

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2009-SC-000043

COMMONWEALTH OF KENTUCKY,
ex rel. J. MICHAEL BROWN, SECRETARY
JUSTICE AND PUBLIC SAFETY CABINET

APPELLANT

v.

INTERACTIVE MEDIA ENTERTAINMENT
& GAMING ASSOCIATION, INC., et al.

APPELLEES

MOTION TO SUPPLEMENT THE RECORD ON APPEAL

Appellee Interactive Media Entertainment & Gaming Association, Inc. ("iMEGA"), by counsel, respectfully moves this Court to supplement the record on appeal in this action.

This appeal has been taken from original actions in the Court of Appeals, which arose from an action brought by Appellant in Franklin Circuit Court. Three items from the record of the circuit court are not found in the record on appeal in the possession of the Clerk of the Court of Appeals, 2008-CA-002000. Appellee iMEGA believes that these three items are necessary in order for it to make a full response to the Brief of the Appellant. The three items are appended to the Brief of Appellee iMEGA, filed along with this Motion, as Appendix A through Appendix C. Those items and the grounds for their admission as supplements to the record are as follows:

Appendix A—The video tape of the closed, *ex parte* hearing conducted by the circuit court on September 18, 2008. The Appellant's Brief to this Court references and quotes testimony from the *ex parte* hearing. (*See, e.g.*, Appellant's Br. at 9-10.) The brief of Appellee iMEGA, filed along with this motion, also cites to testimony during the

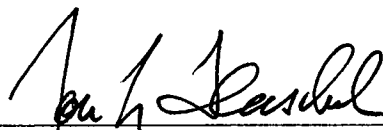
closed hearing. The hearing, which lasted one hour and 18 minutes, was a critical event in the circuit court case. iMEGA believes access to the videotape would be helpful to this Court in understanding many facts that are at the heart of this appeal.

Appendix B—iMEGA's Motion to Dismiss filed in the circuit court on September 26, 2008. Admission of the motion will assist the Court in understanding the progress of the case in circuit court.

Appendix C—iMEGA's Memorandum in Support of its Motion to Dismiss, filed in the circuit court October 3, 2008. Admission of the memorandum will assist the Court in understanding the progress of the case in circuit court.

When an appeal arises from an original action before the Court of Appeals, there is no vehicle within the rules for automatic inclusion of the complete circuit court record in the record on appeal to this Court. In order for it to completely respond to the Appellant's brief, and to present this Court with events as they transpired in the circuit court, iMEGA moves that this Court supplement the record on appeal by admitting Appellee's Appendix items A, B and C into the record.

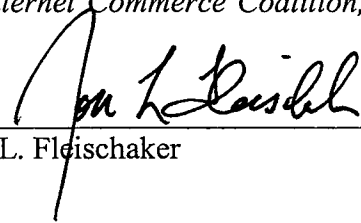
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that copies of this Motion were served upon the following named individuals by U.S. Mail on this 27th day of May, 2009: Sam Givens, Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Thomas Wingate, Judge, Franklin Circuit Court, P.O. Box 40601-0678, Frankfort, KY 40601-0678; D. Eric Lycan, William H. May, III, William C. Hurt, Jr., Aaron D. Reedy, Hurt, Crosbie & May, PLLC, 127 W. Main Street, Lexington, KY 40507, and Robert M. Foote, Foote, Meyers, Mielke & Flowers, LLC, 28 North First Street, Suite 2, Geneva, IL 60134, *Counsel for Appellant Commonwealth of Kentucky*; John L. Tate, Ian T. Ramsey, Joel T. Beres, Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, KY 40202, Bruce F. Clark, Stites & Harbison, PLLC, 421 West Main Street, Frankfort, KY 40601, and A. Jeff Ifrah, Jerry Stouck, Greenberg Traurig LLP, Suite 1000, 2101 L Street, N.W., Washington, DC 20037, *Counsel for Interactive Gaming Council and vicsbingo.com*; William E. Johnson, Johnson, True & Guarnieri, LLP, 326 West Main Street, Frankfort, KY 40601, Patrick T. O'Brien, Greenberg Traurig LLP, 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301, and Kevin D. Finger, Paul D. McGrady, Greenberg Traurig LLP, 77 West Wacker Drive, Suite 2500, Chicago, IL 60601, *Counsel for playersonly.com, sportsbook.com, sportsinteractive.com, mysportsbook.com, and linesmaker.com*; P. Douglas Barr, Palmer G. Vance II, Alison Lundergan Grimes, Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, KY 40507, *Counsel for goldenpalace.com and goldencasino.com*; Lawrence G. Walters, Weston, Garrou, Walters & Mooney, 781 Douglas Avenue, Altamonte Springs, FL 32714, *Counsel for goldenpalace.com*; Charles M. Pritchett, Jr., Bart L. Greenwald, Joshua T. Rose, Frost Brown Todd LLC, 400 West Market Street, 32nd Floor, Louisville, KY 40202-3363, *Counsel for Amicus Curiae Poker Players Alliance*; Michael R. Mazzoli, Cox & Mazzoli PLLC, 600 West Main Street, Suite 300, Louisville, KY 40202, and Timothy B. Hyland, Jason M.A. Twining, Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, PC, 25 West Middle Lane, Rockville, MD 20850, *Counsel for Amicus Curiae Network Solutions, LLC*; Laura D'Angelo, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507-1746, and Daniel G. Dougherty, eBay Inc., 2065 Hamilton Avenue, San Jose, CA 95125, *Counsel for Amicus Curiae eBay Inc.*; David A. Friedman, General Counsel, William E. Sharp, ACLU of Kentucky, 315 Guthrie Street, Suite 300, Louisville, KY 40202, Matthew Zimmerman, Senior Staff Attorney, Electronic Frontier Foundation, 454 Shotwell Street, San Francisco, CA 94110, and John B. Morris, Jr., General Counsel, Center for Democracy and Technology, 1634 I Street NW, Suite 1100, Washington, DC 20006, *Counsel for Amici Curiae The Electronic Frontier Foundation, The Center for Democracy and Technology, The American Civil Liberties Union of Kentucky, The Media Access Project, The United States Internet Industry Association, The Internet Commerce Coalition, and The Internet Commerce Association.*



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