimant.

29. Leaving line 5 blank and depositing under the unpublished-works provision was an affirmative representation to the Register of Copyrights that the film was unpublished as of May 15, 1967.

30. The Copyright Office has advised that the deposit copy for Mu 7813 is no longer in existence and was not retained.

31. Mu 7813 was renewed on March 14, 1995 as Registration No. **RE 696-871**, claimed by Myrna Ries and Henry George Zapruder, the children of Abraham Zapruder. Lillian Zapruder, the widow of Abraham Zapruder, had died on December 11, 1993. RE 696-871 is the only registration recited in the recorded assignments through which the Museum claims title.

32. Separately, six renewal registrations covering Zapruder frames as published in Time's periodicals were registered on December 3, 1991 and April 28, 1992, each naming Abraham Zapruder as the author of the photographs and each claimed by Lillian Zapruder as widow together with Myrna Faith Hauser and Henry Zapruder as children:

a. **RE 555343**, renewing A 673423 — "Split-second horror, sniper's bullet struck. Photos. no. 1-9," appearing in the John F. Kennedy Memorial Edition;

b. **RE 555344**, renewing B 78918 — "Jackie crawled for help; 13 photos";

c. **RE 555345**, renewing B 78918 — "Split-second sequence as the bullets struck; 18 photos";

d. **RE 555346**, renewing B 81133 — "Jackie seeks help; 4 photos. at p. 33A & 33B," appearing in TIME of November 29, 1963;

e. **RE 582917**, renewing B 138324 — new matter stated as cover photos, appearing in LIFE of October 2, 1964; and

f. **RE 582918**, renewing B 138324 — new matter stated as photographs numbered 1 through 8 at pages 43 through 46 of the same issue.

33. Those renewals were filed in the twenty-eighth year of terms computed from publication in 1963 and 1964. None of the six was assigned to the Museum.

34. The two contributions renewed by RE 555344 and RE 555345 — "Jackie crawled for help" and "Split-second sequence as the bullets struck" — are the two captioned spreads described in Paragraph 24, and they appear in the November 29, 1963 issue of LIFE, Volume 55, Number 22, at pages 24 through 27. The counts correspond exactly: RE 555345 describes eighteen photographs, and eighteen are published under that heading at pages 24 and 25; RE 555344 describes thirteen, and thirteen are published under that heading at pages 26 and 27. Time's own stipulation in *Geis* identifies the registration for that issue as B 77445. RE 555344 and RE 555345 are registered instead as renewals of B 78918, which is the issue of December 6, 1963, Volume 55, Number 23. The frames were thus separately renewed for the wrong issue: an issue that does not contain them.

35. The periodicals themselves were separately renewed, by a different claimant. On October 25, 1991, the Time, Inc., Magazine Company registered **RE 548668**, renewing B 77445 and titled "Life magazine. Vol. 55, no. 22, Nov. 29, 1963," and **RE 548669**, renewing B 78918 and titled "Life magazine. Vol. 55, no. 23, Dec. 6, 1963." On November 1, 1991, the same claimant registered **RE 555134**, renewing B 81133 and titled "Time; the weekly newsmagazine

(incorporating Literary digest) Vol. 82, no. 22, Nov. 29, 1963." Each was claimed as proprietor of copyright in a composite work. None was claimed by any member of the Zapruder family, and none has been assigned to the Museum.

36. The two contribution renewals that identify the December 6, 1963 issue describe photographs that are not in it. That issue contains no frame of the Zapruder film. Nor did Time treat it as containing any: in the *Geis* action Time pleaded four periodical registrations covering issues in which Zapruder frames appeared, and the registration for the December 6, 1963 issue was not among them. The Copyright Office's public records disclose a single renewal registration for B 77445: RE 548668. No renewal registration claimed by Abraham Zapruder or his successors identifies that registration.

Time's undertaking to register, and the timing of the film registration

37. As alleged in Paragraph 15, Time undertook in 1963 to obtain such copyright protection as it deemed necessary or proper for its own safety and to prevent infringement.

38. Time performed that undertaking promptly as to its own publications. It registered the November 29, 1963 issue of LIFE on November 29, 1963; the Memorial Edition on January 27, 1964; the October 2, 1964 issue on September 29, 1964; and the November 25, 1966 issue on November 22, 1966.

39. Time did not register the film itself for three and a half years, and the date on which it did so fell in the middle of a dispute it expected to litigate. On April 19, 1967, and again on April 27, 1967, Time's Director of Photography refused a request by the author of a forthcoming book for permission to reproduce Zapruder frames. The author wrote again on May 10, 1967. Time registered the film on May 15, 1967. On June 9, 1967, counsel for the book's publisher demanded the use of thirty-two frames. On June 19, 1967, Time's Editorial Counsel replied that it "has been and will continue to be the policy of Time Inc. not to allow anyone the

use of any part of this film in the United States." The book was published on November 18, 1967. Time filed suit on December 1, 1967.

40. In that action Time asserted infringement as to twenty-two frames. In its memorandum in support of summary judgment, Time stated that "the infringements of all but frame 252 are based on the Life copyright and use." Time thus treated the film registration as reaching a single frame of the twenty-two it sued upon.

Time's public admission of the damage, fifteen weeks before the registration

41. The condition of the film became a subject of public discussion through the work of independent researchers beginning in 1965, and Time was asked to account for it.

42. On January 30, 1967, Time answered publicly. In a news release issued over the name of the Managing Editor of LIFE, Time stated that LIFE had "accidentally damaged not four but six frames of the original — frames 207 through 212."

43. In the same statement Time acknowledged that when the Warren Commission asked LIFE for color enlargements made from the original film, "[w]e were unable to give them frames 207 through 212," and that frame 210, "one of those damaged, is, in copy form, printed in the Warren Commission report." Time released frames 207 through 212 for publication from an intact copy print.

44. The damage Time acknowledged had occurred at Time's own Chicago facility on the evening of November 23, 1963, when a technician working at Time's direction tore the film diagonally, cut away the ruined portion, and discarded it. Four original camera exposures — frames 208 through 211 — were destroyed. Frames 207 and 212 were torn and were thereafter reassembled by splicing. The reproductions Time released in January 1967 were printed from a copy of the film, which does not carry the intersprocket image — approximately one-fifth of the area exposed in the camera on each frame, and an image that exists only on film run through the camera. Nothing Time released restored what had been destroyed.

45. Time made those statements fifteen weeks before it applied to register the film. The application it filed on May 15, 1967 disclosed none of them.

The 1968 Geis litigation

46. In 1967, Time sued to stop publication of a book reproducing twenty-two Zapruder frames. In the course of that litigation Time took the position that it was corporation policy "not to allow anyone the use of any part of this film in the United States," that the film was "an invaluable asset of the corporation," and that "its use will be limited to our publications and enterprises." Time refused an offer by the book's publisher to pay Time a royalty equal to all of the publisher's profits from the book.

47. On September 24, 1968, the court held that the reproduction was fair use, finding "a public interest in having the fullest information available on the murder of President Kennedy." *Time Inc. v. Bernard Geis Assocs.*, 293 F. Supp. 130, 146 (S.D.N.Y. 1968). Time did not appeal.

Time declined to assert the copyright as to part of what was reproduced

48. Time did not assert its copyright against everything the *Geis* defendants used. In its complaint Time stated that it did "not make any claim based on the publication of those frames" as to the six frames it had released to the public on January 30, 1967. And in support of its motion for summary judgment Time identified four further frames — 236, 312, 313 and 316 — whose reproduction in the book it described as fair sketches and of which it did not complain.

49. In the only action Time or any successor in interest has ever brought to enforce the copyright in the film, with counsel engaged and the copyright squarely at issue, Time affirmatively declined to assert the copyright as to ten identified frames the book reproduced.

The escape of the film from Time's control, and Time's acquiescence

50. **The film was subpoenaed, copied, and distributed to colleges across the country, and Time did nothing.** In February 1969 the District Attorney of Orleans Parish

subpoenaed the film from Time, which released a copy to New Orleans. At the trial of Clay Shaw the film was shown to the jury ten times, once frame by frame, over the objection of the defense.

51. While the film was in the District Attorney's possession, copies were made. The District Attorney later stated: "I persuaded Mark Lane to have 100 copies of the Zapruder film printed and distributed to colleges and universities all over the country and world." Time brought no action against him, against Mark Lane, or against any institution that received a print.

52. Prints made from those copies circulated. In November 1969 the editor of the *Texas Observer* told his readers that whatever they believed, they owed it to their country to see the Zapruder film, and offered to make copies available to them at cost. Bootleg prints, many of them ninth- or tenth-generation copies, were brought to college and other audiences by self-styled experts.

53. Beginning in 1973 a group in the Boston area known as the Assassination Information Bureau formed lecture teams and, over the next three years, took a presentation entitled "Who Killed JFK?" to approximately six hundred audiences in more than forty-five states. The presentation included the entire Zapruder film, and the showing of frame Z313 was its climax. Admission was charged or donations collected.

54. The Bureau also sold the film. For thirty dollars a member of the public could purchase from it a copy of the Zapruder film together with a selection of slides. An assassination writer and newspaper publisher separately offered a sound version of the film for ninety dollars.

55. Neither Time nor any successor brought any action, sent any demand, or took any step to stop any of it — not against the District Attorney, not against the lecture teams, not against the sellers, and not against any college or university that hosted a showing.

56. Before and after the *Geis* decision, the film passed out of Time's control repeatedly, and Time brought no action:

a. During the 1960s, individuals including Mark Lane and Penn Jones sold copies of the film or its frames. On information and belief, Time and Mr. Zapruder were aware of these sales and declined to enforce.

b. In 1967 Life sent the original film to a commercial film laboratory to be copied. The laboratory's technician, Moses Weitzman, produced 35mm internegatives in 1968, delivered the best to Life, and retained test copies. Weitzman opened his own optical house later that year, and in 1969 provided a first-generation copy and the use of an optical printer to an employee, Robert Groden, who produced enhanced versions of the film.

c. In 1967 a copy was subpoenaed from Time by New Orleans District Attorney Jim Garrison. Garrison showed the film in open court approximately ten times during the 1969 trial of Clay Shaw — the first public showings of the film — and permitted copies to be made. Those copies became the source of the bootleg copies that circulated thereafter.

d. On February 14, 1969, the film was broadcast on the evening news of KTLA-TV, Channel 5, in Los Angeles.

e. In 1970 the film was broadcast on WSNS-TV, Channel 44, in Chicago, from a copy provided by Penn Jones, and was later aired in syndication in Philadelphia, Detroit, Kansas City, and St. Louis.

f. Bootleg copies became a staple of the college lecture circuit, to Life's knowledge and displeasure.

g. On March 6, 1975, the film was broadcast nationally on the ABC program *Good Night America*. On information and belief, ABC had asked Time for permission and had been told the film was not available at any price; ABC broadcast it regardless. Henry Zapruder, whose family was entitled to a share of subsidiary revenue, demanded that Time sue ABC and threatened to sue Time when it refused. No action was ever brought against ABC.

Time's disposal of the film

57. In 1974, Time sought to transfer the film to the National Archives. A memorandum of the National Archives dated October 15, 1974 records that a Time vice president was "still proposing transfer" of the film, and that Time's "[l]awyers are questioning whether the film has any monetary value for the media." The transfer did not occur. Under the 1963 agreement, any sale or transfer of all rights "shall be subject to the terms of this agreement and shall be binding upon the purchaser thereof," carrying with it the obligation to pay one-half of gross receipts, and no transferee would assume it.

58. By an Assignment dated **April 9, 1975** (recorded as V1542 P143), Time conveyed the film to the Zapruder heirs for the nominal sum of one dollar. That Assignment:

a. conveyed "all of Time's right, title and interest … including the copyright to the Film and all renewals and extensions thereof";

b. recited that "a claim to copyright in the Film was registered by Time … as an **unpublished** work on May 15, 1967 in Class L-M under Number Mu-7813";

c. provided that the assignment "shall not affect in any way any copyright which Time owns or holds with respect to **previous publication by Time of frames** from the Film"; and

d. was executed for Time, Incorporated by a person whose name, office, and authority to bind the corporation are not stated on the instrument.

The Government took the film and left the copyright behind

59. **The 1975 gift to the National Archives was restricted on its face.** On April 9, 1975 — the same day it assigned the copyright to Mr. Zapruder's heirs — Time gave the National Archives and Records Service, "as a gift, exclusively for public purposes," a first-generation copy of the film and a collection of colour transparency still pictures, each item "to be

retained in perpetuity for the benefit, enlightenment and scholarship of the people of the United States."

60. The same instrument withheld what the gift appeared to give. Time notified the Archives that the copyright "is being transferred to others," and granted the Archives "only the following right": to make the film and the still pictures "available for viewing only by individuals on the premises of the Archives provided that the Archives adopt such security procedures as will prevent the copying or removal" of them. The Archivist of the United States accepted the gift on those terms.

61. **The original film was deposited on terms that left the Archives no authority over it.** On June 29, 1978 Henry Zapruder delivered the original film to the Audiovisual Division. The receipt records that the Archives would store it free of charge and that "[n]either Mr. Myers nor Mr. Moore have any authority with regard to the Film other than storage until such time as an agreement letter from LMH Company (the owner of the Film) is received and signed by Mr. Moore." A memorandum for the record the same day states that the Archives held the film "on a courtesy storage basis."

62. By letter of July 10, 1978, Henry Zapruder set the conditions of that storage. The Archives would safeguard the film free of charge; LMH partners or their representatives could permanently or temporarily remove it from the Archives at any time; no one except an LMH partner or a person designated in writing by a partner would have access to it, and an exact record was to be kept of who examined or used it; and the film would not be screened or used in any way, or copies made or inspected, without the written permission of the LMH partners.

63. **Access to the film in federal custody was thereafter administered by its private owner.** A researcher would inquire at the National Archives. The Archives would explain its relationship with LMH and supply the address of the company's representative. The researcher would correspond with him, and he would agree or refuse, set the price, and specify

restrictions and time limits. On the researcher's written concurrence he would issue a letter, which the researcher would take to the Archives to obtain a copy. The Zapruder heirs received and kept the money.

64. On April 24, 1997, the Assassination Records Review Board determined by unanimous vote that the film is an assassination record within the meaning of the President John F. Kennedy Assassination Records Collection Act of 1992, and directed that it be transferred to the President John F. Kennedy Assassination Records Collection at the National Archives. The transfer occurred on August 1, 1998. The Board did not take the copyright.

65. Counsel for the Zapruder heirs sought a single price from the United States for the film together with the copyright. The United States acquired the film alone.

66. In 1999, a divided arbitration panel awarded the Zapruder heirs $16 million as just compensation for the taking of the physical original film. The copyright had been held since 1975 by LMH Company, a partnership the three Zapruder family members created for that purpose and to which they assigned the copyright two days after receiving it from Time. Following the arbitration, the copyright was conveyed to the Museum through three recorded instruments. The first, recorded as V3446D907 and dated December 29, 1999, conveyed from the heirs and the estate. That conveyance was executed by Myrna Ries and Henry George Zapruder individually and as co-independent executors of the Estate of Lillian Zapruder Grossman, and identifies only RE 696-871. Two further instruments were recorded: V3447D441, recorded January 28, 2000, conveying from LMH Company to the Zapruder heirs and to trusts created under the will of Lillian Zapruder Grossman; and V3447D594, recorded February 2, 2000, conveying from those persons and trusts to the Museum. Each of the three recorded instruments identifies RE 696-871 and no other registration.

67. Having sought one price for the film and the copyright together, the heirs were paid substantially that amount for the film alone. In the 1998 taking, the copyright holder sought

eighteen million dollars for the film and its copyright together, but the United States negotiated for and took the physical artifact alone; the copyright was never part of the taking and remained with the holder. Every dollar ever realized from this asset has been realized from control of the physical film, and none from enforcement of the copyright. The negotiation is described in Richard B. Trask, *National Nightmare on Six Feet of Film* 328–29 (2005).

Non-enforcement by the Museum and its predecessors after 1975

68. Neither LMH nor the Museum has ever filed a copyright action concerning the film. Meanwhile: a book reproducing twenty-two Zapruder frames was published in 1976 and appeared on the bestseller list; copies of the film were sold commercially by various parties, often without copyright notice; the film has been reproduced in dozens of versions on YouTube, Rumble, and other platforms attracting tens of millions of views; and a complete copy has been publicly available for free download from the Internet Archive for years. On information and belief, none of these uses was licensed. In 1988, a researcher and a filmmaker sued Henry Zapruder after he refused for three years to permit them to use the film. *Selby v. Zapruder*, No. 88-3043 (D.D.C.). He settled within approximately two months and permitted the use. The copyright was never adjudicated.

69. **The referral arrangement is older than the Museum.** After Time announced in January 1967 that it would release the frames damaged in 1963, no member of the public received them. Persons who asked Time for copies were referred to the National Archives, and persons who asked the National Archives were referred back to Time. One set of prints was sent to a wire service, which neither distributed them nor otherwise made them available.

70. The Museum's only assertions of the copyright have been the denial of licenses, the refusal to withdraw its objections to FOIA requests, and threats against those who question the official account of the assassination. In 2013, counsel for the Museum demanded that

filmmaker Shane O'Sullivan remove Zapruder material from his documentaries or face a claim for statutory damages; under that threat he removed the footage.

The frames contain matter fixed by persons other than Abraham Zapruder

71. Copyright in a derivative work extends only to the material contributed by the author of that work. 17 U.S.C. § 103(b). The allegations in Paragraphs 72 through 80 are pleaded in the alternative under Rule 8(d), as are the causes of action pleaded below. No cause of action is to be read as an admission of any premise of any other.

72. **At least one frame the Government published was printed from a copy that had lost the intersprocket image.** The intersprocket image is the portion of the frame between the sprocket holes, which film exposed in the camera carries and which a straight contact copy of that film retains. On November 22, 1963, Abraham Zapruder had the original developed at Kodak in Dallas and three copies struck at Jamieson; those were contact copies and retained that area. Frame 210, however, as reproduced in the Warren Commission's reenactment comparison exhibits in 1964, was printed from a copy that lacked it. A copy lacking the intersprocket image is not a contact copy of the original but a later generation from which that area had been removed, and such a copy was in official use no later than 1964. That the intersprocket area is part of a complete frame is confirmed by the National Archives' own preservation specifications, which required that the film be copied edge to edge to capture the interperforated imagery, including all image information in the interperf area; that specification is described in Richard B. Trask, *National Nightmare on Six Feet of Film* 338, 340 (2005).

73. **The operative frames were fixed in a photographic laboratory.** Beginning in 2008, senior film post-production experts conducted a high-resolution forensic analysis and concluded that the film bears matter added after exposure: a black patch covering the back of the President's head, in the location where the Parkland Hospital physicians observed a large wound, and a wound depicted on the right side of the head that those physicians did not observe. Those

experts — including specialists in film restoration and optical printing — identified the added matter as a photographic composite laid onto the frames with an aerial optical printer, and not a feature of an unaltered camera exposure.

74. On the experts' analysis, that added matter appears in the frames from **Z-313 through Z-337**.

75. **A second body of added matter appears at frames 219 through 221.** In frame 219, as Mrs. Kennedy begins to emerge from behind the Stemmons Freeway sign, the upper right corner of the sign is smoothly rounded. In frame 220 — the next frame, exposed approximately one-eighteenth of a second later — that same corner is no longer rounded but slanted, and Mrs. Kennedy's hat appears in the foreground, in front of the portion of the sign that stands between her and the camera. In frame 221 the corner is smoothly rounded again. These three frames are reproduced at page 66 of SCAM, attached as **Exhibit A**.

76. The Warren Commission relied on the sign's position in these frames. Working from the film, the Commission's Report established that foliage blocked the view of the limousine from the sixth-floor window from frames 166 through 209, and that the Stemmons Freeway sign blocked the camera's view of the President from frames 210 through 225. Frames 219 through 221 fall within that span, and the sign's presence and position in them is a matter the Government itself determined and used.

77. The sign was a rigid painted panel mounted on a post. It could not change shape between two consecutive frames and change back in the next, and Mrs. Kennedy's hat could not pass in front of a portion of the sign that stood between her and the camera. What appears in frame 220 is not what Mr. Zapruder's camera recorded.

78. The sign also fails to distort as the camera lens required. The film was exposed on a Bell & Howell 414PD camera, which at its telephoto setting produced pincushion distortion — an optical effect that bends straight lines inward toward the center at the edges of the frame.

Every element the camera recorded through that lens carries the same distortion. The straight lines of the Stemmons Freeway sign, however, remain straight while the surrounding frame exhibits the distortion the lens imposed. An element that does not share the distortion of the frame around it was not photographed through the same lens as that frame, and was therefore not fixed by Mr. Zapruder's camera.

79. Matter cannot be composited onto developed reversal film. Once reversal film is developed, its image is fixed, and new elements cannot be added to that strip and read as part of the photograph. Adding such matter requires re-photographing the image, combined with the new element, onto fresh film stock — the aerial optical-printer process described in Paragraph 73. The product is a new generation of film on which the added matter is fixed, and that fixation is the act of whoever performed the re-photography, not of the person who exposed the original.

80. On information and belief, the matter added to frames Z-313 through Z-337 and to frame 220 was fixed by persons other than Abraham Zapruder, and no interest in that added matter passed through the Museum's chain of title.

The damaged and reassembled frames

81. **The author described filming that the registered work does not contain.** On the evening of November 22, 1963, Mr. Zapruder described the filming in an interview with Jay Watson, program director of WFAA-TV in Dallas, broadcast that day. He said: "As I was shooting, as the president was coming down from Houston Street making his turn, it was about a half-way down there, I heard a shot, and he slumped to the side, like this." He continued: "Then I heard another shot or two, I couldn't say it was one or two, and I saw his head practically open up, all blood and everything, and I kept on shooting."

82. At the time of that interview the film had not been processed and no one had seen it. Mr. Zapruder was describing what he had done with his camera, not what any image showed.

83. The work Time registered in 1967 does not contain the turn from Houston Street onto Elm Street. Its numbered sequence begins after that turn, with the limousine already on Elm Street.

84. Independent of the foregoing allegations, and without regard to them, matter occupying specific frame positions within the Museum's asserted copyright was fixed by persons other than Abraham Zapruder.

85. **The National Archives examined the film in its custody in 1999 and recorded what it contains.** On May 12, 1999, at the Archives conservation laboratory, Senior Photographic Conservator Sarah Wagner, Audiovisual Preservation Specialist Alan Lewis, and contract film inspection supervisor Joseph Bono examined the film the Archives holds as the original, which had been transferred to the John F. Kennedy Assassination Records Collection on August 1, 1998 as Record Group 541, item 541 ARRB 1, and made a record of their findings.

86. Their findings describe a reel containing several separate filming events. The portion of the film bearing exposed images measures 73¾ inches and contains **494 individual frames**. The first fourteen exposed frames are the last portion of **a more extensive 117-frame sequence** that Mr. Zapruder had taken of Marilyn Sitzman and Mr. and Mrs. Hester around a park bench in Dealey Plaza. The motorcade sequence contains **480 individual frames**, of which **the first 132 show three lead Dallas police motorcycles** riding ahead of the presidential party. That sequence "is immediately followed by the separately filmed assassination sequence." The examination record is reproduced in Richard B. Trask, *National Nightmare on Six Feet of Film* 335 (2005).

87. The examination also recorded that the film **has been run through a printer for duplication at least seven known times**, including direct contact printing three times on November 22, 1963, and has been laid out on light tables an indeterminate number of times.

88. The original camera exposures of frames 155–156 and 208–211 were destroyed in 1963. What occupies those positions in the work Time registered is a later, partial reproduction lacking the intersprocket image — the portion of the frame that exists only on film exposed in the camera. These frames are omitted from the DVD of the film sold commercially by MPI. The intersprocket image comprises approximately one-fifth of the area exposed in the camera on each frame and exists only on film that passed through the camera. What Time released to the public in January 1967 as frames 207 through 212 were reproductions printed from a copy that does not carry it.

89. Frames 154, 157, 207, and 212 are visibly spliced and repaired composites. A horizontal splice runs near the bottom of frame 154, marking where frames 155 and 156 were lost. Frame 212 consists of its upper portion joined to what appears to be the lower portion of frame 208. The splices were made by whoever repaired the damaged strip, and the matter created by that joining was fixed by that person and not by Mr. Zapruder in his camera. The 1999 examination located these breaks precisely: a broken sprocket perforation and splice at 25½ inches, where frames 155 and 156 are missing, and a second splice at 32 inches running through frames 207 and 212, leaving frames 208 through 211 missing. The examination recorded that these two breaks account for six missing frames, which if counted with the assassination-related frames still present would total 486. The examination record is reproduced in Richard B. Trask, *National Nightmare on Six Feet of Film* 336–37 (2005).

90. **Time accounted publicly for one of the two losses and never for the other.** Time's January 1967 statement addressed frames 207 through 212. It said nothing of frames 155 and 156, which are also missing, or of the further splice at frame 157. Because the Warren Commission had not reproduced that portion of the film, the loss drew no public attention, and Time gave no public accounting of it.

NARA's denials and the publication of SCAM

91. NARA possesses early copies of the film. On June 28, 2024, the Forum submitted a FOIA request to the National Archives for Zapruder frames 171–207 and 212–334 — the frames comprising Commission Exhibit 885. A copy of the request is attached as **Exhibit B**. On July 1, 2024, NARA refused the request because of the Museum's copyright, stating that the series is open to the public and available to view in its research room in College Park, Maryland; a copy of that response is attached as **Exhibit C**.

92. The Forum appealed the same day. A copy of the appeal is attached as **Exhibit D**, and NARA's acknowledgment of July 2, 2024 is attached as **Exhibit E**.

93. On August 8, 2024, the Forum submitted a further FOIA request to the National Archives for Zapruder transparencies 208–211, a copy of which is attached as **Exhibit F**. On August 9, 2024, NARA again refused the request because of the Museum's copyright, as shown by **Exhibit G**.

94. The Forum appealed the same day. A copy of that appeal is attached as **Exhibit H**, and NARA's acknowledgment of August 12, 2024 is attached as **Exhibit I**. Neither appeal was decided within the twenty working days allowed by 5 U.S.C. § 552(a)(6)(A)(ii), and NARA has never informed the Forum of the result of either appeal.

95. NARA's present practice originated in a private arrangement made at Time's request. By letter of March 8, 1967, LIFE's Director of Photography wrote to the National Archives proposing that it would be better "for both of us if the National Archives and LIFE Magazine maintain the position that the Zapruder motion picture film can be shown to qualified researchers but that no prints can be made from the motion picture film for any reason," because even prints stamped as not for publication without LIFE's permission meant that "the very existence of such prints poses a threat to our control of the Zapruder Film."

96. The Archivist of the United States agreed. By letter of March 24, 1967, the Archivist advised that the Archives "shall notify all who request copies of the Zapruder film or of Warren Commission exhibits consisting solely of frames from this film" that Life permits the film to be shown to qualified researchers but "cannot permit the reproduction of the film," and that copies of Commission exhibits containing Zapruder frames together with other material would be stamped on the back to indicate that permission to publish must be obtained from Life.

97. **NARA acknowledges that the records are federal records and conditions copying on a private party's consent.** In refusing the Forum's requests, NARA stated that although it has legal custody of the Zapruder film and the film is considered a federal record, the copyright to the film and slides is owned by the Museum, and that researchers wishing to copy the slides must first obtain written permission from the Museum. NARA thus treats a private party's permission as a precondition to the copying of a federal record in its own custody.

98. **NARA has taken the opposite position as to these same slides.** In earlier litigation NARA stated that it did not believe the individual Warren Commission slides should raise a copyright infringement concern, and that use or copying of such slides presents a much stronger case of fair use than complete, commercial-grade copies of the underlying film. The records the Forum requested are those same slides.

99. **The Forum offered to bear the cost.** The Forum asked to pay for copies or to engage vendors to make them at the Forum's own expense. NARA refused on the ground of the Museum's copyright, not on any ground of burden or cost.

100. NARA's present practice also departs from its own longstanding practice. In 1968, the Archivist's stated practice was that copies of the Zapruder frames would be furnished on request, stamped on the back to indicate that permission to publish should be secured from Life. Time's own Director of Photography swore to that practice in the *Geis* litigation, stating that the film and the frame transparencies were then available at the National Archives for use by

serious scholars, that copies of the frames reproduced in the Commission's Report and Exhibits were "also available for purchase at the Archives," and that "[t]he only limitation placed on their availability is that each is marked with notice that permission to reproduce the frames must be obtained by the user from Time Inc." NARA's website states that NARA may make a single fair-use copy of the film and sell it to any researcher. And a 1995 opinion of the Department of Justice Office of Legal Counsel advised that the Copyright Act is not a withholding statute for FOIA purposes and that NARA must provide access — meaning both inspection and copying — to copyrighted agency records.

101. On April 3, 2025, the Forum sent a letter to the Museum requesting to use the Zapruder film copyright for its publication, and requesting the information the Museum possesses that would establish that frames 154–157 and 207–212 are original. A copy of that letter is attached as **Exhibit J**. On April 15, 2025, the Museum denied the majority of the request; a copy of the Museum's response is attached as **Exhibit K**. The Museum declined to provide the information requested concerning the condition of those frames.

102. On April 15, 2025, the Forum asked the Museum whether it would withdraw its opposition to the Forum's FOIA requests for Zapruder materials at the National Archives, as shown by **Exhibit L**. On April 16, 2025, the Museum responded that it would not withdraw its opposition, because such requests constitute copying without a license; a copy of that response is attached as **Exhibit M**.

103. On April 23, 2025, a further request for permission was made for the films sought in the FOIA requests, attached as **Exhibit N**. On April 24, 2025, the Museum replied that any request must go through the licensing program on its website, attached as **Exhibit O**. The Forum submitted that form and received confirmation that it had been submitted, attached as **Exhibit P**. The Museum did not respond.

104. On May 6, 2025, the Forum published SCAM. A copy of the book is attached as **Exhibit A**. It reproduces seventy-three frames of the film and analyzes the evidence that the surviving film is not an unaltered original. The book is for sale on Amazon.com. The Museum continues to assert that its copyright covers those frames.

105. The seventy-three frames the Forum reproduced in SCAM are frames 1, 2, 3, 4, 131, 132, 133, 134, 135, 144, 154, 155, 156, 157, 166, 174, 175, 176, 177, 193, 201, 202, 207, 208, 209, 210, 211, 212, 216, 219, 220, 221, 228, 237, 244, 262, 265, 269, 273, 276, 277, 289, 294, 304, 311, 312, 313, 314, 315, 316, 317, 320, 321, 323, 327, 328, 335, 337 and 386, together with the fourteen frames of Mr. Zapruder's employees at the pergola, which bear no numbers in the Zapruder series.

FIRST CAUSE OF ACTION
Declaratory Judgment of Non-Infringement
Waiver of Frames 207–212
(Against the Museum)

106. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above.

107. A right such as copyright may be waived by inaction, and copyright may also be waived as the result of a particular act, even if waiver was not the intended result. *Bobby Goldstein Prods., Inc. v. Habeeb*, 2022 U.S. Dist. LEXIS 183123, 2022 WL 5250284, at *2 (N.D. Tex. Oct. 6, 2022). Here Time released the frames to the public expressly without restriction on their use.

108. As alleged in Paragraph 27, Time, Incorporated — then the holder of the copyright — publicly released frames 207 through 212 without restriction on their use on January 30, 1967. The stipulation of facts signed by counsel for Time and filed in *Geis* on May 1, 1968 states that on that date those frames "were publicly released without restriction on their use," and that copies of the frames covered by that release were made available to the

defendants. Time's own complaint in that action stated that Time did "not make any claim based on the publication of those frames."

109. Time's own conduct in that litigation confirms the release. As alleged in Paragraph 48, Time asserted no claim of copyright infringement as to those six frames in the only action it has ever brought to enforce the copyright, although the defendants had reproduced them.

110. The Museum's copyright cannot exceed the interest held by its predecessors, and the Museum could not acquire a copyright in frames Time had already released to the public.

111. Plaintiff is entitled to a declaration that SCAM does not infringe as to frames 207–212.

SECOND CAUSE OF ACTION
Declaratory Judgment of Copyright Invalidity
Fraud on the Copyright Office
(Against the Museum)

112. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above.

113. A certificate of registration is valid regardless of whether it contains inaccurate information, unless (A) "the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate" and (B) "the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration." 17 U.S.C. § 411(b)(1). In enacting that provision as part of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, "Congress codified th[e] court-made standard" governing fraud on the Copyright Office. *Lennar Homes of Tex. Sales & Mktg., Ltd. v. Perry Homes, LLC*, 117 F. Supp. 3d 913, 923 (S.D. Tex. 2015). Section 411(b) therefore supplies the governing standard, and the allegations below satisfy it and the common-law formulation alike.

114. Knowledge of the inaccuracy, including a mistake of law, is required. *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178 (2022). Copyright invalidity for fraud on the Copyright Office may be asserted offensively as the basis for a declaratory judgment. *Friedheim v. Hoeber*, 2020 U.S. Dist. LEXIS 258103, 2020 WL 10893185, at *7 (N.D. Tex. Dec. 16, 2020).

115. **The unpublished misrepresentation.** Mu 7813 represented that the film was unpublished. That representation was false. As alleged in Paragraphs 17 through 23, frames of the film had already been published — 160 frames in Commission Exhibit 885 in 1964, frame 210 in the reenactment comparison exhibits, and additional frames in LIFE in 1963, 1964, and 1966, in publications distributed in excess of 23,750,000 copies domestically.

116. **The applicant knew the representation was false, or was willfully blind to its falsity.** The applicant was **Time, Incorporated** — the entity that had itself published the frames in its own magazine and had registered those publications as **published** works, including A 673423 (printing sworn completed December 7, 1963, new matter described as "previously published in LIFE Magazine") and B 138324 (published September 28, 1964, certified by Arthur W. Keylor). A claimant that registered the frames as published cannot have believed the same frames were unpublished. Time's knowledge is further shown by its insistence that the Warren Commission's reproduction of the film carry a copyright notice (Paragraph 19): a copyright owner does not negotiate notice terms for a work it believes to be unpublished. It is confirmed again by Time's own 1975 Assignment, which recited the "unpublished" 1967 registration while separately preserving Time's copyrights arising from its "previous publication … of frames from the Film."

117. Willful blindness may support a finding of actual knowledge, and circumstantial evidence — including the significance of the error, the complexity of the rule, and the applicant's experience with copyright law — may establish that an applicant was actually aware

of, or willfully blind to, an inaccuracy. *Unicolors*, 595 U.S. at 187–88. To the extent the Museum contends that Time misapprehended whether publication of the frames constituted publication of the motion picture, each of those considerations establishes knowledge or willful blindness here:

a. **The significance of the error.** Whether the work was published was not a peripheral detail of the application. It governed the class in which registration was sought, the copies required to be deposited, and the date from which the copyright term would run.

b. **The simplicity of the rule.** Whether a work has been published is not an esoteric question of copyright law, and Time had answered that question correctly, as to these very frames, in at least four registrations of its own before it filed the 1967 application.

c. **The applicant's experience with copyright law.** Time, Incorporated was among the most sophisticated copyright proprietors in the United States. It published LIFE, TIME, and FORTUNE, routinely registered its periodicals with the Copyright Office, maintained an editorial counsel, and was represented by experienced copyright counsel. It was not a layperson unfamiliar with the requirements of registration; it was the proprietor of the very prior registrations that made the 1967 representation false.

118. **The undisclosed condition of the film.** The registration described an original motion picture and did not disclose that frames 155–156 and 208–211 had been destroyed, that frames 154, 157, 207 and 212 had been cut and spliced, or that what occupied the destroyed positions was reproduced from a copy. Nor had Time ever disclosed the loss of frames 155 and 156 publicly: its January 1967 statement addressed only frames 207 through 212, and because the Warren Commission had not reproduced the earlier stretch, that loss drew no attention. That condition was permanent. In the 2013 volume LIFE advertised as containing all 486 frames of the film, it printed frames 154–157 and 207–212 from copies lacking the intersprocket image, while printing the remaining frames from material that carries it — because the original camera exposures at those ten positions no longer exist. The registration also did not disclose that the

film lacked footage its author had publicly described shooting. On the evening of the assassination Mr. Zapruder said he was filming as the President came down from Houston Street making his turn; the registered work begins after that turn. Time knew of that damage no later than February 1964 — more than three years before it registered — when it was unable to supply the Warren Commission with transparencies of frames 207 through 212 made from the original. Fifteen weeks before it registered, Time said so publicly, in writing, and over the name of the Managing Editor of LIFE: it had "accidentally damaged not four but six frames of the original — frames 207 through 212," and it had been "unable to give [the Commission] frames 207 through 212." The application disclosed none of it.

119. **The applicant knew, and had publicly denied, what it withheld.** The frames were destroyed at Time's own facility by Time's own technician. Fifteen weeks before the application, Time publicly denied that any frames were missing or had been destroyed — a statement it knew to be false, made in direct response to public inquiry on the precise subject the application concealed. Time then described the work to the Copyright Office as an unpublished original motion picture of Abraham Zapruder, disclosing neither the destruction of frames 208 through 211, nor its own splicing of frames 207 and 212, nor the January 30, 1967 release, nor the prior publication of frames in Time's own periodicals under Time's own copyright notice.

120. Nor was the defect one the Register could have detected. The application was filed in the unpublished class; the deposit copy was not retained; and Time's public position at the time was that nothing was missing and that reproductions were available. A viewer told that nothing had been destroyed, looking at a repaired film, would see a repair — not a work from which four camera exposures had been permanently removed.

121. **The omitted prior registrations.** Line 6 of the application, calling for previous registration or publication, was left blank, omitting the registrations the same claimant had obtained covering publications of frames from the same film.

122. **Misidentification of the author and the work.** The registration named Abraham Zapruder as the author of an original in-camera motion picture. As alleged in Paragraphs 71 through 80, the operative frames were not fixed by Mr. Zapruder, and the work as deposited contained matter contributed by other authors.

123. **The circumstances of the application.** Time was not a layperson filling out a form in the ordinary course. It had bound itself by contract in 1963 to obtain such copyright protection as it deemed necessary for its own safety, and it had performed that undertaking promptly as to its own publications. It waited three and a half years to register the film, and then registered it on May 15, 1967, five days after the last of a series of refused requests from the author of a forthcoming book, four weeks before counsel for that author's publisher demanded the use of thirty-two frames, and six months before Time sued. An applicant registering in the expectation of litigation does not misdescribe the work by inadvertence.

124. **Time licensed the frames to third parties for publication as photographs.** Time did not merely print the frames in magazines of its own. On November 27, 1963, Time released six frames — 232, 267, 323, 343, 364 and 372 — to the Associated Press and United Press International for publication in newspapers on November 29, 1963. It did so on five conditions of its own devising: that distribution be confined to the United States and Canada; that the credit read "Courtesy, LIFE Magazine, copyright 1963, Time Inc. All rights reserved"; that "under no conditions shall the pictures be retouched or altered in any way"; that nothing be distributed before 6:00 a.m. on November 29; and that nothing be released to television. Time made a second such release of five further frames to the press, again with notice. It licensed a frame for publication in the 1964 edition of a general encyclopedia. And it licensed frames to approximately twenty-six magazines in seventeen nations.

125. Those were publications of the photographic images themselves, licensed to third-party publishers under a copyright notice Time drafted, and unattached to any collective work of

Time's own. A party that fixes the territory, the embargo hour, the permitted media and the exact wording of the copyright notice knows what it is publishing. None of it appeared at line 5 or line 6 of the application.

126. **The scale of the publication.** By May 1967 the frames had been published not only in Time's own magazines but, with Time's consent and at Time's expense, throughout the Warren Commission's Hearings. Approximately one hundred sixty frames appeared in Volume XVIII alone — more than in all of Time's own publications combined. The representation that the work was unpublished was false as to the greater part of the work by volume.

127. **Materiality.** Whether a work is published or unpublished governs the copies required to be deposited, the class in which registration is sought, the computation of the copyright term, and the date from which that term runs. Had the Copyright Office known that frames of the film had been published beginning in 1963 — including in the applicant's own magazine, under the applicant's own copyright notice, and under registrations the applicant had itself obtained — it would have refused registration of the film as an unpublished work in 1967.

128. **Reliance.** The Register had nothing before her from which the inaccuracies could have been detected. Line 5 of the application, calling for the date and place of publication, was blank. Line 6, calling for previous registration or publication, was blank — so the one place on the form where the applicant's own prior registrations of the same frames would have appeared disclosed nothing. The deposit copy has not been retained and no longer exists, so neither the prior publication of the frames nor the identity of the author could have been detected from an examination of it. The Copyright Office issued Mu 7813 in reliance on the application as Time submitted it.

129. Pursuant to 17 U.S.C. § 411(b)(2), Plaintiff requests that the Court request the Register of Copyrights to advise whether the inaccurate information, if known, would have caused the Register to refuse registration. That referral is not discretionary: a court "must request

a response from the Register before coming to a conclusion as to the materiality of a particular misrepresentation." *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F.3d 616, 624 (7th Cir. 2013); *see Lennar Homes*, 117 F. Supp. 3d at 925–26. Plaintiff does not ask that the referral be made immediately; the Court may first determine that the application included inaccurate information and that Time knowingly included it. *DeliverMed*, 734 F.3d at 625.

130. Plaintiff is entitled to a declaration that the registration is invalid and unenforceable and that SCAM does not infringe.

THIRD CAUSE OF ACTION
Declaratory Judgment of Non-Infringement
Waiver and Abandonment of the Entire Copyright
(Against the Museum)

131. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above. This cause of action is directed to the copyright in the film as a whole, including frames 207–212, and is pleaded in the alternative to the First Cause of Action.

132. A copyright may be abandoned, and may be waived by inaction, where the holder acquiesces in open and widespread infringement. *Panini Am., Inc. v. Wild Card, Inc.*, 2023 U.S. Dist. LEXIS 14338, 2023 WL 1073692, at *9 (E.D. Tex. Jan. 27, 2023). Abandonment by inaction does not require a direct showing that the holder intended to surrender its rights. *Id.* Open and free infringement without consent, payment, or recourse is relevant both to abandonment and to waiver.

133. In *Imperial Homes Corp. v. Lamont*, 458 F.2d 895 (5th Cir. 1972), no abandonment was found because the proprietor had "expressly claimed" copyright in the very publication said to evince abandonment, so that "the opposite intention [was] disclosed." *Id.* at 898. The conduct alleged here is the opposite. Time did not assert its copyright in the face of infringement; it sought to give the film away to the National Archives while its own counsel questioned whether the film had any monetary value, and then disposed of the film and all claims

to it for one dollar. Neither the Museum's licensing program nor its denial of licenses is an assertion of the copyright against infringement, and neither cures decades of acquiescence.

134. **The measure of what enforcement looked like when Time cared.** In November 1963, when the film was at its most valuable, Time policed six photographs with precision. Releasing frames 232, 267, 323, 343, 364 and 372 to two wire services, it imposed five conditions: distribution confined to the United States and Canada; a credit reading "Courtesy, LIFE Magazine, copyright 1963, Time Inc. All rights reserved"; that "under no conditions shall the pictures be retouched or altered in any way"; no distribution before 6:00 a.m. on November 29, 1963; and no release to television. A proprietor that specified the territory, the hour, the permitted media and the exact wording of its notice for six photographs cannot be understood to have found the policing of its copyright disproportionate to the stakes.

135. **Time policed the copyright abroad with the same precision, and within days.** Time did not wait to exploit the film outside the United States. Its Director of Photography testified that Time approached four foreign magazines directly — Der Stern, Paris Match, Epoca and the London Daily Express — named a price to each, and sold world rights for approximately $45,000: $15,000 to Der Stern and $12,500 to each of the others. The terms were specific. Each purchaser received **one-time publication rights** only, and was required to return the transparencies **immediately after publication**.

136. Time went on to license Zapruder frames to twenty-six publications in seventeen nations under specific licensing agreements, and published the frames itself in *Life International* and *Life Español* as well as in LIFE. The three LIFE issues alone reached a circulation exceeding twenty-one million copies.

137. Time refused those it did not choose to license. Approximately two weeks after the first post-assassination issue went to press, The New York Times requested the frames

through Time's syndication department and was refused, pursuant to a corporate decision not to release the film to anyone in the United States for any use.

138. A proprietor that negotiated world rights within days of acquiring a film, fixed a separate price for each purchaser, limited each licence to a single publication, required its transparencies back immediately, dictated the territory, the embargo hour, the permitted media and the exact wording of its own copyright notice, and refused the nation's newspaper of record, cannot be understood to have found the policing of its copyright disproportionate to the stakes.

139. Two of those conditions were later disregarded openly, and nothing was done. The film was broadcast on national television in 1975, the use Time had expressly excluded in 1963. Altered and modified versions of the film have circulated for decades, the use Time had expressly prohibited in 1963. Neither Time nor any successor took any action as to either.

140. **Time, Incorporated (1968–1975).** After the *Geis* decision, the value of the copyright collapsed, and Time relinquished it. Time did not appeal. It brought no action against any of the uses alleged in Paragraphs 50 through 56, including the Garrison courtroom showings and the copies Garrison permitted, the KTLA and WSNS broadcasts, the copies retained by its own laboratory contractor and passed to Robert Groden, the bootleg circulation on the college lecture circuit, or the national ABC broadcast — which it declined to pursue even after the Zapruder family demanded that it sue and threatened to sue Time for refusing. In 1974 Time sought to give the film away to the National Archives while its own lawyers questioned whether the film had any monetary value, and in 1975 it disposed of the film and all claims to it for one dollar.

141. Time's non-enforcement was not inadvertence. In the single action it ever brought, Time declined to assert the copyright as to the frames it had released on January 30, 1967 and as to four further frames whose reproduction it described as fair, and it did not appeal

the judgment it lost. A proprietor that declines to claim while its own enforcement action is pending has done more than fail to sue.

142. Time's refusal in 1967 was not a considered defense of a commercial asset. On June 5 or 6, 1967, Time's Editorial Counsel told the publisher's counsel that there would probably be no problem with the use of the frames. On June 9 the publisher's counsel identified thirty-two frames. On June 19 Time refused. Between June 20 and 22 the publisher authorized its counsel to offer Time all of the book's profits in exchange for permission, and on June 23 Time rejected that offer.

143. Time also stipulated to a series of unauthorized publications it did not pursue. On September 11, 1966, a newspaper published six Zapruder frames without authorization. In December 1964, a television network published two frames without authorization. Two book publishers published Zapruder frames taken from the Warren Commission Report without authorization. Time brought no action as to any of them. Separately, when a magazine published sketches drawn from the frames in late 1967 and its counsel advised Time that the use was fair, Time decided to take no action.

144. Time had contracted to exploit the film, not to suppress it. Under the 1963 agreement Time undertook to exercise its best business judgment in the presentation, sale, leasing, licensing and rental of the film for the production of gross receipts. In June 1967 its Editorial Counsel wrote instead that it "has been and will continue to be the policy of Time Inc. not to allow anyone the use of any part of this film in the United States." On March 6, 1975 the film was broadcast to a nationwide television audience for the first time, from an enhanced copy, without Time's permission and without payment. Time did not sue. Five weeks later it disposed of the film and all claims to it for one dollar.

145. **LMH Company and the Zapruder heirs (1975–1999).** No copyright action was ever filed. The uses alleged in Paragraph 68 continued without enforcement, and further

unauthorized uses followed at once. In March 1975, within weeks of the assignment, the film was broadcast on a national television programme without permission. On April 24, 1975 a national magazine published an article examining the film; in July 1975 a London newspaper magazine did the same. In 1976 a book reproducing twenty-two Zapruder frames was published and appeared on the bestseller list for several weeks. Television stations broadcast the film without paying royalties. Copies were sold without copyright notice. No demand was made and no action was brought as to any of it.

146. **The receipts of possession are not the exercise of a copyright.** In the 1999 arbitration it was disclosed that between 1976 and 1997 the film earned the Zapruder family $878,997 in fees. A fee was charged for a 1988 television documentary. A physician-author was granted rights to reproduce frames in a book. Those receipts were the product of exclusive physical possession of an artifact that the National Archives held in courtesy storage with no public access, so that anyone needing a usable copy had to come to its holder. They are not enforcement of a copyright against infringement, and they postdate the relinquishment alleged above; a successor cannot revive by licensing what its predecessor had already abandoned.

147. When access to the film was refused and suit was filed to obtain it, Henry Zapruder settled within approximately two months rather than defend the copyright.

148. When the United States took the film in 1998, the heirs sought a single price for the film and the copyright together and were paid for the film alone. The copyright, by the conduct of everyone who has ever held it, has been treated as valueless apart from possession of the artifact.

149. **The Museum (1999–present).** No copyright action has ever been filed. Dozens of copies of the film remain freely available online, attracting tens of millions of views, and a complete copy is available for free download from the Internet Archive. The Museum's administration of a licensing program, its denial of licenses, and its defense of suits concerning

the copyright are not enforcement against infringement, and do not revive a copyright already abandoned.

150. Plaintiff is entitled to a declaration that the copyright in the film has been waived and abandoned in its entirety, that the film is in the public domain, and that SCAM does not infringe.

FOURTH CAUSE OF ACTION
Declaratory Judgment of Non-Infringement
The Museum Never Obtained the Registrations Covering the Published Frames
(Against the Museum)

151. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above.

152. A transferee cannot acquire an interest the transferor never held or never validly conveyed.

153. **The 1975 assignment into LMH described one registration.** The instrument by which the Zapruder heirs assigned the copyright to LMH Company on April 11, 1975 conveyed "the copyright to the Film taken by Abraham Zapruder of the assassination of President John F. Kennedy, and registered for copyright on May 15, 1967 in class L-M under No. Mu 7813, with all its literary property, right, title and interest in any and all renewals and extensions of said copyright." It identified no other registration. The six frame renewals described below renew different registrations and are not renewals or extensions of Mu 7813.

154. **The owner's own copyright notice has claimed the film registration and nothing else.** In 1975 counsel for LMH asked the National Archives to attach the notice "Copyright © 1967 LMH Company. All rights reserved." In 2005 a history of the film published with the Museum's permission carried the notice "Zapruder Film ©1967 (Renewed 1995), The Sixth Floor Museum at Dealey Plaza." The same formula appears in the 2013 LIFE volume reproducing the frames and in the 2016 history written by Mr. Zapruder's granddaughter. For

fifty years the owner's public claim has run to the 1967 film registration and its 1995 renewal, and to no registration of 1963 or 1964.

155. **The frame renewals were never conveyed to the Museum.** As alleged in Paragraphs 21, 23 and 32, the frames reproduced in SCAM that appeared in Time's periodicals were registered as published works in 1963 and 1964 under Registrations A 673423, B 78918, B 81133 and B 138324, and the renewal terms of those registrations were separately renewed in 1991 and 1992 under Registrations RE 555343, RE 555344, RE 555345, RE 555346, RE 582917 and RE 582918, claimed by Lillian Zapruder as widow. Lillian Zapruder died on December 11, 1993. Those six renewal registrations were never assigned to the Museum. Nor were RE 548668 and RE 548669, the periodical renewals claimed by the Time, Inc., Magazine Company. The recorded instruments through which the Museum claims title recite only RE 696-871. The Museum accordingly holds no interest in the separately registered and separately renewed works in which the published frames subsist.

156. **Whatever subsists in the November 29, 1963 photographs is not the Museum's.** As alleged in Paragraphs 34 through 36, the only renewal registration reaching the issue in which those thirty-one photographs appeared is RE 548668, claimed on October 25, 1991 by the Time, Inc., Magazine Company as proprietor of copyright in a composite work. That renewal has never been assigned to the Museum, nor have RE 548669 or RE 555134. No transfer of RE 548668 appears in the Copyright Office's records of recorded documents. Every instrument through which the Museum claims title was recorded, and each recites RE 696-871 and no other registration. The renewal registrations claimed by Abraham Zapruder's successors identify B 78918, a different issue published a week later. The Museum therefore holds no registration, and no renewal of any registration, reaching the photographs published in the November 29, 1963 issue.

157. That result is consistent with the 1975 Assignment, which by its terms preserved to Time the copyrights arising from its "previous publication … of frames from the Film." Time did not convey those rights to Mr. Zapruder's heirs, and its successor renewed them in its own name in 1991.

158. **The 1975 Assignment.** A transfer of copyright ownership is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed. 17 U.S.C. § 204(a).

159. The 1975 Assignment on which the Museum's chain of title depends was executed for Time, Incorporated by a person whose name, office, and authority to bind the corporation are not stated on the instrument. The Museum's chain of title therefore rests, at this link, on proof outside the four corners of the instrument.

160. In the further alternative, and as alleged in the Fifth Cause of Action, the copyright in the film expired no later than 1991, and the 1999 transfer to the Museum conveyed nothing, because an expired copyright cannot be transferred.

161. Plaintiff is entitled to a declaration that the Museum holds no interest in the registrations covering the published frames, that it holds no enforceable interest in the film, and that SCAM does not infringe.

FIFTH CAUSE OF ACTION
Declaratory Judgment of Expiration and Public Domain
Failure to Timely Renew
(Against the Museum)

162. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above. This cause of action is pleaded in the alternative under Rule 8(d).

163. As alleged in Paragraphs 17 through 24, and as shown by Time's own registrations of its publications as published works, frames of the film were published with copyright notice in Time's own issues in 1963 and 1964. Time itself fixed the year. The notice

accompanying each LIFE spread bore the year 1963; Time released frames to the wire services in November 1963 under the credit "copyright 1963, Time Inc."; and it directed that the notice on the Warren Commission's publication read "Copyright 1963 Time Inc. All rights reserved." Those publications secured statutory copyright in 1963 — not, as Mu 7813 asserts, in 1967.

164. Plaintiff does not contend that the absence of that notice from the Commission's own volumes worked a forfeiture. The Commission published with Time's authority, and the frames had already been published with notice in Time's own issues. The point is the date on which statutory copyright was secured, not the manner of the Government's printing.

165. The Zapruder successors themselves computed the term from those dates. In December 1991 and April 1992 — the twenty-eighth year of terms running from publication in 1963 and 1964 — Lillian Zapruder renewed the frames as published works of Time's periodicals under the six renewal registrations identified in Paragraph 32. No renewal of the film was registered in 1991.

166. The Copyright Renewal Act of 1992 — Title I of the Copyright Amendments Act of 1992, Pub. L. No. 102-307, 106 Stat. 264 (enacted June 26, 1992) — amended 17 U.S.C. § 304(a) to make renewal automatic, providing that an application to register a claim to the renewed term "is not a condition of the renewal and extension of the copyright." 17 U.S.C. § 304(a)(3)(B). That amendment, however, is expressly limited. It "shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977," and "[c]opyrights secured before January 1, 1964, shall be governed by the provisions of section 304(a) of title 17, United States Code, as in effect on the day before the effective date of this section." Pub. L. No. 102-307, § 102(g)(2), 106 Stat. at 266.

167. A copyright secured before January 1, 1964 is therefore governed by § 304(a) as it stood before the 1992 amendments, under which the copyright endured for an initial term of twenty-eight years and was renewed for a further term only if an application to register the

renewal claim was filed with the Copyright Office, and the claim registered, within the final year of the initial term. Absent such an affirmative registration, the copyright terminated at the end of the initial twenty-eight-year term and the work entered the public domain.

168. All terms of copyright run to the end of the calendar year in which they would otherwise expire. 17 U.S.C. § 305. Because statutory copyright in the work was first secured in 1963, its initial twenty-eight-year term expired on December 31, 1991, and renewal required an affirmative registration filed and registered in that year. The 1963 copyright falls outside the automatic-renewal window, and its initial term closed before the 1992 Act took effect. The film's only renewal, RE 696-871, was registered on March 14, 1995 — a date consistent only with a 1967 date of first copyright, and in any event years after the time for renewing a 1963 copyright had passed. On information and belief, no renewal of the film's 1963 copyright was registered in 1991.

169. The two dates yield different renewal claimants, and the difference is itself telling. Had the term run from 1967, the renewal would have fallen due in 1995, after Lillian Zapruder's death, and the children alone would have been entitled to claim it — which is what RE 696-871 recites. Had the term run from 1963, the renewal would have fallen due in 1991, when Lillian Zapruder was living and was a member of the class entitled to claim. She renewed the frames in that very year on the 1963 and 1964 publication dates. She did not renew the film, and neither did anyone else.

170. This cause of action and the Fourth Cause of Action are pleaded as alternatives, and the Museum cannot prevail on both. If the frames and the motion picture are one work, publication of the frames in 1963 secured the copyright in that year, its term closed on December 31, 1991, and nothing was registered to renew it. If instead the frames and the motion picture are separate works, as the Zapruder successors' own renewal filings treated them, then the

Museum's registration reaches only the motion picture, and the Museum never acquired the separate registrations and renewals in which the published frames subsist.

171. Plaintiff is entitled to a declaration that the copyright in the film has expired, that the film is in the public domain, and that SCAM does not infringe.

SIXTH CAUSE OF ACTION
Declaratory Judgment of Non-Infringement
The Museum's Copyright Does Not Reach the Frames in SCAM
(Against the Museum)

172. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above.

173. A certificate of registration is prima facie evidence of the validity of the copyright it describes, but the presumption is rebuttable and does not establish that the copyright reaches any particular subject matter. The question presented here is not the validity of Mu 7813 but its scope.

174. **The registered work is approximately ten seconds in duration.** The only registration in the Museum's chain of title, Mu 7813 (renewed as RE 696-871), describes the registered work as one of "approximately 10 seconds." That description is not confined to the application. The Copyright Office published it: the Catalog of Copyright Entries, Third Series, Volume 21, Parts 12-13, Number 1, *Motion Pictures and Filmstrips*, January-June 1967, carries the entry "KENNEDY ASSASSINATION. Time, Inc. 10 sec., color. Appl. author: Abraham Zapruder. © Time, Inc.; 15May67; MU7813."

175. **The film is not ten seconds long, and Time published the figures that show it.** In its issue of November 25, 1966, LIFE stated that the film "passed through the camera at 18.3 frames a second, a little more than a 20th of a second (.055 sec.) for each frame," and that by studying individual frames one could measure precisely the intervals between events. At that rate the film runs approximately twenty-six and one-half seconds. Approximately 183 frames

correspond to the ten seconds the registration describes. Time's successor has said the same. In 2013 LIFE published a volume it advertised as containing all 486 frames of the film, its managing editor describing the contents as "all of the 400-plus images … from the 26-second film"; that volume also reproduces the sequence Mr. Zapruder exposed before the motorcade arrived. The deposit copy is no longer in existence, and the Museum cannot establish that its registration extends beyond the work its own registration describes.

176. **Time itself treated the registration as reaching a single frame.** As alleged in Paragraph 40, Time sued on twenty-two frames in the only action ever brought to enforce this copyright and told the court that the infringements of all but frame 252 rested on the LIFE copyright. Every other frame in suit rested on Time's periodical registrations, not on Mu 7813. Frame 252 is not among the frames reproduced in SCAM.

177. **The registered work is a reel of several separate filming events.** As alleged in Paragraphs 85 through 87, the National Archives' own examination records a reel of 494 exposed frames that opens with the tail of a 117-frame sequence of Mr. Zapruder's employee and two bystanders at a park bench, continues with 132 frames of police motorcycles, and only then reaches the separately filmed assassination sequence. Mr. Zapruder described the first of these to the Warren Commission in his own terms: "I was shooting some of the pictures to start my roll from the beginning. I didn't want to have a blank and I shot some." A registration titled "Kennedy Assassination," describing a work of approximately ten seconds, does not reach film exposed to test a camera and to avoid a blank leader, or 132 frames of motorcycles preceding the motorcade.

178. The frames reproduced in SCAM span substantially more than ten seconds of the film — from frames preceding "frame 1" through frame 386, encompassing roughly twenty-one seconds of a twenty-six-second film. A registered work of approximately ten seconds cannot, as a matter of arithmetic, encompass frames spanning approximately twenty-one seconds.

179. **A registration of an unpublished work could not reach frames already published.** Mu 7813 was made under Section 12 of the Copyright Act of 1909, which provided for registration of a work "of which copies are not reproduced for sale." A registration made on that basis could secure copyright only in a work that was unpublished when the application was filed. As to frames that had already been published — whether by Time in its own periodicals, by license to the wire services and other publishers, or by the Government with Time's consent — statutory copyright was secured, if at all, on the date of that earlier publication. The 1967 registration could neither secure copyright in those frames nor extend it.

180. **Most of the frames in SCAM were published before the registration.** As alleged in Paragraph 17, forty-three of the seventy-three frames the Forum reproduced appear in one or more publications predating May 15, 1967 — in the Warren Commission's Volume XVIII, in the body of the Warren Report, in the reenactment exhibits, in the frames Time released to the wire services in November 1963 and in its second press release, in Time's own issues of LIFE and TIME, in the Memorial Edition, in the 1964 encyclopedia, or in the six frames Time released without restriction on January 30, 1967.

181. **The remaining frames are the outer limit of what the Museum could hold through its registration.** The thirty frames in SCAM that appear in no publication before May 15, 1967 — identified in Paragraph 17 — are the outer limit of what the Museum could hold through Registration RE 696-871.

182. Several of those frames are answered elsewhere in this Cause of Action. Frames 154 through 157 are among the reproductions and composites addressed below, the matter in which was fixed by persons outside the Museum's chain of title. As to the remainder, the Forum's use is a fair use for the reasons stated in the Seventh Cause of Action.

183. **The registered work is a later-generation reproduction.** As alleged in Paragraph 72, frames of the film published by the Government were printed from copies lacking

the intersprocket image — the portion of the frame between the sprocket holes that exists only on film exposed in the camera. A reproduction adds no new authorship to the material reproduced, and the Museum's registration reaches no further than what it registered.

184. The registered work is also not the strip that passed through the camera in the condition it left it. The National Archives' examination records that the film it holds has been run through a printer for duplication at least seven known times. The assassination sequence was, in the Archives' own description, filmed separately from what precedes it, and no flash of the kind the camera produced at the start of the reel appears at that transition. And as alleged above, Mr. Zapruder described filming through the turn from Houston Street onto Elm Street, which the registered work does not contain.

185. **The added matter was contributed by authors outside the Museum's chain of title.** Copyright in a derivative work extends only to the material contributed by the author of that work, and does not imply any exclusive right in the preexisting material. 17 U.S.C. § 103(b). A derivative work remains protected by the underlying work's copyright unless it makes "an original contribution to the underlying work that is entitled to its own copyright protection." *Lennar Homes*, 117 F. Supp. 3d at 928–29. Where such a contribution is made by a different author, it is not within the underlying copyright, and the owner of the underlying work holds no interest in it.

186. Plaintiff does not contend that § 103(b) removes Abraham Zapruder's own expression from the frames in which the added matter appears. Plaintiff contends that the added matter itself lies outside the Museum's chain of title, and that the presumption arising from the Museum's registration does not extend to matter no camera exposure produced.

187. As alleged in Paragraphs 73 and 74, the black patch and the depicted wound appearing in frames Z-313 through Z-337 are matter that, on the analysis pleaded above, no camera exposure produced. The Museum's asserted copyright derives entirely from Abraham

Zapruder, through Time, Incorporated and Mr. Zapruder's heirs. Whoever fixed that matter, it was not Mr. Zapruder's camera, and the Museum cannot show that matter no camera exposure produced falls within the expression its registration describes. No person in the Museum's chain of title is shown to have authored it, and the Museum holds no interest in it. To the extent the added matter was fixed by officers or employees of the United States within the scope of their employment, no copyright subsists in it at all. 17 U.S.C. § 105.

188. As alleged in Paragraphs 75, 77, 78 and 79, the deformation of the Stemmons Freeway sign and the placement of Mrs. Kennedy's hat in frame 220 are likewise matter that no camera exposure produced. Whoever fixed the matter now appearing in that frame, it was not Mr. Zapruder's camera, and the Museum cannot show that this matter falls within the expression its registration describes. The Museum holds no interest in it.

189. Plaintiff is entitled to a declaration that the Museum's copyright does not reach, and that SCAM does not infringe, the frames falling outside the approximately ten-second registered work, the frames published before May 15, 1967, or the matter fixed by persons other than Abraham Zapruder in the frames identified in this Cause of Action.

SEVENTH CAUSE OF ACTION
Declaratory Judgment of Fair Use
(Against the Museum)

190. Plaintiff incorporates the foregoing paragraphs. An actual controversy exists as stated above.

191. The fair use of a copyrighted work for purposes such as criticism, comment, and scholarship is not an infringement of copyright. 17 U.S.C. § 107.

192. SCAM reproduces the frames for criticism and commentary — a serious examination of whether the surviving film is Abraham Zapruder's unaltered out-of-camera original — presenting the frames alongside original analysis so the reader may evaluate the evidence of alteration. Its purpose and character differ fundamentally from the Museum's use of

the film as licensed historical footage. See *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023).

193. The copying and publication of Zapruder frames for commentary and criticism has already been held to be fair use, on the ground that there is a public interest in having the fullest information available on the murder of President Kennedy. *Geis*, 293 F. Supp. at 146. Copyright may not be used as an instrument to suppress facts. *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539 (1985).

194. **The nature of the work favors the use.** The frames are photographic records of a public event of the highest historical importance, long published and long in the public record — printed in the Warren Commission's Hearings and Report, distributed in the millions in Time's own periodicals, and studied by investigators and the public for more than sixty years. Factual and historical works of this kind lie near the outer edge of what copyright protects, and their reproduction for examination and comment falls within the core of what fair use permits.

195. **The frames are the object of the criticism, not an illustration of it.** SCAM does not reproduce the frames to depict the assassination. It reproduces them because the alteration it identifies is visible in the frames themselves. The matter SCAM criticizes — a black patch appearing in the frames following the head shot, which SCAM contends was added after exposure — cannot be shown to a reader except by showing the frames in which it appears. No paraphrase, description or substitute conveys it.

196. **SCAM used other sources wherever they would serve, and reproduced Zapruder frames only where nothing else would.** Publicly circulating copies of the film, of unknown generation and source, could not serve, because the analysis turns on the specific copies whose provenance is known — the copies held by the National Archives and the Museum. Other films and photographs of the same events, taken from other positions in Dealey Plaza, are the means by which SCAM identifies the discrepancies it reports; those sources are

used for that purpose throughout. Zapruder frames are reproduced only where the feature under examination appears in the Zapruder frame and in no other source, because the question SCAM asks is whether the Zapruder frames are what they purport to be.

197. **And the matter examined is not the Museum's.** As alleged in Paragraphs 73, 74 and 185, the black patch and the depicted wound in frames Z-313 through Z-337 are, on the analysis pleaded above, matter that no camera exposure produced and that lies outside the Museum's chain of title. To the extent SCAM reproduces those frames to display that added matter, it displays matter in which the Museum holds no interest at all.

198. **The frames have long been obtainable from the Government.** In the *Geis* litigation it was represented to the court, without contradiction, that anyone wishing a copy of all the Zapruder photographs in full size need only write to the Government Printing Office. Neither the Museum nor its predecessors have ever sold the frames as such.

199. *Availability from the Government was material to the holding in* Geis*, and it no longer obtains.** The frames the defendants there used had been photographed from Time's own transparencies without permission. The court held that this did not defeat fair use, because it was not that conduct that enabled the reproduction: the same frames could have been seen and studied in the National Archives, in LIFE, or in the Warren Report. The Forum has copied nothing improperly and has asked at every step. The frames it seeks are in the National Archives, and it is the Museum's asserted copyright, invoked through NARA, that prevents the Forum from obtaining them. The circumstance that answered the misappropriation concern in 1968 is the very circumstance the Museum has since foreclosed.

200. Plaintiff is entitled to a declaration that SCAM's use of the frames is fair use and does not infringe.

EIGHTH CAUSE OF ACTION
Violation of FOIA
Failure to Affirmatively Disclose Frequently Requested Records
(Against NARA)

201. Plaintiff incorporates the foregoing paragraphs. NARA is subject to FOIA and has custody of the Warren Commission slides reflecting Zapruder frames 171–207 and 212–334, and of the transparencies of frames 208–211, which the Forum requested in 2024 as alleged in Paragraph 91.

202. FOIA's Reading-Room Provision requires agencies to make available for public inspection in an electronic format records that have been requested three or more times, without the need for any predicate request. 5 U.S.C. § 552(a)(2)(D). That duty applies to all qualifying records regardless of when or by whom they were created.

203. Public access to these records was the stated purpose of the federal acquisition of the film. In testimony before the Assassination Records Review Board, a drafter of the President John F. Kennedy Assassination Records Collection Act testified that the Act was intended to place the film in the Collection fully accessible to the public, and that access should override the copyright holder's control. In the film's prior history in corporate and private hands, such public access had never been allowed. That testimony is described in Richard B. Trask, *National Nightmare on Six Feet of Film* 320, 324–25, 328–29 (2005). The Zapruder frames are frequently requested records. They were integral to every investigation of the assassination, were printed in the Warren Report, and have been requested and viewed by researchers for more than sixty years. NARA has not made them available in its electronic reading room, in violation of § 552(a)(2).

204. **The copies available to the public are not copies of known provenance.** The versions of the film on video platforms and the Internet Archive are undocumented as to generation and source, are re-compressed and re-scanned, and identify neither the copy from

which they descend nor whether they faithfully reproduce it. The most widely circulated version, produced by MPI Home Video in 1998, is a digital reconstruction: the individual frames were scanned from transparencies, re-animated into motion, registered to one another for motion alignment, stabilized to remove the movement of Mr. Zapruder's hand, and cleaned of dust and scratches, and its own promotion claimed it contained sixty-four percent more information than had ever been seen. That version is missing frames and reverses others. A reconstruction of that kind cannot establish the physical condition of any frame. What the Forum seeks, and what only the National Archives and the Museum hold, is a copy of specified provenance — identified as such — including the Archives' own forensic preservation copy, item 541-MISC-1, made as a straight optical enlargement edge to edge with the interperf area and without image improvement, and the Museum's own prints obtained from LIFE. The processing and defects of the MPI version are described in Richard B. Trask, *National Nightmare on Six Feet of Film* 318, 330–33, 340 (2005). Only a copy of known provenance can establish whether the surviving film faithfully reproduces what Abraham Zapruder exposed. The ubiquity of the imagery does not supply that copy; it is the reason a copy of known provenance is necessary.

205. The withholding concretely injures the Forum's ongoing research and publication. The Forum's published analysis rests on later-generation copies of the film. To test and extend that analysis — including the added matter identified in Paragraphs 73 through 80, the black patch appearing in frames Z-313 through Z-337 and the composited matter in frames 219 through 221 — the Forum requires the first-generation copies that only the National Archives and the Museum hold, so that the condition of each frame can be established against a copy of known provenance rather than the reconstructed public versions. The Forum intends to publish those copies so that its readers may examine the frames for themselves, which is the very public inspection the Reading-Room Provision exists to secure. The camera-exposed film degrades with time, the public may not inspect it, and the early copies held by the Archives and the Museum

are therefore irreplaceable primary research materials. By withholding them, NARA has denied the Forum records it is entitled to inspect and has prevented the identified research and publication that the denial obstructs.

206. The practice by which NARA withholds these records originated, as alleged in Paragraph 95, in a 1967 arrangement made at the request of the copyright holder for the express purpose of protecting its control of the film. A private party's interest in control is not a ground on which a federal agency may decline a statutory disclosure duty.

207. **The Forum sought the Museum's permission at every step and was refused at each.** As alleged in Paragraphs 101 through 103, the Forum requested it on April 3, 2025 and was refused; asked the Museum to withdraw its opposition on April 15, 2025 and was refused; and submitted the Museum's own online licensing form on April 24, 2025, receiving confirmation of submission and no response. No further step remained available to the Forum.

208. This Court has authority under 5 U.S.C. § 552(a)(4)(B) to enjoin NARA from withholding records it has an affirmative duty to publish, including by ordering NARA to make the records available in its electronic reading room.

209. Plaintiff is entitled to an order enjoining NARA from withholding the records by failing to make them available for public inspection in an electronic format on its website.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court, pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 552:

A. declare that Time, Incorporated waived any copyright in frames 207–212;

B. declare that Registration Mu 7813, renewed as RE 696-871, is invalid and unenforceable as procured by knowing, material misrepresentations to the Copyright Office, and request the advice of the Register of Copyrights under 17 U.S.C. § 411(b)(2);

C. declare that the copyright in the film was waived and abandoned in its entirety and that the film is in the public domain;

D. declare that the Museum holds no interest in Registrations RE 555343, RE 555344, RE 555345, RE 555346, RE 582917 and RE 582918, nor in Registrations RE 548668, RE 548669 and RE 555134, and no enforceable interest in the film;

E. declare that the copyright expired for failure to timely renew and that the film is in the public domain;

F. declare that the Museum's copyright does not reach the frames in SCAM falling outside the approximately ten-second registered work, does not reach the frames published before May 15, 1967, and does not reach the splice matter in frames 154, 157, 207 and 212, the reproductions occupying the positions of frames 155–156 and 208–211, or the matter added in frames Z-313 through Z-337 and frames 219 through 221, none of which was fixed by Abraham Zapruder and all of which lies outside the Museum's chain of title;

G. declare that SCAM does not infringe and that its use of the frames is fair use;

H. enjoin NARA from withholding the frequently requested records by failing to make them available for public inspection in an electronic format on its website;

I. award Plaintiff its attorneys' fees and costs reasonably incurred in this action pursuant to 17 U.S.C. § 505 and Federal Rule of Civil Procedure 54(d), and, as to the Eighth Cause of Action, 5 U.S.C. § 552(a)(4)(E); and

J. grant such other relief as the Court deems just and proper.

Dated: August 19, 2026

Respectfully submitted,

JAVITCH LAW OFFICE
/s/ Mark L. Javitch
Mark L. Javitch
CA Bar No. 323729 (admitted pro hac vice)

mark@javitchlawoffice.com
3 East 3rd Ave., Ste. 200
San Mateo, CA 94401
(650) 781-8000 | Main
(650) 300-0343 | Fax

—and—

CHAMPION LLP
Austin Champion
Texas Bar No. 24065030
austin.champion@championllp.com
Ryan J. Reynolds
Texas Bar No. 24110268
ryan.reynolds@championllp.com
2200 Ross Avenue, Suite 4500W
Dallas, Texas 75201
214-225-8880 | Main
214-225-8881 | Fax

COUNSEL FOR PLAINTIFF FORUM ON OPEN ACCESS TO GOVERNMENT RECORDS, INC.