

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

Caption [use short title]:

Docket Number(s): 10-3270 & 10-3342

Motion for: an order permitting the filing of a double-captioned joint appendix and of double-captioned amicus briefs, and considering the physical paper filing of the joint appendix or amicus brief in one docket as filed in both.

VIACOM INT'L INC., et al.
Plaintiffs-Appellants,
v. 10-3270-cv
YOUTUBE, INC., et. al.,
Defendants-Appellees.

Set forth below precise, complete statement of relief sought:
The parties are jointly seeking an order permitting (1) the preparation of a single joint appendix containing both captions; (2) any amici filing otherwise permitted briefs to file a single double-captioned brief; (3) the physical hard-copy filing of the joint appendix or an amicus brief in docket No. 10-3270 to be deemed as also filed in docket No. 10-3342, while the joint appendix and amicus briefs would be e-filed in both dockets; and (4) each party may submit, on CD or DVD, its brief with hyperlinks to record citations a week after the unhyperlinked brief is filed.

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LTD., et al.
Plaintiffs-Appellants,
v. 10-3342-cv
YOUTUBE, INC., et. al.,
Defendants-Appellees.

MOVING PARTY: The Football Association Premier League Ltd., et al.
[checked] Plaintiffs [] Defendant
[checked] Appellant/Petitioner [] Appellee/Respondent

OPPOSING PARTY: YouTube, Inc et. al., and Viacom Inc.

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Court-Judge/Agency appealed from: United States District Court, Southern District of New York; Honorable Louis L. Stanton

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
[checked] Yes [] No (explain):

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

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

Is oral argument on motion requested? [] Yes [checked] No

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:

(requests for oral arguments will not necessarily be granted)

Has argument date of appeal been set: Yes No If yes, enter date: _____

Signature of Moving Attorney:

/s/ Charles S. Sims **Date:** 11/04/2010 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: _____

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

CERTIFICATE OF SERVICE

I, Charles S. Sims, hereby certify under penalty of perjury that on November 4, 2010, I caused a copy of Premier League's 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 to be filed electronically. Notice of these filings will be sent by email to all parties through the operation of the court's electronic filing system. Parties may access these filings through the court's system.

Dated: 11/04/2010

/s/ Charles S. Sims

Charles S. Sims