

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIACOM INT'L INC., et al.,	:	
	:	
Plaintiffs-Appellants,	:	
	:	Docket 10-3270-cv
v.	:	
	:	
YOUTUBE, INC., et al.,	:	
	:	
Defendants-Appellees.	:	
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THE FOOTBALL ASSOCIATION	:	
PREMIER LEAGUE LIMITED, et al.,	:	
	:	Docket 10-3342-cv
Plaintiffs-Appellants,	:	
	:	
v.	:	
	:	
YOUTUBE, INC., et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

**DECLARATION OF CHARLES S. SIMS IN SUPPORT OF MOTION ON
CONSENT TO PERMIT THE FILING OF A DOUBLE-CAPTIONED
JOINT APPENDIX AND ANY AMICUS BRIEFS, AND TO DEEM THE
FILING OF PAPER VERSIONS OF THE JOINT APPENDIX OR AMICUS
BRIEFS IN ONE DOCKET AS FILED IN BOTH**

CHARLES S. SIMS hereby declares as follows under penalty of perjury:

1. I am a partner at Proskauer Rose LLP, counsel for plaintiffs-appellants The Football Association Premier League Limited, et al. (“Premier League”). I submit this declaration in support of the motion by Premier League for an order permitting the preparation of a single joint appendix with case captions for both docket Nos. 10-3270 & 10-3342; permitting amici curiae otherwise permitted to file amicus briefs to file such briefs with both captions; and, while e-filing would proceed in each docket as the rules contemplate, deeming the filing of the paper joint appendix or amicus briefs in docket No. 10-3270 as filed in both appeals, which the Court has already directed will be argued in tandem.
2. I am authorized to state that the plaintiffs-appellants Viacom International, Inc., et al. (“Viacom”) and defendants-appellees YouTube, Inc., et al. (“YouTube”) (together, the “Parties”) join in this motion.
3. *Viacom International Inc., et al. v. YouTube, Inc., et al.*, 1:07-CV-2103 and *The Football Association Premier League Ltd, et al. v. YouTube, Inc., et al.*, 1:07-CV-03582, were both filed in the Southern District of New York in 2007. Although the two proceedings were not consolidated, discovery in both cases was coordinated and was common to both parties. The district court resolved both cases with a single double-captioned opinion and order, dated June 23, 2010. Final judgment in both cases was entered on August 10, 2010.

4. The notices of appeal were filed on August 11 and 12, 2010. YouTube filed a motion to consolidate the appeals, which was granted in part and denied in part by Order dated October 18, 2010. That Order directed that the appeals would be heard in tandem.
5. As the papers filed in connection with that motion indicated, the parties have agreed to file, and are in the midst of preparing, a single, unified joint appendix. However, the clerk's office has advised that, without relief granted by this Court on motion, it is not permissible to double-caption that single joint appendix, and the parties would have to produce two versions of that appendix – one with the Viacom caption, and one with the Premier League caption. That would entail printing and filing two versions of the joint appendix, identical except for different covers. Burdening the parties with producing such alternate versions – and the Court with having to store and maintain them – seems to make no sense.
6. For the foregoing reasons, the Parties respectfully request an order permitting them to file a unified joint appendix bearing both captions: VIACOM INT'L INC., et al. v. YOUTUBE, INC., et al., No. 10-3270 and THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, et al. v. YOUTUBE, INC., et al., No. 10-3342. They would e-file as the rules generally contemplate; but the

paper copies of the joint appendix would be filed in the first-filed appeal (the Viacom appeal), and deemed filed in the Premier League appeal.

7. Similarly, the Clerk's office has advised that amici curiae could not, without relief, file a double-captioned amicus brief for use in both appeals, and would have to prepare two versions of their briefs, one captioned and filed in the Viacom appeal, and one captioned and filed in the Premier League appeal. The members of the panel considering these appeals, to be argued in tandem, obviously need only a single copy of each amicus brief, not two copies that are identical except for cover pages. An order permitting amicus curiae briefs to be filed with a double caption, efiled in both actions, and paper-filed in the Viacom appeal (but deemed filed in both), would be a convenience to amici, to the Court, and to the parties.
8. Finally, out of an abundance of caution, the Parties note that they each plan to submit to the Clerk, a week after their briefs are filed per the rules, disks containing those briefs with hyperlinks to the record on appeal – so that, when any citation to the record is clicked on, the reader would be delivered to the underlying cited evidence. The rules do not seem to address such hyperlinked briefs, but we are advised that they have been submitted in prior appeals, and the parties are agreed in believing that the Court would find such hyperlinked briefs highly convenient and useful. In case an order permitting their submission is required, we request it here.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 4, 2010.

/s/ Charles S. Sims

Charles S. Sims