

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GREAT MINDS,

Plaintiff,

-against-

FEDEX OFFICE AND PRINT SERVICES,
INC.,

Defendant.

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ORDER

16-CV-1462 (DRH)(ARL)

Plaintiff is a non-profit organization that produces various educational materials including a comprehensive math curriculum, *Eureka Math*, for grades PreK-12 (the “Material”) used by school districts across the country, for which it owns the federal copyright. Plaintiff publishes and sells printed book versions of the Material and has entered into royalty bearing licenses with third parties for commercial reproduction of the Material. Plaintiff also makes the Material available under a “Creative Commons Attribution - Non Commercial - Share Alike 4.0 International Public License (the “License”). In a nutshell, plaintiff alleges that defendant violated its copyright when it duplicated the Materials for certain school districts for profit - a commercial use not authorized by the License. *See* Complaint ¶¶ 8-18. Defendant has moved to dismiss the complaint asserting that its duplication of the Materials was permissible under the License because it was assisting school districts in their noncommercial use of the Materials.

Presently before the Court is an application by Creative Commons Corporation to file an *amicus* brief in support of defendant’s motion to dismiss. According to that motion, “Creative Commons is a global nonprofit organization that enables sharing and reuse of creative works through the provision of free legal tools” including the “‘off the shelf’ copyright license[.]”

at issue in this case. DE 20 at p.1. Furthermore, “[a]s author and steward of [the License], Creative Commons is intimately familiar with the [L]icense and the manner in which it operates, is used, and is relied upon by hundreds of millions of individuals, organizations, entities and governments [and] thus possess a unique perspective on its proper interpretation and the consequences of an erroneous one.” *Id.* at 1-2. The application is denied.

“District Courts have broad discretion to permit or deny the appearance of amici curiae in a given case.” *U.S. v. Yaroshenko*, 86 F. Supp.2d 289, 290 (S.D.N.Y. 2015) (internal quotation marks omitted). “An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the *amicus* has an interest in some other case that may be affected by the decision in the present case or when the *amicus* has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide. Otherwise leave to file an *amicus* brief should be denied. *Jamaica Hosp. Med. Ctr., Inc. v. United Health Group, Inc.*, 584 F. Supp.2d 489, 497 (E.D.N.Y. 2008) (internal quotations marks omitted).

While it may be true that Creative Commons “is intimately familiar with the [L]icense and manner in which it operates” and “is used” and “has a unique perspective on its proper interpretation,” at this stage of the litigation the Court is limited to determining whether the License is unambiguous in defendant’s favor based on its “four corners,” rendering Creative Commons’ familiarity and perspective irrelevant at this juncture. *See Ariel (UK) Limited v. Reuters Group PLC*, 2006 WL 3161467, at *5 (S.D.N.Y. Oct. 31, 2006) (“Dismissal of a claim for copyright infringement is proper where a contract underlying the suit clearly and unambiguously demonstrates the existence of defendant’s license to exploit the plaintiff’s

copyrights”); *see also Powlus v. Chesley Direct LLC*, 2011 WL 135822 (S.D.N.Y. Jan. 10, 2011) (“Ambiguity is determined by looking within the four corners of the document, not to outside sources.”)

SO ORDERED.

Dated: Central Islip, New York
February 21, 2017

/s Denis R. Hurley
Denis R. Hurley
United States District Judge