

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 PROPOSED *AMICUS CURIAE*
COURTROOM VIEW NETWORK FOR ORAL ARGUMENT AND
PERMISSION TO PARTICIPATE IN ORAL ARGUMENT**

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Pursuant to Rule 27 and Rule 34 of the Federal Rules of Appellate Procedure, proposed *Amicus Curiae* Courtroom View Network (“CVN”) hereby moves this Court to order oral argument in *In Re: Sony BMG Music Entertainment, Et. al.*, No. 09-1090, and to permit CVN to participate in such oral argument. In support of this Motion, CVN states as follows:

1. The Petition for Writ of Mandamus or Prohibition (“Petition”) raises the issue of whether Local Rule 83.3 provides district judges in the District of Massachusetts with the discretion to authorize broadcasting and recording of adversarial proceedings by “order of the court.” As noted in this Court’s January 21, 2009 Order setting expedited briefing, the Petition raises “substantial and novel questions” that are likely to “recur in this setting and other settings” and involve the “public interest.” Given the novelty of these issues, and their importance to both court administration and the public generally, the decisional process would benefit from oral argument.

2. 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.

3. CVN should be permitted to participate in oral argument because it has both a unique interest in this case, and a valuable perspective to offer this Court that is not shared by any of the other parties to this proceeding. *See Massachusetts Food Ass'n v. Massachusetts Alcoholic Beverages Control Com'n*, 197 F.3d 560, 567 (1st Cir. 1999) (“[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers, and the amici can easily seek a larger allotment of pages or time to participate in oral argument.”) CVN's entire business focus is on providing unedited, gavel-to-gavel coverage of court proceedings to its subscribers over the internet. If this Court interprets Rule 83.3 in the manner (erroneously) urged by the Petitioners, CVN will be

prohibited from recording and broadcasting any adversarial proceedings in the District of Massachusetts. As a result, CVN has a powerful interest in the proper interpretation of Rule 83.3, not only for this case, but for future proceedings.

4. CVN's proposed brief is also the central exposition of the reasons the Petition has incorrectly construed Rule 83.3 and its purport. It would add materially to any oral argument on the question of whether the Court properly exercised authority under the Rule.

5. CVN also 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). This perspective is helpful not only in interpreting Local Rule 83.3, but also addressing many of the concerns raised by the Petitioners regarding the consequences of granting district judges in Massachusetts the discretion to permit coverage of adversarial proceedings.

6. Finally, while CVN is not a party to the underlying litigation, the Petition accuses CVN of being in league with “Defendant and his counsel” (Petition at 6) and as lacking the “required neutrality” and “genuine interest in the proceedings.” (Petition at 25) These accusations directly challenge CVN’s role as a neutral and independent media provider. CVN should be given the opportunity at oral argument to respond to them.

CONCLUSION

Wherefore, proposed *Amicus Curiae* CVN respectfully requests that this Court order oral argument and permit CVN to participate in this argument.

Dated: January 29, 2009

Respectfully submitted,

COURTROOM VIEW NETWORK

By Its Attorneys,

A handwritten signature in black ink, appearing to be 'JS', written over a horizontal line.

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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.


