

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC.,
COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC.,
PARAMOUNT PICTURES CORPORATION, and
BLACK ENTERTAINMENT TELEVISION LLC,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC,
and GOOGLE, INC.,

Defendants.

CASE NO.: 1:07-CV-02103 (LLS)
(Related Case No.: 1:07-CV-03582 (LLS))

ECF CASE

**MEMORANDUM OF LAW IN SUPPORT OF WASHINGTON LEGAL
FOUNDATION'S MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS**

Non-party Washington Legal Foundation (WLF) submits this memorandum of law in support of its motion to file an *amicus curiae* brief on behalf of Plaintiffs in this case.

I. PROPOSED *AMICUS* PARTY'S INTEREST IN THIS CASE

WLF is a non-profit, public interest law and policy center with supporters in all fifty states. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has regularly appeared as an *amicus curiae* before this and numerous other federal and state courts in favor of protecting the rights of property owners, including owners of intellectual property. *See, e.g., MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005); *Author's Guild v. Google, Inc.*, No. 05 CV 8136 (DC), 2009 U.S. Dist. LEXIS 116175 (S.D.N.Y. Dec. 1, 2009).

In addition, WLF's Legal Studies Division routinely publishes articles and sponsors briefings on a variety of legal issues, including those that are implicated in this case. *See, e.g., Sony v. Tenenbaum: There Are Limits to Fair Use Defense In Copyright Infringement Cases* (WLF Legal Opinion Letter, Oct. 9, 2009); *Liberty And Property: Human Rights And The Protection Of Intellectual Property* (WLF Working Paper, Jan. 2009); *Copyrights in Cyberspace: Are Intellectual Property Rights Obsolete in the Digital Economy?* (WLF Media briefing, March 28, 2001); *Congress Modifies Copyright Protections for the Digital Age* (WLF Legal Backgrounder, Feb. 19, 1999).

II. RELEVANCE AND DESIRABILITY OF AMICUS BRIEF

WLF seeks leave to submit the accompanying proposed Brief of *Amicus Curiae* Washington Legal Foundation In Support of Plaintiffs to address the important copyright and public policy issues raised by this case and to provide the Court with a fuller context in which to consider its decision on the pending motions. As explained in greater detail in WLF's proposed *amicus* brief, the intent and purpose of Congress in enacting the Digital Millennium Copyright Act ("DMCA") is a crucial consideration in this case.

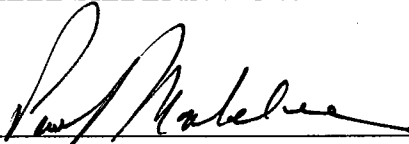
The DMCA establishes a regime of shared responsibility on the part of both copyright owners and Internet service providers to police and enforce intellectual property rights. An informed understanding of this legislatively intended shared responsibility is especially important in this case, where the unique business model utilized by YouTube – deriving advertising revenue from user-generated content – was not in existence, or even contemplated, when the DMCA was crafted. Precisely because YouTube's operations are, at a minimum, very different from the kinds of passive, innocent service provider conduct that was before Congress when it enacted the DMCA, the Court should look to the intent and purpose of Congress. *See*

Costar Group, Inc. v. LoopNet, Inc., 164 F. Supp. 2d 688, 693-94 (D. Md. 2001), *aff'd* 373 F.3d 544 (4th Cir. 2004) (“The world wide web has progressed far faster than the law and, as a result, courts are struggling to catch up. Legislatures and courts endeavor in this growing area to maintain the free flow of information over the Internet while still protecting intellectual property rights. The DMCA is one attempt by Congress to strike the proper balance. Understanding the interplay between basic copyright jurisprudence and the DMCA presents an additional challenge for the courts.”).

In its proposed *amicus curiae* brief WLF presents to this Court an analysis of the important copyright and public policy issues raised by the present motions in the context of the intended purpose of the DMCA. Accordingly, the Washington Legal Foundation respectfully requests leave to file its proposed Brief of *Amicus Curiae* in Support of Plaintiffs in this case.

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