UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 10-3270 Caption [use short title]

Motion for: Leave to File Amicus Brief (Unopposed)

Viacom International Inc. et al
v.
YouTube et al.

Set forth below precise, complete statement of relief sought:

Proposed amici, Microsoft Corporation and Electronic Arts Inc. seek leave to file an amicus brief in this case in support of Plaintiffs-Appellants Viacom et al.

MOVING PARTY: proposed amici **OPPOSING PARTY:** Unopposed

☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Gregory G. Garre **OPPOSING ATTORNEY:**

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☑ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☑ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this Court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
/s/ Gregory G. Garre **Date:** Dec. 10, 2010

Has service been effected? ☑ Yes ☐ No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is **GRANTED DENIED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

Form T-1080

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIACOM INTERNATIONAL INC. ET AL., Plaintiffs-Appellants, v. YOUTUBE, INC., YOUTUBE LLC, AND GOOGLE, INC., Defendants-Appellees.	**DECLARATION OF GREGORY G. GARRE IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** No. 10-3270

I, the undersigned, Gregory G. Garre, do hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner of Latham & Watkins LLP, an attorney licensed to practice law in the District of Columbia, and admitted to practice before this Court. I am counsel for Microsoft Corporation ("Microsoft") in this matter, and lead counsel for *amici* on the accompanying proposed brief. Microsoft respectfully seeks leave to file, on behalf of itself and Electronic Arts Inc. ("EA"), the accompanying amicus brief in support of Plaintiffs-Appellants Viacom et al.

2. This appeal concerns a challenge to a district court order granting summary judgment regarding the applicability of the safe harbor

provisions of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 512(c).

3. Microsoft is a leading innovator in both computer software and online services. Microsoft develops, manufactures, licenses, and supports a wide range of programs and services, including Windows and Windows Live, Microsoft Office and Microsoft Office 365, Xbox and Xbox Live, and Bing. Microsoft invests enormous resources into research, development, and promotion of new technologies, products, and services, and competes vigorously in dynamic technology markets. It is therefore keenly interested in having fairness and predictability in intellectual property law, including the safe harbor provision of the DMCA at issue in this case.

4. Microsoft believes that it is well situated to address the broader legal, economic, technological, and societal implications of the important question presented by this case. On the one hand, Microsoft offers numerous online products and services that engage in the lawful, digital distribution of content, in reliance on the DMCA safe harbor provisions and recognizes that those provisions have been instrumental in fostering the growth of new, innovative online services. Microsoft also has first-hand experience operating user-generated content services similar to YouTube and addressing the important copyright-related issues that such services face. On the other hand, Microsoft is the owner of highly valuable

copyrighted content that is at great risk of infringement in the digital marketplace. In fact, Microsoft issues copyright-related take-down notices to online service providers for millions of infringing files every year.

5. EA is a world-leading developer and publisher of interactive entertainment software for play on the Internet, personal computers, and a variety of portable computing devices. EA is a copyright owner that issues take-down notices to online service providers operated by others. At the same time, EA has developed gaming products and services incorporating features that allow users to upload and share content through online services operated by EA.

6. Microsoft and EA (together, "Amici") thus have a direct and profound interest in the proper interpretation of § 512(c) and in ensuring that the safe harbor strikes the balance that Congress intended between encouraging innovation online and protecting against infringement.

7. The accompanying brief contains arguments relevant to the proper interpretation of § 512(c) and the disposition of this appeal that are not fully addressed by Appellants and reflect Amici's unique perspectives on this issue. Accordingly, the participation of Amici in the above-captioned case will aid this Court's resolution of this case.

8. This request for leave to participate as *amicus curiae* and the accompanying proposed brief are timely filed under Federal Rule of Appellate Procedure 29(b) and (e).

9. Counsel for Plaintiffs-Appellants and Defendants-Appellees have advised that all parties consent to the filing of the accompanying brief.

WHEREFORE, Amici respectfully request leave to file the accompanying brief in support of Plaintiffs-Appellants in this matter.

/s/ Gregory G. Garre
Gregory G. Garre

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 2010, a true and correct copy of the foregoing document was served on all counsel of record in this appeal via CM/ECF pursuant to Local Rule 25.1(h)(1) & (2):

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