

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, 10-3342

Caption [use short title]

Motion for: Leave to file a brief of amici curiae.

Set forth below precise, complete statement of relief sought:

Leave of Court to file the attached brief of amici curiae in support
of appellants.

Viacom International, Inc. , et al. v. YouTube, Inc., et al.
The Football Association Premier League Limited, et al. v.
YouTube, Inc., et al.

MOVING PARTY: Motion Picture Association of America, Inc.

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: YouTube, Inc. et al.

MOVING ATTORNEY: Kelly M. Klaus

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

Munger, Tolles & Olson LLP

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OPPOSING ATTORNEY: Andrew H. Schapiro

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Court-Judge/Agency appealed from: Southern District of New York (Stanton, J.)

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:**

Yes No

Has request for relief been made below?

Yes No

Has this relief been previously sought in this Court?

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/ Kelly M. Klaus

Date: 12/10/2010

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: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

VIACOM INTERNATIONAL, INC., et al.,

Plaintiffs-Appellants,

No. 10-3270

v.

YOUTUBE, INC., et al.,

Defendants-Appellees.

THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, et al.,

Plaintiffs-Appellants,

No. 10-3342

v.

YOUTUBE, INC., et al.,

Defendants-Appellees.

**MEMORANDUM IN SUPPORT OF MOTION OF MOTION
PICTURE ASSOCIATION OF AMERICA, INC. AND
INDEPENDENT FILM & TELEVISION ALLIANCE FOR LEAVE
TO FILE BRIEF OF *AMICI CURIAE* SUPPORTING APPELLANTS**

The Motion Picture Association of America, Inc. (“MPAA”) and the Independent Film & Television Alliance® (IFTA®) respectfully move the Court for leave to file a brief of *amici curiae* supporting appellants. A copy of the proposed *amici* brief is attached as Ex. 1 to the accompanying

Affidavit of Kelly M. Klaus (“Klaus Affidavit”). All appellants in these consolidated proceedings have consented to this filing. Klaus Affidavit ¶¶ 3-4. *Amici* requested consent from appellees (Google and YouTube). Appellees position was that, unless *amici* provided them with an advance copy of the brief, appellees could not say whether they would consent to this filing. *Id.* ¶ 5. Appellees have indicated they will respond to this motion and inform the Court whether they consent to, oppose or take no position regarding the relief that this motion seeks. *Id.*

Amici and their members have a significant interest in the important questions that this case presents concerning the interpretation of the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and in particular the Digital Millennium Copyright Act provisions codified at § 512. *Amici*’s members depend upon effective copyright protection in order to protect the motion picture and television content that they invest in, create and distribute.

Founded in 1922, the MPAA is a trade association that serves as the advocate for the domestic motion picture, home video and television industries. Its members and their affiliates include the largest producers and distributors of motion pictures and television programs in the United States. These members include Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney

Studios Motion Pictures and Warner Bros. Entertainment Inc. Appellant Paramount Pictures Corporation is a member of the MPAA. However, Paramount, its affiliates (including other of the appellants), and their counsel have not written the *amici* brief in whole or in part. None of them has made a monetary contribution intended to fund the preparation or submission of *amici's* brief.

IFTA is the trade association for the independent film and television industry worldwide, representing over 155 independent production and distribution companies, as well as affiliated financial institutions that provide funding for independent production. IFTA also is the owner of the American Film Market®, the largest commercial film market in the world. IFTA members have produced, financed and/or distributed such critically and commercially successful films as *The Hurt Locker*, *Crash*, *Slumdog Millionaire*, *The Departed*, *Million Dollar Baby* and *Lord of the Rings*. Since 1984, IFTA member films have won over 64% of the Best Picture Academy Awards®.

Amici seek to file the attached brief because of their profound concerns with the district court's decision. *Amici* believe that their views regarding the important legal and policy issues that this case presents may be helpful to the Court in its consideration of this case.

Appellees informed the undersigned that they could not determine whether they would consent to the filing of *amici*'s brief without first reviewing it. Appellees cited the fact that the Viacom Plaintiffs-Appellants' brief discusses evidence concerning communications between the MPAA and YouTube. *Amici*'s brief does not discuss this evidence, a fact that the undersigned has communicated to appellees' counsel. Klaus Affidavit ¶ 5.

Amici respectfully submit that the brief should be filed. Appellants have not authored all or any part of the *amici* brief. Nor have they made a monetary contribution intended to fund its preparation or submission. The brief does not discuss any evidence concerning communications between the MPAA and YouTube. The brief simply offers *amici*'s arguments on the important legal and policy issues that this case raises. Given *amici*'s clear and significant interest in these issues, we respectfully submit that *amici*'s brief should be filed.

DATED: December 10, 2010

MUNGER, TOLLES & OLSON LLP

By: /s/ Kelly M. Klaus

KELLY M. KLAUS
Counsel for *Amicus* MPAA

AFFIDAVIT OF KELLY M. KLAUS

Kelly M. Klaus declares and states, under penalty of perjury under the laws of the United States, 28 U.S.C. § 1746, as follows:

1. I am a partner in the law firm of Munger, Tolles & Olson LLP, counsel to *amicus curiae* the Motion Picture Association of America, Inc. (“MPAA”). I was admitted to practice before the United States Court of Appeals for the Second Circuit on December 7, 2010. The facts stated in this affidavit are within my personal knowledge.

2. Attached as Exhibit 1 to this affidavit is the proposed Brief of *Amici Curiae* MPAA and Independent Film & Television Alliance in Support of Appellants.

3. On December 2, 2010, counsel for appellants in No. 10-3270 consented to the filing of *amici*’s brief.

4. On December 6, 2010, counsel for appellants in No. 10-3342 consented to the filing of *amici*’s brief.

5. On December 3, 2010, counsel for appellees in Nos. 10-3270 and 10-3342 told me that appellees would not be able to decide whether to consent to the filing of *amici*’s brief without first reviewing it. Counsel cited the fact that documents and testimony concerning communications between the MPAA and YouTube are discussed in appellants’ opening brief in No.

10-3270. On December 3, 2010, I told appellees' counsel that *amici's* brief would not discuss this evidence. On December 6, 2010, appellees' counsel again told me that appellees could not consent to the filing of the brief without first reviewing it. On December 8, 2010, I inquired of appellees' counsel concerning his clients' position on this motion. Counsel told me that I could inform the Court that appellees do not know whether they will oppose this motion and that they will file a response after reviewing the motion and the attached *amici* brief.

DATED: Los Angeles, California
December 10, 2010

/s/ *Kelly M. Klaus*
Kelly M. Klaus

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2010, a true and correct copy of the foregoing Motion of Motion Picture Association of America, Inc. and Independent Film & Television Alliance for Leave to File Brief of *Amici Curiae* Supporting Appellants; Memorandum in Support; and Affidavit of Kelly M. Klaus, including Exhibit 1, which is the proposed *amici* brief, was served on all counsel of record in this appeal via CM/ECF pursuant to Second Circuit Rule 25.1(h)(1)-(2).

/s/ Kelly M. Klaus
Kelly M. Klaus