

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FUBOTV INC. and FUBOTV MEDIA INC.,

Plaintiffs,

-against-

THE WALT DISNEY COMPANY, ESPN,
INC., ESPN ENTERPRISES, INC., HULU,
LLC, FOX CORPORATION, and WARNER
BROS. DISCOVERY, INC.,

Defendants.

Civil Action No. 24-cv-1363-MMG-JW

**MOTION OF SPORTS FANS
COALITION, AMERICAN ECONOMIC
LIBERTIES PROJECT, THE
ELECTRONIC FRONTIER
FOUNDATION, OPEN MARKETS
INSTITUTE, AND PUBLIC KNOWLEDGE
FOR LEAVE TO FILE BRIEF AS AMICI
CURIAE IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Sports Fans Coalition (SFC), American Economic Liberties Project (AELP), the Electronic Frontier Foundation (EFF), Open Markets Institute (OMI), and Public Knowledge (PK) respectfully move this Court for leave to file the accompanying brief as *amici curiae* in support of Plaintiffs' Motion for Preliminary Injunction ("PI"). Counsel for the parties have been consulted regarding this motion. Plaintiffs consent to this motion. Defendants, however, oppose this motion.

INTRODUCTION

Amici are five organizations devoted to advocacy on behalf of consumers and the public interest in the context of antitrust policy and litigation, as well as other issue areas. *Amici* are uniquely positioned to opine on this motion for a preliminary injunction given their expertise on antitrust law. In addition, *amici* have relevant expertise in how anticompetitive mergers and conduct cause harm to consumers and the public interest. Consumers whose interests *amici* represent, and advocate on behalf of, would be adversely affected if this Court were to deny Plaintiffs' motion for a preliminary injunction.

LEGAL STANDARD

District Courts enjoy “broad discretion to grant or deny an appearance as *amicus curiae* in a given case.” *Johnson v. United States*, No. 24-CV-872 (DEH), 2024 U.S. Dist. LEXIS 81259, at *2 (S.D.N.Y. May 2, 2024). A court’s consideration of the propriety to permit an appearance as *amici curiae* is guided by determining whether such submissions “are of aid to the court and offer insights not available from the parties.” *Id.* Courts within the Southern District of New York generally employ a liberal application of that standard. *See, e.g., Cruz v. Decker*, No. 18-CV-9948 (GBD) (OTW), 2019 U.S. Dist. LEXIS 58247, at *2 (S.D.N.Y. Apr. 4, 2019) (granting motion to file *amicus* brief despite Court finding that “some of its case law analysis may be repetitive of the Petitioner’s brief.”); *see also United States v. Yaroshenko*, 86 F. Supp. 3d 289, 290-91 (S.D.N.Y. 2015) (explaining that *amici curiae* are appropriate when they offer a “fresh perspective on an unsettled question of law,” even if parties have already partially addressed those questions).

STATEMENT OF INTEREST

Amici have deep knowledge and expertise in the issues facing this Court and are well suited to provide advice “concerning legal issues that have potential ramifications beyond the parties directly involved” given their roles as groups that advocate on behalf of consumers and the public interest. *Cf. NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (granting opposed motion to file *amicus* brief by Native American tribe).

SFC is a grassroots, fan-driven sports advocacy organization that represents sports fans wherever public policy impacts the games people love. Established in 2009, SFC is the largest fan-oriented consumer group with advocates that transcend geographic, demographic, socio-economic, and political boundaries. SFC's Board of Directors includes a former member of the

U.S. women's Olympic soccer team; a sports writer; a former corporate CEO; and the CEO of a non-profit consumer advocacy group, among others. SFC has an engaged digital community of fan activists who are deeply concerned with issues of access to sports programming and the affordability of sports media more broadly.

AELP is an independent nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States. AELP organizes and employs a diverse set of leading policy experts in a wide range of areas impacted by concentrated power that include digital media and the technology industry, private equity, airlines, and healthcare. AELP advocates for policies that address today's crisis of concentration through legislative efforts and public policy debates.

EFF is a non-profit civil liberties organization with tens of thousands of dues-paying members. EFF has worked for over 30 years to ensure that technology supports freedom, justice, and innovation for all people of the world. EFF and its members have an interest in ensuring that the public receives all the benefits of robust competition in high-tech markets, including the ability to choose, curate, and engage with media through a diverse array of technologies that put users' interests first.

OMI is a non-profit organization dedicated to promoting fair and competitive markets. It does not accept any funding or donations from for-profit corporations. Its mission is to safeguard our political economy from concentrations of private power that undermine fair competition and threaten liberty, democracy, and prosperity. OMI regularly provides expertise on antitrust law and competition policy to Congress, federal agencies, courts, journalists, and members of the public.

PK is a nonprofit technology policy organization that promotes freedom of expression, an open Internet, access to affordable communications tools and creative works, and a competitive media marketplace. As part of that mission, PK advocates on behalf of consumers, including sports fans, supporting policies that promote competition and open markets.

Amici have limited bandwidth and resources. But once these groups understood they could work together to share their unique expertise and experience with the court for the benefit of the public interest, *amici* acted quickly to draft this brief and accompanying motions, recruit further amici, and file this motion. *See, e.g., Andersen v. Leavitt*, No. 03-cv-6115 (DRH)(ARL), 2007 WL 234672, at *5, *6 (E.D.N.Y. 2007) (accepting amicus's motion for leave to file five months after motion to dismiss briefing concluded, despite objections about its timeliness, as amicus discovered the lawsuit late but acted quickly and the motion did not cause unnecessary delay).

CONCLUSION

This Court should grant *amici* leave to file the attached brief in support of Plaintiffs' motion for injunctive relief.

Respectfully submitted,

/s/ Amanda G. Lewis
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August 2, 2024

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this second day of August 2024, a true and correct copy of the foregoing was filed with the Clerk of the United States District Court for the Southern District of New York via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Amanda G. Lewis
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Counsel for *Amici Curiae*