

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

AMERICAN CHEMICAL
SOCIETY,

Plaintiff,

v.

SCI-HUB HUB d/b/a WWW.SCI-
HUB.CC, JOHN DOES 1-99,

Defendants.

Civil Action No. 1:17cv0726 (LMB)

**MEMORANDUM IN SUPPORT OF MOTION OF CCIA FOR LEAVE TO FILE A BRIEF
AS *AMICUS CURIAE* IN SUPPORT OF OBJECTIONS TO MAGISTRATE JUDGE’S
PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS**

The Computer and Communications Industry Association (“CCIA” or “Amicus”), by counsel, pursuant to Local Rule 7(F) submits this Memorandum in Support of the Motion of CCIA for Leave to File a Brief as *Amicus Curiae*. CCIA is an industry association representing more than 20 large, medium-sized, and small companies in the high technology products and services sectors, including companies that provide a broad range of online services to billions of people around the world. A list of CCIA members, including a number of providers that could be swept up in the proposed overbroad injunction in this case, is available at <https://www.ccianet.org/members>.

CCIA has reviewed the docket and filings in this case, including Plaintiff’s Motion for Default Judgment [Dkt. No. 16], Memorandum in Support re motion for Default Judgment [Dkt. No. 17], and Proposed Findings of Fact and Recommendations [Dkt. No. 22]. CCIA notes that, because no Defendant has appeared, the Plaintiff’s Proposed Findings of Fact and Recommendations stood

unopposed in consideration by the Court. As those Proposed Findings and the Report and Recommendation of Magistrate Judge Andersen implicate critical issues not fully briefed or addressed, CCIA submits that its Brief as *Amici Curiae* would assist the Court.

In particular, CCIA submits that the recommended injunction purports to bind entities, including unnamed entities, who have not been represented in this matter, who bear no liability or relationship to the accused defendants, and in a way that runs counter to the permissible bounds of injunctive relief. Specifically, the recommended injunction seeks to bind “those in privity with Defendants and those with notice of the injunction, including any Internet search engines, web hosting and Internet service providers” (hereafter, Neutral Service Providers). As explained in the accompanying proposed Brief of *Amicus Curiae*, Federal Rule of Civil Procedure 65(d)(2)(C) does not allow an injunction against nonparty Neutral Service Providers or similar online services that are not working “in active concert or participation” with Defendants. As further explained by CCIA, the proposed injunction would also circumvent the safe harbors of the Digital Millennium Copyright Act (DMCA), which place clear limits on the scope of injunctive relief available against search engines and similar services. Finally, the proposed injunction is impermissibly overbroad and ambiguous, to the detriment of the due process rights of CCIA and its members, who have not been given the opportunity to appear in this matter.

Because these important issues have not been brought to the Court’s attention by Plaintiff and no Defendant has appeared, CCIA urges the Court to grant this Motion and accept its Brief as *Amicus Curiae* and the relief requested in it, including specifically to reject the recommended injunction as it would extend to Neutral Service Providers. CCIA further respectfully request that the Brief be deemed filed on October 12, 2017, the date the Court has designated as the last date for parties to file objections to the Magistrate Judge’s Report and Recommendations.

Dated: October 12, 2017

Respectfully submitted,

/s/ Veronica S. Ascarrunz

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CERTIFICATE OF SERVICE

I certify that on October 12, 2017, I will electronically file the **Memorandum in Support of Motion of CCIA for Leave to File a Brief as *Amicus Curiae* in Support of Objections to Magistrate Judge's Proposed Findings of Fact and Recommendations** with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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Dated: October 12, 2017

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