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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.	§	

PLAINTIFF'S OPPOSITION TO DEFENDANT DALLAS COUNTY HISTORICAL FOUNDATION'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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INTRODUCTION

The Museum asks this Court to find that there is no longer a case to decide — even as it told the Forum, on the morning this brief was due, that it is still rewriting the instrument on which that request depends. On August 5, 2026, this Court found an actual controversy between these parties, on two independent grounds, and has already rejected the answer the Museum now repeats. That request rests on two instruments the Museum filed after the First Amended Complaint and disclosed with this motion.

Neither instrument removes either ground. The Covenant does not release all the Forum's existing and future activities, instead it releases only the Forum's activities as they existed as of August 1, 2026, while leaving unanswered numerous questions, such as whether Plaintiff has permission to obtain and access the commercial grade materials in the National Archives for commercial purposes. The license further restricts the agency to providing non-commercial grade quality versions for research only, and directs every requester to the Museum for permission to publish. These new instruments do not end the conduct complained of. They reduce it to writing. And the authorities the Museum relies on are infringement disputes between two private parties, in which the holder's forbearance ended the plaintiff's whole exposure. None involves intellectual property asserted to defeat a claim for records held by the United States.

This motion seeks relief it cannot obtain — dismissal of the entire case with prejudice, Doc. 48 at 24 — when the Forum's Eighth Cause of Action is a FOIA claim against the National Archives. The Museum's request to dismiss the action against the National Archives, which the agency has answered, demonstrates the Museum's continued interference with Plaintiff's rights under FOIA. Doc. 32; Doc. 46. The Museum cannot win a judgment for its co-defendant on grounds personal to itself. It moves against four of the Forum's eight causes of action — the Second, Fourth, Fifth and Sixth — and offers no argument addressed to the First, Third or Seventh. At most it could dismiss four, leaving the claim against the agency untouched.

Part I shows that both grounds survive, that what the Museum raises is mootness rather than standing, and that the burden mootness places on the Museum is not carried. Part II addresses the four causes of action the motion reaches on the merits, and the relief its proposed order requests, which exceeds what the motion argues.

BACKGROUND

A. The course of the proceedings

The Forum filed this action on August 1, 2025. Doc. 1. On August 5, 2026, the Court denied the Museum's first motion to dismiss in relevant part, finding an actual controversy on two independent grounds and sustaining the claim against the National Archives. Doc. 32. The First Amended Complaint followed on August 19, 2026. Doc. 37.

The License bears the date October 1, 2026, on which the Archivist of the United States executed it. Mus. App. 9–12 (citations to "Mus. App." are to the Museum's Appendix, Doc. 49). The Museum executed the Covenant on October 2, made effective "as of August 1, 2026" — two months before execution, and one year to the day after the Complaint. Mus. App. 5. Neither was negotiated with the Forum, which first learned of both when they were filed with this motion on October 5. The National Archives answered the same day. Doc. 46. Discovery was stayed on October 8. Docs. 50, 51, 53.

On October 16, 2026, the Forum responded to the Museum by requesting clarification on the instruments in the form of ten written questions about the scope and effect of the two instruments — which of the agency's holdings they reach, whether the Museum consents to the Forum obtaining commercial-grade reproductions, whether it still contends the records are not "readily reproducible" or are exempt from disclosure, whether its permission is required before the agency complies with the reading-room provision, and what the undefined terms of the License mean — and asked for a response by October 23. Javitch Decl. ¶ 18, Ex. 10, App. 65-69. The Museum replied on October 23 that it was "continuing to work on The Museum's responses

to your questions below, but request more time to do so," and asked for "a one-week extension." *Id.* It answered none of the ten questions. On October 26, 2026, the morning this opposition was due, counsel for the Museum wrote again, stating that the Museum "is considering an amendment to the license to NARA" and renewing its request to extend the briefing schedule. *Id.* The ten questions remain unanswered.

B. The registrations for the published frames and the "unpublished" film

Time, Incorporated published individual frames of the film in its magazines beginning in 1963 under its own copyright notice, and registered those publications as published works — A673423, whose new matter was described as "previously published in LIFE Magazine," together with B 78918, B 81133 and B 138324. FAC ¶¶ 22–25, 116, 155, 163.

On May 15, 1967, Time registered the film itself as an ***unpublished work***. FAC ¶¶ 28-29. A registration on that basis "could secure copyright only in a work that was unpublished when the application was filed." FAC ¶ 179. The Copyright Office published the description of what issued: "KENNEDY ASSASSINATION. Time, Inc. 10 sec., color. Appl. author: Abraham Zapruder. © Time, Inc.; 15May67; MU7813." FAC ¶ 174.

On May 6, 2025, the Forum published *SCAM*. 43 of the 72 frames reproduced in *SCAM* appear in one or more publications predating May 15, 1967. FAC ¶ 180.

On October 23, 2026, the Forum published *Zapruder Frame-Up* and offered it for sale to the public on Amazon.com for $30.22[1]. Boehm Decl. ¶ 9, Ex. A, App. 76. The book publishes 74 Zapruder frames in order to examine how these frames Life published from 1963-67 were presented in a manner to implicate Oswald during a time when people could not view the film for themselves. *Id*. Every frame the book reproduces was published before Time registered the

[1] https://www.amazon.com/Zapruder-Frame-Up-National-Archives-Continue/dp/B0HP7TFQ2M/

film as an unpublished motion picture on May 15, 1967: frames that appeared in Time's LIFE magazine in its issues of 1963 through 1966; the six frames Time distributed to the Associated Press and United Press International on November 27, 1963; certain of the frames reproduced in the Warren Commission's published volumes and in the Warren Report; and frames 207 through 212 as released by Time on January 30, 1967. *Id*.

C. The two instruments

The Covenant. The Museum covenants not to assert any claim for infringement relating to the Forum's activities as of August 1, 2026, including the book *SCAM* and two websites. Mus. App. 6. It permits NARA to provide "a single copy…for the purpose of research and commentary." Mus. App. 7. The Museum preserves the copyrights, which "shall remain valid and enforceable" and its term runs "through the life of the Museum's copyrights in the Zapruder Film and any extensions thereof." *Id.*

The License. The Museum warrants that it is "the registered claimant of the copyright in The Zapruder Film" identifying "RE 696-871" and "U.S. Copyright Registration Number V3447D594." Mus. App. 9 (§ 1). The Term "extend[s] through and end upon any cessation of the Museum's copyrights in the Zapruder Film." Mus. App. 10 (§ 2). The license permits the agency to let the public "access, view and obtain a digital non-commercial grade copy" "via NARA's website for research purposes only," and defines "Zapruder Film" to include "any and all partial copies, still frames, reproductions interfiled in NARA textual records collections, and any copies that exist in donated materials collections[.]" Mus. App. 10 (§ 3). The agency must display a notice stating that the license is for "research purposes only" and that the requester is responsible "for obtaining any necessary permission for use, further duplication, and publication of the Zapruder Film, in whole or in part, from the Museum." Mus. App. 10 (§ 4). The agency must not itself or encourage others to use the film in a manner "which is sensational" or, except "for historic or scientific inquiry, illustration, or study," "punctuate or emphasize the episodes of

violence contained in the Zapruder Film, particularly those parts of the Zapruder Film that depict and follow: the depiction of a bullet striking President John F. Kennedy." Mus. App. 10–11 (§ 5). The agency "shall not use or purport to authorize others to use the Zapruder Film, in whole or in part, for advertising, promotion, publicity, or merchandising or any other purpose not expressly provided for in this Agreement." Mus. App. 11 (§ 7). The Museum retains everything else: "[a]ll rights, title, and interest in and to the copyright in the Zapruder Film are expressly retained by the Museum." Mus. App. 11 (§ 6). The License bears the signature of the Archivist of the United States, dated October 1, 2026. Mus. App. 12. Beneath the Museum's signature block the date line reads "10.02.2026" and the signature line above it is blank. *Id.*

I. THE COVENANT AND THE LICENSE DO NOT REMOVE THE BASIS ON WHICH THE COURT FOUND AN ACTUAL CONTROVERSY

Both instruments are the Museum's own unilateral acts executed after the Court's ruling. What the Museum raises is therefore mootness rather than standing.

A. The Museum Faces the Burden of Establishing No Controversy Exists

The Court found an actual controversy on August 5, 2026, on two independent grounds. First, "Considering the totality of the circumstances, there is a substantial controversy between the parties because the Forum is actively using the Zapruder film's frames without a license to do so, and the Museum actively claims a copyright interest in those frames." Doc. 32 at 11. Second, and independently, "[t]he Museum's role as an obstacle to the Forum's FOIA requests also demonstrates an actual controversy." Doc. 32 at 12.

The Covenant and License are merely a repeat of its previous argument for disavowal. The Court previously rejected this argument: "even an explicit disavowal of future legal action will not eliminate the existence of an actual controversy if [a defendant] has engaged in a course of conduct that shows a preparedness and willingness to enforce its . . . rights." Doc. 32 at 9.

Mere disavowal is insufficient because the Museum has "a preparedness to protect its copyright interest by denying licenses (or ignoring license requests), conditioning future license requests on agreements not to challenge the copyright's validity, and refusing to withdraw objections to FOIA requests," Doc. 32 at 11 — The new instruments merely enshrine the very policy and practice, implicating the Court's exact reason that disavowal is insufficient, because "[w]ere it not so, the Museum could engage in the kind of perpetual 'extra-judicial' copyright enforcement that the DJA was intended to obviate." Doc. 32 at 12.

The same two independent grounds exist today as when the Court denied the Museum's first motion to dismiss. First, the Covenant does not release the Forum's existing and future potentially infringing activities. Second, and independently, the Museum is still interfering in Plaintiff's FOIA requests. Therefore, an actual controversy exists because the Forum continues to face a choice to "either refrain from publishing…or risk the possibility of litigation." Doc. 32 at 11–12.

The Museum reads Paragraph 149 of the First Amended Complaint as a concession that no controversy exists. Doc. 48 at 16. That paragraph is pleaded in the Third Cause of Action, where the question is whether the Museum's conduct amounts to sufficient enforcement to preserve a copyright against abandonment. It is not addressed to jurisdiction, and this Court has already held that the same conduct supports an actual controversy. Doc. 32 at 11.

Because, as of October 26, 2026, the Museum has represented that it intends to amend the License, the Forum notes that any amended or additional instrument, and any contention that such an instrument moots the case, would be presented for the first time on reply. New matter raised for the first time in a reply should not be considered.

B. The Museum Cannot Satisfy Its Burden to Establish Voluntary Cessation

The Museum cannot satisfy the burden of establishing voluntary cessation. The Court must consider "(1) the language of the covenant; (2) whether the covenant covers future conduct

in addition to past conduct; and (3) evidence of the intent or lack of intent of the party asserting jurisdiction to engage in new activity or develop new potentially infringing products arguably not covered by the covenant." Doc. 48 at 5 (citing *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 93 (2013)

The factors requiring a finding of voluntary cessation in *Already* are not present here:

The language. The covenant in *Already* did at least three things not present here. First, it was "unconditional." Second, it was "permanent." Third, it covered not just current or previous designs, but any colorable imitations. *Already.*, 568 U.S. at 97.

In contrast to *Already*, neither instrument here is unconditional or irrevocable. The License terminates automatically upon a material breach by the agency, Mus. App. 11 (§ 11), and no provision of it may be changed or waived except in a writing signed by the Museum and the agency, Mus. App. 11 (§§ 12–13) — so the one accommodation the Museum offers can be undone by the two defendants without the Forum's participation. The one accommodation it makes — a single copy of the film, for research and commentary — does not reach the records the Forum asked for. In *Already* the covenant removed the only instrument of injury. Here it leaves the instrument of injury in place.

Existing and Future conduct not released. The covenant in *Already* left no possibility that a potential activity would not be released by the covenant. *Already, LLC*, 663 F.3d at 97 ("it is hard to imagine a scenario that would potentially infringe [the] trademark and yet not fall under the Covenant"). In contrast, the Museum's Covenant releases conduct only as of August 1, 2026, and the Forum's present and future conduct falls outside it. *Infra* § I.D. The Forum has already published additional potentially infringing material since the date the Covenant release extends to. Boehm Decl. ¶ 9. Further, the Forum is releasing a documentary on January 14, 2027 that contains the challenged Zapruder material. *Id.* at ¶¶ 10-12.

Interference with Plaintiff's rights under FOIA. Unlike in *Already*, there is a concern that the Museum is interfering with Plaintiff's rights. The covenant enshrines rather than ends the Museum's pursuit to have Plaintiff's case against the National Archives dismissed and continues to impose restrictions on the commercial grade versions of the Zapruder film that Plaintiff seeks to access. Doc. 47-1 at 1. The Covenant does not promise no invasion, and the invasion continues: the agency withholds the records today on the ground of the Museum's copyright. *Infra* § I.C.

Intent, and who must show what. The Museum does not establish it has no intent to sue in the future. It has not told this Court that no use of the frames could fall outside the Covenant, because the opposite is true – the Museum seeks to reserve rights and continue to enforce them. The Covenant reaches three defined Activities and preserves everything else. *See Element Cap. Mgmt., LLC v. Element Fin., Inc.*, No. 4:23-CV-310-Y, 2024 U.S. Dist. LEXIS 97674, 2024 WL 2786055, at *11 (N.D. Tex. Mar. 12, 2024) (covenant failed to moot the controversy because movant "does not clearly take the position that 'no such [conduct]' could occur that falls outside the covenant's protection," and "still seeks to vindicate its common-law rights . . . despite its attempt to moot [the] counterclaim for declaratory judgment — which requires a determination of those rights."); Although *Nursery Decals & More, Inc. v. Neat Print, Inc.*, No. 22-10065, 2023 U.S. App. LEXIS 19826, 2023 WL 4884803, at *1 (5th Cir. Aug. 1, 2023) credited the covenanter's commitment to "not send any more ' takedown' or infringement notices, its breadth was uncontested, and mere promises are held to be insufficient. *See Exxon Mobil Corp. v. Arjuna Cap., LLC*, 735 F. Supp. 3d 709, 720 (N.D. Tex. 2024), *dismissed without prejudice*, 2024 U.S. Dist. LEXIS 109370 (N.D. Tex. June 17, 2024) (a letter "promising not to refile is toothless," because it "was a unilateral promise, not an enforceable contract.") The Covenant here likewise binds the Forum without requiring its assent or any performance on its part, and a party resisting

mootness "isn't required to take Defendants at their word." *Id.* (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)).

Finally, the instruments do not end the challenged practice; they record it. An instrument coextensive with the right in dispute, premised throughout on the Museum and the National Archives agreeing that the Museum has ownership of it, and modifiable only by the two defendants between themselves, is that practice reduced to writing and made durable.

Nor has the agency implemented the instrument: the notice the License directs the agency to display for the public does not appear in the agency's Electronic FOIA Reading Room. Javitch Decl. ¶ 10, Ex. 3, App. 20. And the Museum has not shown that it executed the instrument by which the agency's conduct was to change: the Museum's signature line on the License is blank. *Supra* Background C.

Asked to state what the instruments do, the Museum has not said. *Supra* Background A. The ten questions asked whether the Museum now permits the Forum to obtain commercial-grade reproductions from the agency for commercial publication, whether it consents to the agency furnishing such reproductions in response to the Forum's FOIA requests, whether it will itself furnish the versions in its own possession, and whether it permits the Forum to publish them in a commercial work and in advertising; which of the agency's holdings the instruments reach, the Forum identifying seven listings by number; whether the Museum still contends such records are not "readily reproducible" because of its copyright, or are exempt under 5 U.S.C. § 552(b)(4); whether its permission is required before the agency may comply with the reading-room provision; whether the Museum will advise the agency that it does not object to the Forum's requests; and what the License's undefined terms mean, including "non-commercial grade" and what the Museum takes "sensational" to forbid. *Id.* The questions remain open as this opposition is filed. The first two of them are the grounds on which the agency in fact withholds. *Infra* § I.C. A movant bearing the burden of showing that it is "absolutely clear" the challenged

conduct cannot reasonably be expected to recur, Doc. 48 at 7, has not met it by declining to say what its own instrument means.

The Museum cannot meet that burden, because its conduct is a practice of recurrence. It has mooted a challenge to this copyright this way before: in a prior action between these parties it granted a license to the one frame then in suit and obtained a dismissal for want of a controversy; facing this action, it has filed a covenant, *infra* § I.C; and on the morning this opposition was due it represented that it "is considering an amendment to the license to NARA." Ex. 10, App. 65. An instrument the movant concedes it is still revising is not the "absolutely clear," fixed, and irrevocable cessation the doctrine requires, and the Museum cannot show that the challenged conduct cannot reasonably be expected to recur while it is amending the very instruments on which its motion depends. Were serial forbearance of that kind enough to defeat the controversy each new publication creates, a holder that had abandoned its copyright by non-enforcement could never be made to answer for it — it would forbear into abandonment and then covenant away each challenger in turn, its copyright "valid and enforceable" against the world and adjudicated by no one. That is the "perpetual 'extra-judicial' copyright enforcement that the DJA was intended to obviate." Doc. 32 at 12.

C. The injury runs through the National Archives, which no covenant of the Museum's reaches

In each of the decisions the Museum relies on, the defendant held the only key: stop the threat and the plaintiff may proceed. That is not this case. The Museum's claim of right operates on a federal agency, and the agency withholds because the Museum asserts. The Forum requested the Warren Commission slides and the transparencies on June 28 and August 8, 2024; the agency refused each request because of the Museum's copyright; the Forum appealed each the same day; and nothing has been produced. FAC ¶¶ 91–94. The agency "refused on the ground of the Museum's copyright, not on …burden or cost." FAC ¶ 99.

The agency has admitted the practice in its Answer: it "provides copies of the Zapruder film to researchers who possess permission from the film's copyright holder." Doc. 46 ¶ 63. That Answer pleaded seven affirmative defenses and did not mention the License at all. Doc. 46 at 40–41. Two of the seven are the grounds on which these records are withheld: that the Forum is "not entitled to compel production of any record(s) that are not 'readily reproducible,'" and that the records "are exempt from disclosure by one or more exemptions to the FOIA." *Id.* at 41 (citing 5 U.S.C. § 552(a)(3)(B), (b)). No record has been produced, and none published, since. And its declarant has sworn that both grounds run through the Museum's claim of right — that "copyrighted motion picture records in NARA's holdings are not readily reproducible by NARA without consent of the rightsholder," and that Exemption 4 applies "because they are subject to an in-force copyright where the rights holder is known or can be determined." Rooney Decl. ¶¶ 18 (emphasis added), 35, Javitch Decl. Ex. 8, App. 48, 55. The agency tells the public the same. Its Catalog marks each version of the film "Use: Fully Restricted" and states that "the reproduction rights to this film are held by the Sixth Floor Museum at Dealey Plaza in Dallas, Texas." Javitch Decl. ¶ 12, Ex. 5, App. 25. And its published answers to frequently asked questions state that, although the agency "may make a single fair-use copy of the film and sell it to any researcher," a researcher who "chooses to publish the film in any way … will need to obtain permission from the copyright holder." Javitch Decl. ¶ 11, Ex. 4, App. 23. Both determinations depend on the validity of the Museum's copyright. If the registration is invalid, both fail with it — which is why a declaration of validity and scope is the relief that reaches this injury.

This Court has already found as much: the Forum's "rights under FOIA are being actively restricted by the Museum's purported copyright interest, and a declaratory judgment action may be the Forum's only way to overcome the obstacle that is the Museum's assertion of copyright ownership." Doc. 32 at 12. The cause is the Museum's assertion of right; the agency is

the instrument. A promise not to sue the Forum does not withdraw the assertion, and the Museum has not withdrawn it. *Supra* Background C.

Each element of the loop the Court described remains in place. Asked in April 2025 for permission to publish, the Museum answered that "you must acknowledge that the Museum owns the copyrights and agree to refrain from any efforts to challenge the validity of the copyrights." FAC Ex. K. The validity of those copyrights is the subject of this action. Asked to tell the agency it was unopposed, the Museum answered that it "is not going to inform the National Archives that it is unopposed to the FOIA requests of FOIAConsciousness.com LLC and the Forum because you are seeking to make a copy of the materials without a license." FAC Ex. M. The Covenant has since withdrawn that objection only as to one copy of the non-commercial grade versions for research and commentary, and no further. And the Museum releases the claim only when the copyright is challenged: in the prior action, with its motion to dismiss pending, it granted a license to a single frame and said why on the face of its reply: "Defendant (to remove any possibility that there is an actual controversy with Plaintiff) hereby grants Plaintiff a license to use the copyright in Frame 188 as it has done so on its website." Reply Br. in Supp. of Mot. to Dismiss 10, No. 3:24-CV-2299-B (N.D. Tex. Jan. 9, 2025), ECF No. 27. With a second motion pending, the Museum has executed a second instrument. The Museum has not stopped, it has done it again.

D. Even at the second step, the Forum engages in conduct the Covenant does not release

The Covenant promises only that the Museum will not sue on the Forum's activities as they stood as of the effective date of August 1, 2026. However, the Forum publishes, and continues to publish, after that date. On October 23, 2026 the Forum published *Zapruder Frame-Up*: *Lies Told About the Zapruder Film to Frame Oswald*, a book offered for sale to the public on Amazon.com. *Frame-Up* republishes and analyzes the 1963-1967 publication of 74 Zapruder

frames in newspapers, four Life magazines, the Warren Report, and its release of frames 207 through 212 in January 1967. Boehm Decl. ¶¶ 9, 9A, Ex. A, App. 76. The publication postdates the Covenant's cutoff, so it is not among the activities the Covenant releases. And the Museum asserts copyright over those very frames, contending that its registration protects the film as "a single copyrightable work, with the copyright not merely protecting the portion described on the face of the registration." Doc. 48 at 22. The Museum cannot hold that position and also maintain that the Forum's publication raises no controversy: if the registration reaches those frames, the October 23, 2026 publication is an infringement the Covenant has not released; if it does not, the scope defense to the Fourth and Sixth Causes of Action fails. Either way the Forum "engages in … activities not covered by the covenant," Doc. 48 at 5.

Besides publishing activity after the effective date of the Covenant, the Forum has also shown concrete plans to engage in new activity. It is producing a documentary motion picture, *The Other Zapruder Film*, which it will release for sale to the public on Vimeo on January 14, 2027, presenting a version of the film the Museum's registration purports to reach. Boehm Decl. ¶¶ 10–12, App. 72. That is the "intent … to engage in new activity or develop new potentially infringing products arguably not covered by the covenant" that the Museum's own test makes decisive. Doc. 48 at 5. The Forum is also launching a podcast, *Intersprocket*, publishing episodes on an ongoing basis that reproduce frames of the film and examine the validity of the Museum's copyright, it advertises its publications using frames of the film; and it intends to sell merchandise, including t-shirts, bearing those frames in connection with the podcast — further activities postdating the cutoff and reproducing the very frames the Museum claims. Boehm Decl. ¶¶ 13–14, App. 73. The Forum's two pending requests to the National Archives fall outside the Covenant's definition for the same reason. Javitch Decl. ¶¶ 7–8, Exs. 1–2, App. 11, 17.

Neither instrument permits what the Forum seeks in any event. The Covenant's accommodation is not the highest quality versions of the film, or even the versions requested,

discrete records in the agency's holdings. FAC ¶¶ 91, 93. It is one copy; the requests reach the highest resolution versions. The License reaches these very records and fixes the same ceiling: the grade the agency may furnish is non-commercial and the purpose is research. Each limitation defeats the Forum's stated use on its own. *Supra* Background C. Section 5 adds a restriction whose meaning the Museum will not state. It conditions the license on the agency's agreement not to use the film in a "sensational" manner, or to "punctuate or emphasize the episodes of violence contained in the Zapruder Film, or depicting a bullet striking President John F. Kennedy." *Supra* Background C. These restrictions appear nowhere in FOIA law. On October 16, 2026 the Forum asked the Museum whether publishing a reproduction that "depicts the wounding of President Kennedy more graphically than the extant versions portray," for the purpose of discussing whether the film was altered, would be "sensational" within clause (i) or would "punctuate or emphasize the episodes of violence" within clause (ii). Javitch Decl. ¶ 18, Ex. 10, App. 65-66. That is the question the Sixth Cause of Action puts in issue, and the Museum has not answered it. *Id.* A party that cannot learn from the rightsholder what the rightsholder's own instrument forbids is in the position the Declaratory Judgment Act exists to relieve.

What the Forum does is commercial, on this Court's own findings: its book "is available for sale on various commercial platforms and contains 72 Zapruder frames," and it sought to publish "all frames 1-486 from any source." Doc. 32 at 10. The Museum's sworn position is that commercial use is the category for which it charges. Longford Decl. ¶ 8, Javitch Decl. Ex. 7, App. 34. The Museum has never quoted a price to Plaintiff for commercial licensing.

That is enough under the framework this Court applied. In *MedImmune* "the Supreme Court dispatched with the traditional two-pronged approach in favor of a more-fluid approach that considers 'all the circumstances.'" Doc. 32 at 8. Where "one party asserts intellectual property rights over another's planned activity, and the other party contends that it has a right to engage in that activity without a license, the party claiming non-infringement has standing to

bring a declaratory judgment action." Doc. 32 at 8 (citing *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1381 (Fed. Cir. 2007)).

II. THE FIRST AMENDED COMPLAINT STATES A CLAIM ON EACH CAUSE

The motion reaches four of the Forum's eight causes of action. The Eighth is asserted against the National Archives, which answered rather than moved, Doc. 46. The order the Museum submits would enter in the agency's favor relief the agency could not now seek for itself.

The four causes the motion reaches are complementary rather than inconsistent, and they are directed at different groups of frames. The Museum's position requires an enforceable interest in every frame reproduced in SCAM; the First Amended Complaint alleges, as to each group, a distinct reason why it has none. As to the four it does reach, the motion leaves the central allegations of each unaddressed.

A. The Second Cause of Action states a claim under § 411(b) that the registration was obtained with knowledge of inaccurate information.

1. The applicant's own prior registrations establish both the inaccuracy and the applicant's knowledge of it.

Section 411(b)(1) requires that "(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), quoted in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 181 (2022). The Fifth Circuit states the same test in two parts: "A copyright registration is invalid under § 412 [sic] if (A) the applicant knowingly included inaccurate information, and (B) the inaccurate information was material. 17 U.S.C. § 411(b)(1)." *Energy Intelligence Grp., Inc. v. Kayne Anderson Cap. Advisors, L.P.*, 948 F.3d 261, 278 (5th Cir. 2020).

The inaccuracy is the registration's description of the work as unpublished. Knowledge is established because the applicant had already registered individual frames as published works. The applicant was Time, Incorporated, and its prior registrations of the same frames as published works are set out in the Background. "A claimant that registered the frames as published cannot have believed the same frames were unpublished." FAC ¶ 116.

2. The Court's prior ruling rested on two allegations the First Amended Complaint does not replead, and the Museum does not address what replaced them.

The Court dismissed the original count because the Forum "fails to allege beyond bare assertions that those inaccuracies were willful or that the Copyright Office relied on them," Doc. 32 at 25, and identified two allegations that defeated it: the Forum's own statement that "it is unknown what the ten seconds is referring to," *id.* (quoting Compl. ¶ 271), and its allegation that Time omitted the fact that frames were lost and damaged was "apparent to anyone who merely viewed the[] frames," Doc. 32 at 25–26. Neither basis appears in the First Amended Complaint.

Now, the allegations are sufficient to show that the inaccurate were willful. LIFE was aware of the frame count and the length of the film, as it stated in 1966 that the film "passed through the camera at 18.3 frames a second," so the ten seconds the registration describes correspond to approximately 183 frames; the film runs approximately twenty-six and one-half seconds, and the frames reproduced in SCAM span approximately twenty-one. FAC ¶¶ 174, 175, 178. Further, the pleading alleges that no inspection was possible. Line 5, calling for the date and place of publication, was blank. Line 6, calling for previous registration or publication — "the one place on the form where the applicant's own prior registrations of the same frames would have appeared" — was blank. FAC ¶ 128. And the deposit copy "is no longer in existence and was not retained." FAC ¶ 30; Javitch Decl. ¶ 13; Ex. 6, App. 29. Where the original complaint alleged that the concealed fact was apparent on inspection, the First Amended Complaint alleges that there was nothing to inspect.

Materiality is pleaded in a paragraph the Museum's brief does not address. Paragraph 127 alleges that publication status "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," and that had the Office known the frames had been published beginning in 1963 under the applicant's own notice and registrations, "it would have refused registration of the film as an unpublished work in 1967." That is the counterfactual subparagraph (B) asks, in the statute's own words.

The Museum's answer is one sentence: "the publication occurred in LIFE Magazine with nationwide distribution." Doc. 48 at 18. That the frames were published in 1963-67 is the inaccuracy alleged; it is not a fact that was before the Register in 1967. The examiner had the application, whose disclosure lines were blank, and a deposit that is gone.

A court of appeals has held the same defect uncorrectable, because "the Copyright Office would not have registered a published design as part of an unpublished collection." *Gold Value Int'l Textile, Inc. v. Sanctuary Clothing, LLC*, 925 F.3d 1140, 1145 (9th Cir. 2019), *abrogated in part on other grounds by Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 52 F.4th 1054, 1066–67 (9th Cir. 2022). The third element the Museum proposes appears in neither the statute nor the Supreme Court's reading of it. *See Unicolors*, 595 U.S. at 182. Regardless, the Forum alleges reliance. FAC ¶ 128.

3. The conditions for a referral to the Register of Copyrights are satisfied, and the Museum's objection goes only to timing.

The Museum argues that "[s]ophistication alone does not establish knowledge." Doc. 48 at 17. Time waited three and a half years and registered in the middle of a dispute it expected to litigate, FAC ¶ 39; fifteen weeks earlier it publicly accounted for the damage to the frames, and "[t]he application it filed on May 15, 1967 disclosed none of them," FAC ¶¶ 42–45. Sophistication enters only where the Supreme Court placed it, among the "[c]ircumstantial

evidence" that may establish awareness — including "the applicant's experience with copyright law[.]" *Unicolors*, 595 U.S. at 187–88. The First Amended Complaint tracks those factors in order. FAC ¶ 117. The safe harbor exists for clerical errors — in *Beatriz Ball, L.L.C. v. Barbagallo Co., L.L.C.*, 40 F.4th 308, 315 (5th Cir. 2022), a trade name entered by nonlawyer employees, "an innocent, inadvertent error made by workers unfamiliar with the legalese and misled by inconsistent instructions from the Copyright Office," and a "quintessential example[] of the unknowing errors § 411(b)(1) is meant to excuse." Leaving blank the one line calling for the applicant's own prior registrations of the same frames is not that. FAC ¶¶ 116, 128.

The Museum next argues that "omissions on a registration application, with no evidence indicating that such was done intentionally, are not equivalent to affirmative misrepresentations and do not establish knowledge or willful blindness." Doc. 48 at 18. The qualifier is the answer. The pleading does not allege mere silence: "[l]eaving 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." FAC ¶ 29 (emphasis added). The standard in this Circuit does not draw the line the Museum proposes in any event. A court "may find a registration invalid if the copyright claimant willfully misstated or failed to state a fact that, if known, might have caused the Copyright Office to reject the copyright application." *Interplan Architects, Inc. v. C.L. Thomas, Inc.*, No. 4:08-cv-03181, 2010 U.S. Dist. LEXIS 114306, at *73–74, 2010 WL 4366990, at *24 (S.D. Tex. Oct. 27, 2010) (emphasis added) (quoting *Berg v. Symons*, 393 F. Supp. 2d 525, 542 (S.D. Tex. 2005)).

Finally, the Museum objects that "the referral is not automatic." Doc. 48 at 18. The objection confuses the referral with its timing, and nothing in the pleading turns on the difference. This Circuit has held that "§ 411(b) does not require immediate referral to the Copyright Office to determine the materiality of alleged inaccuracies," *Energy Intelligence Grp.*, 948 F.3d at 277, and that "trial courts may, in their discretion, determine inaccuracy before

making a referral to the Register," *id.* at 278. Discretion as to when the question is put to the Register is not an absence of authority to put it, and the Forum has asked for nothing that holding forbids: "Plaintiff does not ask that the referral be made immediately[.]" FAC ¶ 129. The Museum's remaining objection — that "the Court lacks the authority to submit a request to the Register of Copyrights," Doc. 48 at 19 — rests entirely on its jurisdictional argument and falls with it. *Supra* Part I. The Museum has elsewhere characterized a request under § 411(b)(2) as seeking "an advisory opinion." Doc. 54 at 6. Seeking the Register's advice is what the provision directs.

B. The Fourth Cause of Action states a claim that the Museum never acquired the registrations in which the published frames subsist.

1. The Museum does not address the allegation.

The Fourth Cause of Action alleges that the Museum never acquired the registrations and renewals covering the frames Time published. *Supra* Background B. The six renewals of the frame registrations, claimed by Lillian Zapruder as widow, "were never assigned to the Museum," nor were "RE 548668 and RE 548669, the periodical renewals claimed by the Time, Inc., Magazine Company." FAC ¶ 155. The Museum reads that paragraph as an allegation about "six specific frames from the Zapruder Film." Doc. 48 at 19. It identifies six renewal registrations — RE 555343 through RE 555346, RE 582917 and RE 582918 — covering the frames Time published in 1963 and 1964. As to the thirty-one photographs in the November 29, 1963 issue, "[n]o transfer of RE 548668 appears in the Copyright Office's records of recorded documents." FAC ¶ 156.

The Museum's brief does not engage any of those allegations. Its argument is confined to the § 410(c) presumption, the component-parts rule, and § 204(a). The Court's prior disposition reached two contentions Plaintiff abandoned— that the 1975 documents were "either unsigned or contain illegible signatures," and that an earlier agreement barred the 1999 transfer. Doc. 32 at

30–31. In contrast, these allegations that the Museum did not obtain the copyright to all the frames because of the various registrations rest on recorded instruments and Copyright Office records, which the Court has said it may notice. Doc. 32 at 29 n.6.

The Museum's own October 2026 instrument confirms its claim is limited. The License recites that "the Museum owns the copyright to a film authored by Abraham Zapruder on November 22, 1963 having RE 696-871, and being registered as U.S. Copyright Registration Number V3447D594." Mus. App. 9. V3447D594 is not a registration number. It is the recordation number the Copyright Office assigned to the February 2, 2000 instrument conveying from the Zapruder heirs and the testamentary trusts to the Museum. FAC ¶ 66. A recordation is not a registration, and it conveys nothing the underlying instrument did not convey. So the two identifiers by which the Museum warrants to a federal agency that it is "the registered claimant," Mus. App. 9 (§ 1), are the film renewal and the recordation of a transfer — and the first recorded instrument in that chain "identifies only RE 696-871." FAC ¶ 66. Neither reaches the registrations in which the published frames subsist.

The 1975 Assignment did not convey what the Museum needs. By its terms it "preserved to Time the copyrights arising from its 'previous publication . . . of frames from the Film.'" FAC ¶ 157. Time did not convey those copyrights, and its successor renewed them in its own name in 1991.

The Museum's answer on § 204(a) addresses a contention the Forum does not make. It argues that the statute "requires only a signed writing and does not require that the instrument state the signatory's title or prove authority on its face." Doc. 48 at 20. The Forum does not allege otherwise. The allegation is that the instrument does not show the signatory's authority on its face, so that the Museum's chain of title "rests, at this link, on proof outside the four corners of the instrument." FAC ¶ 159. Whether that proof exists is not a question the pleadings resolve.

2. The presumption the Museum invokes does not establish which registrations were transferred.

The Museum argues that its copyright is presumed valid. Doc. 48 at 19. This Court has already said "that presumption is rebuttable." Doc. 32 at 22. The presumption also reaches only "the facts stated in the certificate." 17 U.S.C. § 410(c). The facts stated in this certificate are the facts the Forum alleges to be false: that the work was unpublished when Time knew that 76 frames had been published by itself and its licensees, and that 160 frames were published by the Warren Report. FAC ¶¶ 113–119. Over 1/3 of the film had been published, so a presumption that the film was unpublished is not an answer to a pleading that they are not. Given full effect, the presumption establishes that the Museum holds a valid Mu 7813 and its renewal — not an answer to a claim that the published frames subsist in different registrations, separately renewed by a different claimant and never assigned to it. FAC ¶¶ 31–36, 155–156, 173.

3. The component-parts rule cannot extend Mu 7813 to the previously published frames.

The Museum argues that "publication of a motion picture with notice provides copyright protection for all its component parts," so "no separate assignment of the frames was required." Doc. 48 at 19. But that rule turns on publication, and the Museum's registration is of an unpublished work — while its position on the Fifth Cause of Action is that no publication occurred. *Frame-Up* reproduces Zapruder Frames that were published, with notice, between 1963 and 1967. Supra Background B. A 1967 registration of the film as unpublished could not reach those frames or extend the term their publication had already begun. The Museum resists treating the individually-published frames as publishing parts of the film, but "any other result under the 1909 Act would grant an author multiple rights to first publication and would allow an author to publish in one medium with a statutory copyright but leave the work unpublished in a separate medium to extend copyright protection in perpetuity." *Batjac Prods. Inc. v. GoodTimes Home Video Corp*., 160 F.3d 1223, 1235 (9th Cir. 1998).

C. The Fifth Cause of Action states a claim that the film copyright was not timely renewed, or else that the Museum's registration reaches only the motion picture.

1. The cause of action is pleaded in the alternative, and the Museum answers only one branch.

The FAC pleads the alternative expressly. If the frames and the film are one work, publication in 1963 secured the copyright, the term closed in 1991, and nothing renewed it. If instead the frames and the motion picture are separate works, then the Museum's registration reaches only the frames that were unpublished at the time of the registration, and the Museum never acquired the separate registrations and renewals in which the published frames subsist. FAC ¶ 170. The Museum treats publishing the stills as not the same as publication of the motion picture. Doc. 48 at 21. On that view the published frames hold statutory copyright secured on their own publication, which a 1967 registration of the film as unpublished could neither secure nor extend. *Batjac*, 160 F.3d at 1235; see supra § II.B.3.

2. On the first branch, the renewal came too late.

Statutory copyright first secured in 1963 fell outside the automatic-renewal provisions of 1992, which "appl[y] only to those copyrights secured between January 1, 1964, and December 31, 1977." Pub. L. No. 102-307, § 102(g)(2), 106 Stat. 264, 266 (1992); FAC ¶ 166. Copyrights secured earlier remained governed by § 304(a) as it then stood, under which renewal required registration within the final year of the initial term. FAC ¶ 167. Terms run to the end of the calendar year. 17 U.S.C. § 305. An initial term secured in 1963 therefore closed on December 31, 1991, and the film's only renewal, RE 696-871, was registered on March 14, 1995. FAC ¶ 168.

The successors' own filings computed the term from publication: 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, and "[n]o renewal of the film was registered in 1991." FAC ¶ 165. The two dates also produce different claimants, and the

registration reflects the later one: had the term run from 1967, the renewal would have fallen due in 1995, after Lillian Zapruder's death, and the children alone could have claimed — "which is what RE 696-871 recites." FAC ¶ 169.

D. The Sixth Cause of Action states a claim that the Museum's copyright does not reach every frame or part of a frame published in SCAM.

1. The Museum's copyright does not extend to altered material which Abraham Zapruder did not author.

The Museum cannot claim copyright on material that was not in Zapruder's original work. The Museum says the pleading's "sole legal support includes a quotation not found in the supposed case source." Doc. 48 at 23. The sentence is this Court's own, and *Lennar* is cited alongside it, with a *see also*, for a different proposition. Doc. 32 at 23 n.5. The pleading alleges that the film contains added significant matter: a black patch covering the back of the President's head, and that the Stemmons Freeway sign was distorted. FAC ¶¶ 73–80, 185–187. Whether that matter is original, trivial, or must be read "as a whole" are merits questions.

2. The Museum's copyright does not extend to footage outside the work it registered

The Museum argues that the film is "a single copyrightable work, with the copyright not merely protecting the portion described on the form." Doc. 48 at 22. However, there are different scenes on Zapruder's film, and the Museum has not established that the copyright applies to every single scene in Zapruder's film whether it was related to the assassination scene it claimed or not. This Court has already identified relief of this kind as available in principle. Sustaining the waiver count, it observed that "[t]he Forum may be entitled to a declaratory judgment that the Zapruder copyright cannot cover those particular frames." Doc. 32 at 23.

3. The Museum's copyright does not extend to the frames published before it registered, because the statute forbade the 1967 registration to secure or extend copyright in them.

Mu 7813 was made under the 1909 Act's unpublished-works provision, and could secure copyright only in a work that was unpublished when the application was filed. 43 of the 72 frames reproduced in *SCAM* had already been published, and every one of the 74 frames reproduced in *Zapruder Frame-Up* had been published before Mu 7813 was registered on May 15, 1967. Supra Background B; Boehm Decl. ¶ 9, App. 71. Whatever Mu 7813 reaches, the statute did not permit it to secure a 1967 term in frames whose statutory copyright had already been secured on publication, or to extend the term that then began. The limit operates on the registration, not on the applicant's disclosures, and it holds whoever owns what the earlier publications secured. See §§ II.B and II.C above.

CONCLUSION

The Museum's motion should be denied, and any dismissal should be without prejudice and with leave to amend.

Dated: October 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 26, 2026, the foregoing was filed electronically through the Court's CM/ECF system, which will send notice of the filing to all counsel of record, including counsel for Defendant Dallas County Historical Foundation and counsel for Defendant National Archives and Records Administration.

/s/ Mark L. Javitch
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