

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-cv; 10-3342-cv

Caption [use short title]

Motion for: Leave to File Amicus Curiae Brief

Viacom Int'l Inc. et al. v. YouTube, Inc. et al.; The Football Ass'n Premier League Ltd. et al. v. YouTube Inc. et al.

Set forth below precise, complete statement of relief sought:

Computer & Communications Industry Ass'n (CCIA) and NetCoalition seek leave to file a brief amici curiae in support of appellees YouTube et al., urging affirmance.

MOVING PARTY: Amici Curiae CCIA & NetCoalition

OPPOSING PARTY: The Football Ass'n Premier League et al.

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Jonathan Band

OPPOSING ATTORNEY: Charles Sims

Jonathan Band PLLC
21 Dupont Circle NW, Suite 800
Washington DC 20036
(202) 296-5675 / jband@policybandwidth.com

Proskauer Rose
11 Times Square
New York, NY 10036
(212) 969-3000

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):

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:

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

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

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/ Jonathan Band Date: 4-7-2011

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:

10-3270-cv

10-3342-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY
MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and
BLACK ENTERTAINMENT TELEVISION, LLC,
Plaintiffs-Appellants,

v.

YOUTUBE, INC., YOUTUBE LLC, and GOOGLE, INC.,
Defendants-Appellees.

(Additional Caption and Attorneys on Reverse)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE COMPUTER
& COMMUNICATIONS INDUSTRY ASSOCIATION AND
NETCOALITION IN SUPPORT OF APPELLEES AND URGING
AFFIRMANCE**

FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, on behalf of themselves and all others similarly situated, BOURNE CO., CAL IV ENTERTAINMENT, LLC, CHERRY LANE MUSIC PUBLISHING COMPANY, INC., NATIONAL MUSIC PUBLISHERS' ASSOCIATION, THE ROGERS & HAMMERSTEIN ORGANIZATION, EDWARD B. MARKS MUSIC COMPANY, FREDDY BIENSTOCK MUSIC COMPANY, dba Bienstock Publishing Company, ALLEY MUSIC CORPORATION, X-RAY DOG MUSIC, INC., FEDERATION FRANCAISE DE TENNIS, THE MUSIC FORCE MEDIA GROUP LLC, SIN-DROME RECORDS, LTD., on behalf of themselves and all others similarly situated, MURBO MUSIC PUBLISHING, INC., STAGE THREE MUSIC (US), INC., and THE MUSIC FORCE, LLC,
Plaintiffs-Appellants,

and

ROBERT TUR, dba Los Angeles News Service, THE SCOTTISH PREMIER LEAGUE LIMITED
Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE LLC, and GOOGLE, INC.,
Defendants-Appellees

Markham C. Erickson
Holch & Erickson LLP and
Executive Director, NetCoalition
400 N. Capitol Street NW, Suite 585
Washington, DC 20001
(202) 624-1460
merickson@holcherickson.com

Jonathan Band
Jonathan Band PLLC
21 Dupont Circle NW,
Suite 800
Washington, D.C. 20036
(202) 296-5675
jband@policybandwidth.com

Matthew Schruers
Vice President, Law & Policy
Computer & Communications
Industry Association
900 Seventeenth Street NW, 11th Floor
Washington, D.C. 20006
(202) 783-0070
MSchruers@ccianet.org

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae state that:

CCIA represents large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services – companies that collectively generate more than \$250 billion in annual revenues. A complete list of CCIA members is available at <http://www.ccianet.org/members>. No publicly held corporation has an ownership stake of 10% or more in CCIA.

NetCoalition serves as the public policy voice for some of the world's most innovative Internet companies on legislative and administrative proposals affecting the online realm. NetCoalition's members include Amazon.com, Bloomberg LP, eBay, IAC, Wikipedia, Yahoo!, and Google. No publicly held corporation has an ownership stake of 10% or more in NetCoalition.

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION AND
NETCOALITION IN SUPPORT OF APPELLEES AND URGING
AFFIRMANCE**

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, the Computer & Communications Industry Association (CCIA) and NetCoalition respectfully move for leave to file the “Brief of Amici Curiae Computer and Communications Industry Association and NetCoalition in Support of Appellees and Urging Affirmance.” A copy of the brief accompanies this motion.

CCIA represents large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services – companies that collectively generate more than \$250 billion in annual revenues. A complete list of CCIA members is available at <http://www.ccianet.org/members>.

NetCoalition serves as the public policy voice for some of the world’s most innovative Internet companies on legislative and administrative proposals affecting the online realm. NetCoalition’s members include Amazon.com, Bloomberg LP, eBay, IAC, Wikipedia, Yahoo!, and Google.¹

¹ Although Google is a member of both CCIA and NetCoalition, none of the parties to either of these cases (*i.e.*, Plaintiffs-Appellants or Respondents-Defendants) nor their counsel authored this motion in whole or in part; nor did any party or any party’s counsel contribute money intended to fund preparing or

Reversal of the decision below would radically transform the functioning of the copyright system and severely impair, if not completely destroy, the value of many of the services provided by CCIA and NetCoalition members. Under the liability regime proposed by Viacom, many Internet companies would no longer be able to provide a free and open platform for user generated content. The potential cost of liability would force Internet companies to discontinue products or services, charge for their currently free services, or monitor their users' communications in search of potentially infringing material. Any of these approaches would harm CCIA and NetCoalition members, as well as their hundreds of millions of regular users.

This brief amici curiae focuses on aspects of the case relating to intentional inducement, a dimension of secondary liability addressed at length by the Supreme Court in *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 929 (2005). First, the brief argues that intentional inducement is not a new form of secondary copyright infringement liability distinct from contributory infringement. Rather, the Supreme Court in *Grokster* redefined contributory infringement as intentionally inducing infringement.

submitting the motion; nor did anyone else other than Amici and their counsel contribute money that was intended to fund preparing or submitting this motion.

Second, the brief demonstrates that Viacom in its brief distorts the *Grokster* Court’s finely-tuned test for determining whether a distributor of a technology product or service has intentionally induced infringement. Viacom ignores the Supreme Court’s careful calibration of the inducement doctrine to ensure that it “does nothing to compromise legitimate commerce or discourage innovation having a lawful promise.” *Id.* at 937.

Third, the brief shows that the safe harbors of the DMCA apply to all forms of copyright liability. Contrary to Viacom’s suggestion, intentional inducement is not categorically ineligible for the safe harbor’s protections.

Finally, the brief contends that Viacom attempts to upset the balance Congress and the courts have established in our intellectually property (IP) laws. The Supreme Court observed that the IP laws strike a “difficult balance between the interests of authors and inventors in the control and exploitation of their writings and discoveries on the one hand, and society’s competing interest in the free flow of ideas, information, and commerce on the other....” *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984). While the Internet has posed challenges to traditional distributors of copyrighted works, it has also presented a wide range of new opportunities for the creation and distribution of creative works.

The matters discussed in this brief amici curiae relate directly to arguments made by appellants and appellees in their briefs. Amici are uniquely situated to provide the Court with the perspective of the Internet and information technology industries on these matters.

Appellees as well as Appellants Viacom et al. consented to the filing of this brief. Counsel for Appellants Football Association Premier League Ltd. et al. withheld consent.

For the foregoing reasons, amici respectfully request leave to file a brief as amicus curiae in this proceeding.

Respectfully submitted,




Markham C. Erickson
Holch & Erickson LLP and
Executive Director, NetCoalition
400 N. Capitol Street NW, Suite 585
Washington, DC 20001
(202) 624-1460
merickson@holcherickson.com

Jonathan Band
Jonathan Band PLLC
21 Dupont Circle NW,
Suite 800
Washington, D.C. 20036
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jband@policybandwidth.com

Matthew Schruers
Vice President, Law & Policy
Computer & Communications
Industry Association
900 Seventeenth Street NW, 11th Floor
Washington, D.C. 20006
(202) 783-0070
MSchruers@ccianet.org

CERTIFICATE OF SERVICE

I hereby certify, pursuant to FRAP 25(d)(2), that on this 7th day of April, 2011, a true and correct copy of the foregoing Motion for Leave to File Brief of Amici Curiae Computer & Communications Industry Association and NetCoalition in Support of Appellees and Urging Affirmance was timely filed in accordance with FRAP 25(a)(2)(B) and served on all counsel of record in this appeal via CM/ECF pursuant to Second Circuit Rule 25.1(h).



Counsel for Amici Curiae

Jonathan Band
Jonathan Band PLLC
21 Dupont Circle NW, Suite 800
Washington, D.C. 20036
(202) 296-5675
jband@policybandwidth.com

April 7, 2011