

Appeal Nos. 09-15932 & 09-16044

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.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
THE HONORABLE DAVID G. CAMPBELL, JUDGE
CASE No. 06 CIV. 2555

**AMICUS CURIAE BUSINESS SOFTWARE ALLIANCE'S
UNOPPOSED MOTION TO EXTEND TIME TO
FILE AMICUS CURIAE BRIEF UNTIL NOVEMBER 13, 2009**

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The Business Software Alliance (“BSA”) hereby respectfully requests, pursuant to Federal Rule of Appellate Procedure 29(e), an unopposed extension of time until November 13, 2009, to file its *amicus curiae* brief. The current deadline is November 6, 2009.

BSA is an association of the world’s leading software and hardware technology companies. BSA’s members include Adobe, Apple, Autodesk, AVG, Bentley Systems, CA, Cadence Design Systems, Cisco Systems, Corel, Cyberlink, Dassault Systèmes SolidWorks Corporation, Dell, Embarcadero, HP, IBM, Intel, Intuit, McAfee, Microsoft, Mindjet, Minitab, Quark, Quest, Rosetta Stone, SAP, Sheba Distribution, Siemens PLM Software, Inc., Sybase, Symantec, Synopsys, and The MathWorks. BSA’s members have a substantial interest in this case, because it impacts important issues regarding the licensing and protection of software under the Copyright Act.

On September 14, 2009, Appellants MDY Industries LLC and Michael Donnelly filed their First Brief on Cross-Appeal. On October 28, 2009, Appellees Blizzard Entertainment, Inc. and Vivendi Games, Inc. filed their Response Brief. Pursuant to Federal Rules of Appellate Procedure 26(a) and 29(e), BSA’s *amicus curiae* brief would be due on November 6, 2009.

Before filing any *amicus curiae* brief, BSA must coordinate with its members regarding those members’ input to, and approval of, BSA’s *amicus*

curiae brief. Although that process is already under way, BSA requires an additional week to complete the process and file its brief.

Counsel for BSA has communicated with counsel for all of the parties to this appeal and for *amicus curiae* Public Knowledge. The parties and Public Knowledge have stated that they do not oppose BSA's request for an extension to November 13, 2009. Counsel for BSA has also communicated with counsel for *amicus curiae* Software & Information Industry Association ("SIIA"). SIIA does not oppose BSA's request but maintains that a two week extension for SIIA is both necessary and appropriate.

For the reasons set forth herein and in the Declaration of David R. Eberhart submitted herewith, BSA respectfully requests that the Court grant BSA an extension of time to November 13, 2009 to file its *amicus curiae* brief.

Dated: November 2, 2009

GEORGE A. RILEY
DAVID R. EBERHART
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By: /s/ David R. Eberhart

David R. Eberhart
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CORPORATE DISCLSOURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amicus curiae* Business Software Alliance (“BSA”) certifies that it is a trade association. BSA is not a publicly held corporation, does not have a parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Dated: November 2, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2009, I electronically filed the foregoing 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.

Dated: November 2, 2009

By: /s/ David R. Eberhart

David R. Eberhart
Attorneys for Amicus Curiae
Business Software Alliance