

The Honorable James L. Robart

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MICROSOFT CORPORATION,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF  
JUSTICE, and LORETTA LYNCH, in her  
official capacity as Attorney General of the  
United States,

Defendants.

No. 2:16-cv-00538-JLR

**STIPULATED MOTION OF AMAZON.COM,  
BOX, CISCO SYSTEMS, DROPBOX,  
EVERNOTE, GOOGLE, LINKEDIN,  
PINTEREST, SALESFORCE, SNAPCHAT,  
AND YAHOO FOR LEAVE TO  
PARTICIPATE AS AMICI CURIAE IN  
SUPPORT OF MICROSOFT CORPORATION**

**Noted on Motion Calendar:  
September 2, 2016**

1 Amazon.com, Inc.; Box, Inc.; Cisco Systems, Inc.; Dropbox, Inc.; Evernote Corporation;  
2 Google Inc.; LinkedIn Corporation; Pinterest, Inc.; salesforce.com, inc.; Snapchat, Inc.; and  
3 Yahoo! Inc. hereby move for leave to participate as *amici curiae* in support of Microsoft  
4 Corporation in this litigation. A proposed brief is attached. Neither party opposes this motion.  
5 In support of their motion, movants state:

6 1. Microsoft seeks a declaration that two provisions of the Stored Communications  
7 Act—18 U.S.C. §§ 2703 and 2705(b)—are unconstitutional under the First and Fourth  
8 Amendments to the U.S. Constitution. Microsoft’s lawsuit raises vitally important legal  
9 questions about the scope of the government’s power both to search the private information that  
10 internet users store in the cloud without notifying the target of the search and to prohibit a  
11 provider of cloud computing services from informing a customer that her information has been  
12 searched.

13 2. District courts have inherent authority to permit non-parties to participate as *amici*  
14 *curiae* in a case and broad discretion in deciding whether to permit *amicus* briefs. *See Hoptowit*  
15 *v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). “District courts may consider amicus briefs from  
16 non-parties ‘concerning legal issues that have potential ramifications beyond the parties directly  
17 involved or if the amicus has unique information or perspective that can help the court beyond  
18 the help that the lawyers for the parties are able to provide.’” *Skokomish Indian Tribe v.*  
19 *Goldmark*, 2013 WL 5720053, at \*1 (W.D. Wash. Oct. 21, 2013) (Robart, J.) (quoting *NGV*  
20 *Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005))  
21 (some internal quotation marks omitted). Generally speaking, “courts have exercised great  
22 liberality in permitting an amicus curiae to file a brief in a pending case.” *In re Roxford Foods*  
23 *Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp.  
24 608, 620 (E.D. La. 1990)). A brief will typically be accepted if it is “timely and useful.”  
25 *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (internal quotation  
26 marks omitted). Movants’ brief is both.

27 3. First, movants’ brief is timely because it is filed on September 2, 2016, the date  
28 set for *amicus* submissions in this Court’s scheduling order of June 14, 2016. Dkt. 26 ¶ 5; *see*

1 also Dkt. 42, at 2-3 (Aug. 23, 2016) (reiterating September 2 deadline for parties seeking to file  
2 an *amicus curiae* brief related to Defendants' pending motion to dismiss); *cf.* Fed. R. App. P.  
3 29(e) ("An *amicus curiae* must file its brief . . . no later than 7 days after the principal brief of the  
4 party being supported is filed."). Movants' brief also complies with the page limit set forth in  
5 the Court's order of August 15, 2016 (Dkt. 40), because it does not exceed 12 pages in length,  
6 half the allowance for Microsoft's brief opposing Defendants' motion to dismiss. *See* W.D.  
7 Wash. Local Rule 7(e)(3); *cf.* Fed. R. App. P. 29(d).

8 4. Second, movants' brief is useful. This case presents legal questions that have  
9 ramifications beyond the parties directly involved, and movants' brief offers unique information  
10 and insight on those questions. In particular, movants provide a unique perspective as leading  
11 technology companies that provide cloud computing services to the public. Movants collectively  
12 respond to tens of thousands of government requests for user data pursuant to the Stored  
13 Communications Act each year. Movants have also been subject to nondisclosure orders under  
14 § 2705(b) and will likely be subject to many more such orders in the future unless § 2705(b) is  
15 declared unconstitutional. Movants' brief focuses on legal issues that have potential  
16 ramifications for the fundamental rights of entities beyond the parties directly involved in this  
17 litigation—including movants themselves, other providers of cloud computing services, and  
18 hundreds of millions of people who store private information in cloud accounts. Movants thus  
19 believe that the Court will benefit from the unique perspective and helpful information offered  
20 by their brief.

21 5. Movants have conferred with counsel for Microsoft and Defendants regarding this  
22 motion. The parties have consented to movants' participation as *amici curiae*.

23 For the foregoing reasons, the motion should be granted.

24 DATED: September 2, 2016

Respectfully submitted,

HOGAN LOVELLS US LLP

By:           s/ Neal Kumar Katyal          

Neal Kumar Katyal

Attorney for *Amici Curiae*

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED September 2, 2016.

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