



on the projected dismissal that is the subject of the stipulation” entered between YouTube and the Withdrawing Appellants.

YouTube and the five Withdrawing Appellants have entered into an agreement resolving the litigation between them. As a result, the Withdrawing Appellants have agreed to release their claims against YouTube and dismiss their appeal with prejudice.

The parties are aware of no legal grounds that would allow the remaining appellants to oppose or otherwise challenge the stipulated dismissal between YouTube and the Withdrawing Appellants. In its letter to the Court dated August 29, 2011, the Football Association Premier League claimed that under Fed. R. App. P. 42(b) a stipulation to dismiss an appeal requires “consent of all parties.” That is incorrect. Rule 42(b) provides simply that an “appeal may be dismissed on the appellant’s motion on terms agreed to by the parties or fixed by the court.” That is precisely what has happened here. The absence of any requirement that “all parties” consent to a dismissal involving only some of the appellants is underscored by comparison to Fed. R. App. P. 42(a), which addresses pre-docketing dismissals (not at issue here). Rule 42(a) conditions dismissal of a not-yet-docketed appeal “on the

filing of a stipulation signed by *all* parties or on the appellant’s motion with notice to *all* parties.” (Emphases added.) Rule 42(b), by contrast, includes no such “all parties” language or requirement. In short, the stipulation by which the Withdrawing Appellants seek dismissal of their claims is entirely proper—with or without the consent of the remaining appellants.

In any event, despite our requests, the remaining appellants have articulated no substantive objection to the projected dismissal. Should the remaining appellants make such an objection in their comments to the Court, YouTube and the Withdrawing Appellants respectfully request an opportunity to respond. Otherwise, YouTube and the Withdrawing Appellants request that the Court enter the stipulation filed on August 24 and order the dismissal of the Withdrawing Appellants’ appeal with prejudice.

Respectfully submitted,

/s/ David S. Stellings

David S. Stellings  
*Lieff, Cabraser, Heinmann & Bernstein, LLP*  
8th Floor  
250 Hudson Street  
Telephone: (212) 355-9500  
Facsimile: (212) 355-9592

*Attorneys for Plaintiffs-Appellants  
The National Music Publishers Association,  
The Rodgers & Hammerstein Organization,  
Edward B. Marks Music Company,  
Freddy Bienstock Music Company  
d/b/a/ Bienstock Publishing Company,  
and Alley Music Corporation*

/s/ Andrew H. Schapiro

Andrew H. Schapiro

*Mayer Brown LLP*

1675 Broadway

New York, New York 10019-5820

Telephone: (212) 506-2500

Facsimile: (212) 262-1910

*Attorneys for Defendants-Appellees  
Google Inc., YouTube LLC, and YouTube,  
Inc.*

September 9, 2011