

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 09-1090

IN RE: SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS, INC.; ATLANTIC RECORDING CORPORATION;
ARISTA RECORDS LLC; AND UMG RECORDINGS, INC.

Petitioners

ON PETITION FOR EXTRAORDINARY WRIT TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

District Court Case No. 07-11446-NG (D. Mass.)

(Consolidated with District Court Case No. 03-11661-NG (D. Mass.))

Hon. Nancy Gertner, United States District Judge, presiding

**MOTION OF COURTROOM VIEW NETWORK TO
FILE BRIEF *AMICUS CURIAE* AND ATTACHED ADDENDUM**

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Pursuant to Federal Rule of Appellate Procedure 29 and this Court's January 21, 2009 Order granting expedited briefing, Courtroom View Network ("CVN") respectfully requests permission to file a brief *Amicus Curiae* in *In Re: Sony BMG Music Entertainment, Et. al.*, No. 09-1090, accompanied by an addendum containing unreported authorities and relevant federal district court local rules. Respondent consents to the filing of the Amicus brief, and Petitioners have not yet responded to our request for consent. In support of this Motion, CVN states as follows:

1. *Amicus Curiae*, Courtroom View Network ("CVN"), is an independent media organization that provides unedited, gavel-to-gavel coverage of court proceedings to subscribers over the internet. CVN has covered over 200 proceedings, including trials and some of the most prominent civil litigation in the United States. (Docket #719 [Shin Decl. at ¶ 4]) CVN's purpose is no different than that of the press generally: to provide information about courts and proceedings as accurately as possible. But it does this through the unique emerging opportunities afforded by the internet. CVN's subscribers vary by proceeding—and can include, for example, only parties; interested groups, such as the shareholders of a party; and members of the public, who are CVN subscribers (much like cable or satellite television). (*Id.* at ¶ 3) These stakeholders seek out proceedings,

and CVN provides a particularly effective model to reach members who have the greatest need to obtain accurate and complete information about court proceedings.

2. At the heart of this proceeding is whether the Local Rules of the District of Massachusetts—specifically Local Rule 83.3—permit the continued, deliberate, and judicious evolution of this phenomenon—in *any* case in the District of Massachusetts that stakeholders have a desire to watch. As set forth in its brief, CVN seeks to persuade this Court that it should not, and indeed *may* not, construe Local Rule 83.3 to bar cameras in all adversarial proceedings.

3. Rule 83.3 creates two exceptions to the general prohibition in the Rule. One exception is for activity “specifically provided for in these rules,” and the second is for activity permitted by “order of the court.” Petitioners’ argument that the phrase “by order of the court” is limited to only those activities set forth in one subsection of the Rule (subsection c), is flawed because it: (1) reads language into the Rule that is not there; (ii) renders superfluous language that is there; (iii) ignores language from analogous rules that do unambiguously bar cameras from adversarial proceedings; and (iv) makes absolutely no sense because it renders impermissible routine uses of audio-visual technology that take place every

day in adversarial proceedings. These routine uses include the use of security cameras in courtrooms, media overflow rooms, and conference calls (video or otherwise).

4. CVN has a unique and valuable perspective to offer this Court as an *Amicus Curiae* in interpreting Rule 83.3. CVN has extensive experience recording and broadcasting from various courtrooms around the country, including the federal district courts in the Southern and Eastern District of New York. As a result, it is thoroughly familiar with the various local rules governing the coverage of adversarial proceedings (including Local Rule 83.3), and how those rules have been applied in other jurisdictions that permit recording and broadcasting of adversarial proceedings (such as the Southern and Eastern Districts of New York).

5. This perspective is helpful not only in interpreting Local Rule 83.3, but also addressing many of the concerns raised by Petitioners regarding the consequences of granting district judges the discretion to permit coverage of adversarial proceedings. CVN has witnessed first hand how judges use this discretion, and can represent to this Court that it is done carefully, somberly and with close attention to protecting the rights of the parties and the administration of justice. Petitioners are simply wrong to

posit a flood of applications by media entities to broadcast judicial proceedings.

6. Finally, Petitioners have denounced CVN as conspiring with “Defendant and his counsel.” (Petition for Writ of Mandamus or Prohibition at 6) CVN has a direct interest in rebutting this reckless and unfounded rhetoric. CVN is a completely neutral provider of unedited, gavel-to-gavel coverage of court proceedings. CVN has no interest in the outcome of the underlying case—indeed CVN did not even appear below and does not necessarily agree with the conditions enumerated by the Court for providing coverage. What CVN does possess is a strong interest in ensuring the proper interpretation of Rule 83.3.

CONCLUSION

Wherefore, CVN respectfully requests this Court grant it permission to file a brief *Amicus Curiae*, along with an addendum, in this case. The addendum consists of unreported decisions as well as relevant District Court local rules cited in the Amicus brief.

Dated: January 29, 2009

Respectfully submitted,

COURTROOM VIEW NETWORK

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served by hand delivery upon the following:

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Dated this 29th day of January 2009 at 3:00 pm.


