

MOTION INFORMATION STATEMENT

Docket Number(s): 16-3830 Caption [use short title] _____

Motion for: an extension of time for Appellant United States to file its brief United States of America v. Broadcast Music, Inc.

Set forth below precise, complete statement of relief sought:
A ninety day extension of time, from February 17 to May 18, 2017, for Appellant United States to file its opening brief.

MOVING PARTY: United States OPPOSING PARTY: Broadcast Music, Inc.
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Robert J. Wiggers OPPOSING ATTORNEY: Atara Miller
[name of attorney, with firm, address, phone number and e-mail]

U.S. Department of Justice, Washington, DC Milbank, Tweed, Hadley & McCloy LLP
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Court-Judge/Agency appealed from: Judge Louis L. Stanton

Please check appropriate boxes:
Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____
Opposing counsel's position on motion:
 Unopposed Opposed Don't Know
Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: /s/ Robert J. Wiggers Date: Feb. 3, 2017 Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellant,

v.

BROADCAST MUSIC, INC.,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(Honorable Louis L. Stanton)

UNOPPOSED MOTION OF THE UNITED STATES OF AMERICA
FOR AN EXTENSION OF TIME TO FILE BRIEF

Appellant United States hereby moves for an extension of ninety days to file its opening brief in this case. The brief is currently due on February 17, 2017. The extension would make it due on May 18, 2017. Appellee Broadcast Music, Inc. consents to this motion.

The appeal raises a significant issue. Broadcast Music, Inc. (“BMI”), and the American Society of Composers, Authors and Publishers (“ASCAP”) are the two largest performing rights organizations in the United States, and most American music writers

and publishers belong to one or the other. They provide the licenses for the public performance of most music heard on television, radio and the internet, and in public places like restaurants and fitness clubs. And both have been subject to antitrust consent decrees since 1941, with various amendments. The current dispute arises from an investigation conducted by the United States from 2014 to 2016, and its Closing Statement in which it expressed its conclusion that the decrees require BMI and ASCAP to provide licenses that give licensees the full and immediate right to perform all the works in their repertoires. BMI sought a declaratory order from the district court that, with respect to works with multiple co-owners not all of whom belong to BMI, BMI could provide “fractional licenses” which would have to be combined with licenses from others to allow the public performance. The district court agreed, and the United States is seeking review of that decision.

This appeal raises important issues concerning a consent decree that governs much of the licensing for the public performance of musical works in the United States. The United States respectfully requests a ninety-day extension of time, to and including May 18, 2017, in which to file its opening brief. The requested extension is necessary to allow new

leadership in the Department of Justice adequate time to familiarize themselves with the issues and review the brief before it is filed.

Appellee's counsel has authorized us to state that BMI consents to this extension motion.

Respectfully submitted,

/s/ Robert J. Wiggers

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February 3, 2017