

Nos. 10-3270 & 10-3342

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIACOM INT'L INC., et al.	)	On Appeal from the United States
	)	District Court for the Southern
Plaintiffs-Appellants,	)	District of New York
v.)	
	)	No. 1:07-CV-2103
YOUTUBE, INC., et. al.,)	
	)	The Honorable Louis L. Stanton,
Defendants-Appellees.	)	United States District Judge
)	

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LTD., et al.	)	On Appeal from the United States
	)	District Court for the Southern
Plaintiffs-Appellants,	)	District of New York
v.)	
	)	No. 1:07-CV-03582
YOUTUBE, INC., et. al.,)	
	)	The Honorable Louis L. Stanton,
Defendants-Appellees.	)	United States District Judge.
)	

**APPELLEES' RESPONSE TO MOTIONS FOR LEAVE TO FILE
BRIEFS AS *AMICI CURIAE***

Appellees YouTube, Inc., YouTube, LLC, and Google, Inc. ("YouTube") submit this response to the motions of Audible Magic Corp. and Vobile, Inc. for leave to file briefs as *amici curiae*.

Neither the Audible Magic nor the Vobile brief contains any legal argument. Instead, both briefs consist entirely of extra-record factual assertions about the technologies that each company offers. While YouTube does not object to the filing of the proposed *amicus* briefs, that should not be taken as agreement with the

various factual assertions that they make. We draw attention to that point because Audible Magic and Vobile were percipient witnesses in this case; both companies produced documents in response to subpoenas, and Audible Magic provided deposition testimony. The district court record thus contains considerable evidence about those companies and their technologies, some of which the parties cited in their summary judgment briefs. To the extent that those factual issues are relevant to this appeal, it is that record evidence that matters—not the extra-record assertions contained in the proposed *amicus* briefs.

Audible Magic’s proposed brief is particularly irrelevant because the single sentence in the district court’s opinion to which that brief is addressed concerns an issue that is not part of this appeal. *See Declaration of Jeremy Stern In Support Of Motion Of Audible Magic Corporation To File Brief Amicus Curiae In Support Of Neither Party* ¶¶ 10-11. In granting summary judgment to YouTube, the district court rejected Plaintiffs’ argument that YouTube’s repeat-infringer policy was unreasonable because, for a period of time, YouTube did not assign “strikes” to users who posted videos that were automatically blocked by Audible Magic’s technology. SPA-30-31. In so holding, the court cited a ruling in a different case that concluded that the automated Audible Magic filter was not sufficiently reliable to justify terminating a user’s account. SPA-31 (citing *UMG Recordings v. Veoh Networks, Inc.*, 665 F. Supp. 2d 1099, 1116-18 (C.D. Cal. 2009)). But neither Viacom nor the putative class plaintiffs have chosen to challenge YouTube’s repeat-infringer policy on the basis of whether and how YouTube assigned strikes using

Audible Magic's technology. As a result, the sole issue raised in Audible Magic's proposed brief is not before this Court and thus not "relevant to the disposition of the case." Fed. R. App. P. 29(b)(2). YouTube nevertheless does not object to the filing of the brief.

Respectfully submitted,

December 17, 2010

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CERTIFICATE OF SERVICE

I certify that on December 17, 2010, I caused copies of Appellees' Response to Motions for Leave to File Briefs As Amici Curiae to be sent, by first class United States mail and by electronic mail, to the following:

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