

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
Plaintiffs-Appellants,	)	Southern District of New York
v.)	
	)	No. 1:07-CV-2103
YOUTUBE, INC., et. al.,)	
	)	The Honorable Louis L.
Defendants-Appellees.	)	Stanton, United States
	)	District Judge

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

DECLARATION OF ANDREW H. SCHAPIRO

I, Andrew H. Schapiro, declare as follows:

1. I am a partner at Mayer Brown LLP, counsel for Defendants-Appellees, YouTube, Inc., et al., in the above-referenced matter. I make this declaration in support of the

Appellees' Motion to File a Single Answering Brief Not to Exceed 21,000 Words.

2. Defendants/Appellees YouTube, Inc., YouTube, LLC, and Google Inc. ("YouTube") move under Local Rule 27.1(e) for permission to file a single answering brief not to exceed 21,000 words. Plaintiffs/Appellants have authorized us to state that they take no position on this motion.

3. On October 18, 2010, this Court granted in part YouTube's motion to consolidate the above-captioned appeals and ordered that the two cases be heard "in tandem." Order in No. 10-3270 (Oct. 18, 2010). In so doing, the Court stated that "[a]ll parties are permitted to file briefs of the customary length provided for in FRAP 32(a)(7). If Appellees choose to file one brief in response to both Appellants' briefs, it is permitted to file an answering brief that does not exceed 18,000 words." *Id.* YouTube's brief is due on March 31, 2011.

4. On December 3, 2010, appellants filed their opening briefs. Viacom's brief used 13,880 words; the Premier League 13,840 words. Under the Court's consolidation order (and FRAP

32(a)(7)), YouTube now has 28,000 words to use in opposition to plaintiffs' briefs—if it elects to file two separate briefs of the customary length. While YouTube is prepared to file separate briefs if necessary, we would prefer to file a single brief responding to both appellants' submissions. Doing so would reduce the burden on the Court and make for a more streamlined presentation of the issues. Appellants have raised a number of similar issues about the proper interpretation of the Digital Millennium Copyright Act, and filing one answering brief rather than two separate briefs would eliminate the need for elaborate cross-references or duplication of arguments.

5. While there are efficiencies to be gained from the filing of a single opposition brief, YouTube respectfully submits that 18,000 words is not sufficient for it to fully respond to the nearly 28,000 words that Appellants have used in their opening briefs (to say nothing of the 14 separate amicus briefs that have now been filed on Appellants' behalf or in support of neither party). Appellants themselves have recognized as much. In their response to YouTube's consolidation motion, the *Premier League*

plaintiffs proposed that YouTube be allowed to file a single brief of 21,000 words. *See* Appellants’ Opposition to Appellees’ Motion To Consolidate (No. 10-3342) at 6 (Oct. 14, 2010) (“Premier League Opp.”). Appellants also said that the parties and the Court would be in a better position to judge exactly how long a single opposition should be once the opening briefs were filed. *Ibid.*; *see also* Appellants’ Opposition to Appellees’ Motion To Consolidate (No. 10-3270) at 4 (Oct. 14, 2010) (“Viacom Opp.”).

6. Those briefs have now been filed. While Appellants have raised a core of overlapping issues, their legal and factual arguments are not entirely parallel—just as Appellants themselves promised. *See* Premier League Opp. at 3 (“plaintiffs in the two respective cases presented different evidence and different arguments”); Viacom Opp. at 3 (describing the “considerable factual and legal differences” between the two appeals). In particular, Viacom makes arguments about direct, contributory, and vicarious infringement that the *Premier League* appellants does not. Viacom also challenges the district court’s denial of its summary judgment motion on its inducement claims—a motion

not made in the *Premier League* case. For its part, the *Premier League* appellants make claims about music publishing and YouTube's Content ID system that are not in Viacom's brief. And, even when they discuss the same issues, the two Appellants' briefs often rely on different evidence (and case law), and in some instances propose different interpretations of the relevant legal provisions. Although these differences are not so great as to demand two separate answering briefs, YouTube respectfully submits that they do necessitate an opposition brief somewhat longer than the 18,000 words contemplated by the Court's original consolidation order.

7. Having carefully reviewed Appellants' briefs, YouTube seeks permission to file a single answering brief not to exceed 21,000 words. As noted, that allotment is one that the *Premier League* appellants themselves have already proposed, and it is far less than the 27,720 words that Appellants collectively used for their briefs. Given the considerable length of Appellants' briefs and the number of different issues that they raise, YouTube's request for an additional 3,000 beyond those that the

consolidation order already contemplates for a single answering brief is modest. That is particularly so considering that YouTube is not seeking more words than it otherwise will have to answer Appellants' arguments. To the contrary, YouTube is asking for significantly *fewer* than the 28,000 words it already has under FRAP 32(a)(7) (and the Consolidation Order) if it elects to file separate answering briefs. Allowing YouTube to submit a single 21,000 word brief, rather than two separate 14,000 word briefs, would keep the parties on equal footing and result in greater efficiency for the Court, while giving YouTube the space it needs to effectively respond to Appellants' briefs.

8. For these reasons, YouTube seeks permission under Local Rule 27.1(e) to file a single brief not to exceed 21,000 words in response to both Appellants' briefs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of January, 2011.

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CERTIFICATE OF SERVICE

I certify that on January 19, 2011, I caused copies of this motion to be sent to the following:

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