

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WPIX, INC., WNET.ORG, AMERICAN)
BROADCASTING COMPANIES, INC.,)
DISNEY ENTERPRISES, INC., CBS)
BROADCASTING INC., CBS STUDIOS INC.,)
THE CW TELEVISION STATIONS INC.,)
NBC UNIVERSAL INC., NBC STUDIOS, INC.,)
UNIVERSAL NETWORK TELEVISION, LLC,)
TELEMUNDO NETWORK GROUP LLC,)
NBC TELEMUNDO LICENSE COMPANY,)
OFFICE OF THE COMMISSIONER OF)
BASEBALL, MLB ADVANCED MEDIA, INC,)
COX MEDIA GROUP, INC., FISHER)
BROADCASTING-SEATTLE TV, L.L.C.,)
TWENTIETH CENTURY FOX FILM)
CORPORATION, FOX TELEVISION STATIONS,)
INC., TRIBUNE TELEVISION HOLDINGS, INC.,)
TRIBUNE TELEVISION NORTHWEST, INC.,)
UNIVISION TELEVISION GROUP, INC.,)
THE UNIVISION NETWORK LIMITED)
PARTNERSHIP, TELEFUTURA NETWORK,)
WGBH EDUCATIONAL FOUNDATION,)
THIRTEEN, and PUBLIC BROADCASTING)
SERVICE)
)
)
)
)
Plaintiffs,)
)
v.)
)
IVI, INC. and TODD WEAVER)
)
)
Defendants.)

10 Civ. 07415 (NRB)
ECF Case

**MOTION OF NONPARTIES PUBLIC KNOWLEDGE, ELECTRONIC FRONTIER
FOUNDATION, MEDIA ACCESS PROJECT, AND OPEN TECHNOLOGY
INITIATIVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS**

TO ALL PARTIES AND COUNSEL OF RECORD:

Nonparties Public Knowledge, Electronic Frontier Foundation (EFF), Media Access Project, and Open Technology Initiative (a project of the New America Foundation) (collectively, “*Amici*”) hereby move for leave to file the accompanying *amicus curiae* brief in the above-captioned case in support of Defendants’ pending motion opposing the motion for a temporary restraining order and/or preliminary injunction, filed on October 22, 2010. Defendants have consented to the filing of this brief. Plaintiffs do not consent to its filing.

Amici are public interest organizations concerned with maintaining an open, competitive, and diverse communications infrastructure. As the market for commercial video distribution becomes increasingly consolidated, both horizontally and vertically, the wide variety of online video distributors (OVDs) have become one of the preeminent forces for competition in the marketplace, with the potential to lower consumer costs, spur technological innovation, and even promote the deployment of high-speed Internet access to communities it currently does not reach. However, OVDs must be allowed to operate and innovate in this space if their promise is to be fulfilled. Issuing a temporary restraining order or preliminary injunction against ivi would frustrate this potential by effectively shutting down ivi's business. In the meantime, the competitive benefits of this OVD's continued operation would be absent from the market, while the harms Plaintiffs allege from ivi would persist regardless. Given the circumstances, *Amici* respectfully ask that the Court not enjoin ivi's operations pending a full decision on the merits.

Although *amicus* briefs are unusual at the district court level, they are certainly not unprecedented. *Amici* have participated in a number of leading district court cases that address the proper scope of copyright law as applied to new technologies, including before this Court. *See, e.g., Viacom Int’l Inc. v. YouTube Inc.*, No. 07-CV-02103 LLS, 2010 WL 2532404 (S.D.N.Y. June 23, 2010); *Arista Records LLC v. Lime Wire LLC*, No. 06-CV-5936 GEL

(S.D.N.Y. Sept. 30, 2008); *Elektra Enter. Group v. Barker*, 551 F.Supp.2d 234, 237 (S.D.N.Y. 2008). *Amici* have also participated as *amicus curiae* in numerous appellate cases addressing

A description of each of the *Amici* follows:

Public Knowledge is a non-profit public interest 501(c)(3) corporation, working to defend citizens' rights in the emerging digital culture. Its primary mission is to promote innovation, protect the legal rights of all users of copyrighted works, and ensure that any copyright legislation remains balanced and does not slow technology innovation, unduly burden free speech, shrink the public domain, or prevent fair use.

The Electronic Frontier Foundation (EFF) is a nonprofit civil liberties organization that has worked for over 20 years to protect consumer interests, innovation, and free expression in the digital world. EFF and its more than 14,000 dues-paying members have a strong interest in assisting the courts and policy-makers in striking the appropriate balance between copyright law and the public interest.

The Media Access Project (MAP) is a non-profit, public interest law firm and advocacy organization working in communications policy. For over 38 years, MAP has promoted the public interest before the Federal Communications Commission and the U.S. Courts, fighting for an open and diverse communications system that protects freedom of expression, promotes universal and equitable access to media outlets and telecommunications services, and encourages vibrant public discourse on critical issues facing our society.

The Open Technology Initiative of the New America Foundation (OTI) formulates policy and regulatory reforms to support open architectures and open source innovations and facilitates the development and implementation of open technologies and communications networks. OTI promotes affordable, universal, and ubiquitous communications networks through partnerships

with communities, researchers, industry, and public interest groups and is committed to maximizing the potentials of innovative open technologies by studying their social and economic impacts – particularly for poor, rural, and other underserved constituencies. OTI provides in-depth, objective research, analysis, and findings for policy decision-makers and the general public.

For the foregoing reasons and based on the documents submitted herewith, *Amici* respectfully request that the Court grant the motion for leave to file the accompanying *amicus curiae* brief.

Dated: January 31, 2011

By:

/s Jennifer A. Klear, Esq.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 31, 2011, a copy of each of the following documents was served upon the Plaintiffs and Defendants:

1. Notice of Motion and Motion for Leave to File *Amicus Curiae* Brief
2. *Amicus Curiae* Brief of the Public Knowledge, Electronic Frontier Foundation, Media Access Project, and Open Technology Initiative of the New America Foundation in Support of Defendants
3. Rule 7.1 Corporate Disclosure Statement

Service was accomplished via the Court's ECF system. Lead counsel for the parties will also receive a courtesy copy via electronic mail.

/s Jennifer A. Klear, Esq.

Counsel for amici curiae