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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

22 DATEL HOLDINGS LTD. And DATEL)
 23 DESIGN & DEVELOPMENT, INC.,)
 24)
 25 Plaintiffs,)
 26 v.)
 27 MICROSOFT CORPORATION,)
 28)
 Defendant.)

CASE NO. 09-cv-5535 EDL
**ELECTRONIC FRONTIER FOUNDATION
 AND PUBLIC KNOWLEDGE'S MOTION
 FOR LEAVE TO FILE REPLY BRIEF AMICI
 CURIAE IN SUPPORT OF DATEL'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT; ~~PROPOSED~~ ORDER
 THEREON**
 Courtroom: E, 15th Floor
 Magistrate Judge Elizabeth D. Laporte

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2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that the undersigned proposed Amici Curiae will and hereby do
4 move the Court for leave to file the accompanying proposed Reply Brief Amici Curiae In Support of
5 Datel’s Motion for Partial Summary Judgment. Plaintiffs consent to the filing of this brief. Defendant
6 does not.

7 **I. Statement of Interest of Amici Curiae**

8 As explained in Amici’s motion for leave to file their principal brief, the Electronic Frontier
9 Foundation (EFF) is a non-profit, member-supported civil liberties organization working to protect
10 rights in the digital world. As part of its mission, EFF has served as counsel or amicus in key cases
11 addressing user rights to free speech, privacy, and innovation as applied to the Internet and other new
12 technologies. Public Knowledge is a non-profit public interest 501(c)(3) corporation, working to
13 defend citizens’ rights in the emerging digital culture. Its primary mission is to promote innovation,
14 protect the legal rights of all users of copyrighted works, and ensure that copyright law remains
15 balanced and does not slow technology innovation, unduly burden free speech, shrink the public
16 domain, or prevent fair use.

17 **II. Issues Addressed by Movants in the Brief**

18 EFF and Public Knowledge file this brief in order to assist the Court in its consideration of the
19 proper scope of Section 1201(a) of the Digital Millennium Copyright Act (“DMCA”), and the
20 common law doctrines of misuse and exhaustion. Defendant Microsoft and its amicus ESA submitted
21 briefing in response to EFF and PK’s principal brief that misconstrues the arguments and misstates the
22 holding of the key controlling case in this circuit on Section 1201 liability, *MDY Industries v. Blizzard*
23 *Entertainment*, 629 F.3d 928 (9th Cir. 2010) (“*MDY*”). See Def. Resp. to EFF Am. Br.; ESA Am. Br.
24 EFF and PK seek leave to file a short reply brief in order to correct these misstatements and explain
25 how EFF and PK’s approach is consistent with the text and structure of 17 U.S.C. § 1201 as well as
26 long-standing common law precedents.

27 These issues are particularly pressing because an erroneous interpretation of *MDY* and its
28 teachings could lead to subsequent decisions that may significantly limit consumers’ ability to make

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reasonable uses of products they lawfully purchase. Thus, Amici believe this brief will assist the Court's deliberations regarding the important legal issues raised in this case.

CONCLUSION

For the above reasons, EFF and Public Knowledge respectfully request this Court's leave to submit the accompanying brief.

Dated: July 29, 2011

By: /s/ Corynne McSherry

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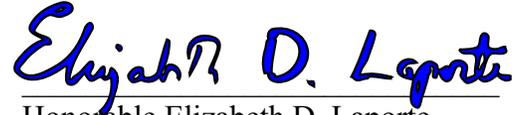
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2 ~~PROPOSED~~ ORDER

3 Good cause appearing, the motion of the EFF and Public Knowledge for leave to file a brief of
4 amici curiae is hereby GRANTED.

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6 **IT IS SO ORDERED.**

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8 Dated: August 1, 2011


Honorable Elizabeth D. Laporte
United States Magistrate Judge