

Kelley Drye Files Amicus Brief on Behalf of California Broadcasters Association for Ninth Circuit Court Review of *Garcia v. Google*

April 14, 2014

Kelley Drye filed an amicus brief on behalf of the California Broadcasters Association (the "CBA"), seeking rehearing *en banc* of the Ninth Circuit Court's Opinion in *Garcia v. Google*, 743 F.3d 1258 (9th Cir. 2014).

In that opinion, dated February 26, 2014, the Court found that actress Cindy Lee Garcia, Plaintiff-Appellant in the case, likely owns a separate copyright in her brief performance within the film "Innocence of Muslims."

The CBA's amicus brief respectfully disagrees, contending that the panel's majority decision conflicts with the Copyright Act, well-established Ninth Circuit precedent, and the Copyright Office's longstanding practices, and creates uncertainty for entertainment companies, many of which reside in the Ninth Circuit.

Permitting individual performances to be copyrightable, the brief states, would leave content broadcasters, exhibitors, and distributors little choice but to demand the right to edit individual performances out of works, most likely over the vehement protests of creators of the work as a whole, and to demand copies of every release, license, or work-for-hire agreement before making the work available to the public. That burden, compounded by the dramatically increased risk of meritless copyright litigation initiated by performers, would stifle the creativity that the Copyright Act serves to foster.

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