

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**MDY INDUSTRIES LLC AND
MICHAEL DONNELLY,**

Plaintiffs-Appellants

v.

**BLIZZARD
ENTERTAINMENT, INC. AND
VIVENDI GAMES, INC.,**

Defendants-Appellees.

No. 09-15932

No. 09-16044

Declaration of Scott Bain

In Support of Amicus Software &
Information Industry Association's Motion
for Two Week Extension

I, the undersigned, declare under penalty of perjury:

1. I am the Litigation Counsel of the Software & Information Industry Association (SIIA). SIIA is the principal trade association of the U.S. software and information industry, and includes several hundred member companies.
2. I am a member of the bars of the District of Columbia and the U.S. Court of Appeals for the Ninth Circuit (among others), and will be SIIA's counsel of record as amicus in the above captioned case.
3. The amicus brief of SIIA in support of Appellee presently is due Friday November 6, 2009.
4. SIIA's Motion seeks a two week extension, to Friday November 20, 2009.
5. The extension is necessary because (i) SIIA is in the process of collecting detailed information from its member companies that is relevant to this case, will be

used in its brief, and will be useful to this Court in assessing the copyright and licensing issues raised in this important case, (ii) I have been and will continue to be out of the office on travel for a substantial part of October and the first ten days of November. This travel includes (among other matters) multiple meetings with SIIA member companies on both coasts, to collect and discuss the aforementioned information, and obtain their input.

6. SIIA has exercised, and will continue to exercise, diligence in collecting the information and research to be used in its brief, and drafting the brief, and will file the brief within the time requested in its Motion if granted.

7. Appellee Blizzard et al. has consented to SIIA's requested extension. Appellant MDY consents to an extension of up to a week, but objects to the two weeks SIIA requests. As SIIA understands it, MDY is concerned about the effect on its reply due date and how it would relate to its attorneys' schedules. I had indicated to MDY, with Blizzard's consent, that Blizzard would also consent to extending MDY's reply date if the new due date were problematic. My understanding is that this did not change MDY's position.

8. This case raises issues that are very important to the SIIA, the software industry and its member companies. SIIA has significant experience dealing with some of the issues raised in this case, believes its views will be useful to the Court,

and desires to be heard in this matter. For the reasons set forth above, SIIA has substantial need for the requested two-week extension.

Respectfully submitted,

SIIA

By: _____ s/ Scott Bain

Scott E. Bain
Software & Information Industry
Association
1090 Vermont Av. NW, Suite 600
Washington, DC 20005
Telephone: 202.789.4492
Facsimile: 202.289-7442

Dated: October 28, 2009

Counsel for SIIA

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2009, I electronically filed the foregoing

Amicus Software & Information
Industry Association's Motion
For Two-Week Extension to Submit Amicus Brief

with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Scott Bain

Counsel for SIIA