UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AIRBNB, INC., *Plaintiff*, v. THE CITY OF NEW YORK *Defendants*.	1:18-cv-07712
HOMEAWAY.COM, INC., *Plaintiff*, v. THE CITY OF NEW YORK *Defendants*.	1:18-cv-07742

NOTICE OF NETCHOICE'S MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFF AIRBNB, INC.'S AND HOMEAWAY.COM REQUEST FOR INJUNCTIVE RELIEF

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NetChoice respectfully moves for leave to file the accompanying *amicus curiae* brief (attached hereto as Exhibit A) in support of Plaintiff Airbnb, Inc. ("Airbnb") and HomeAway.com, Inc.'s Motions seeking a Court Order that preliminary enjoins the Homesharing Surveillance Ordinance (the "Motion"). Airbnb has consented to the filing of this brief. HomeAway.com has consented to the filing of this brief. The City of New York, which has notice of the brief's topics, has consented to its filing on condition that it is afforded two weeks to respond. *See* Exhibit B. *Amicus* has no objection to the City's request and have so indicated. *Id*.

THE LEGAL STANDARD

"District Courts have broad discretion to permit or deny the appearance of amici curiae in a given case." *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992). "An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties area able to provide." *Automobile Club N.Y. Inc. v. Port Authority of N.Y. & N.J.*, No. 11-cv-6746-RJH, 2011 U.S. Dist. LEXIS 135391 *2 (S.D.N.Y. Nov. 22, 2011) (quotations omitted). "The court is most likely to grant leave to appear as an amicus curiae in cases involving matters of public interest." *Andersen v. Leavitt*, No. 3-cv-6115-DRH-ARL, 2007 U.S. Dist. LEXIS 59108, at *7 (E.D.N.Y. Aug. 13, 2007).

INTEREST OF THE *AMICUS CURIAE* AND ARGUMENT

As detailed in the accompanying brief, NetChoice is a national trade association of e-commerce and online businesses who share the goal of promoting convenience, choice, and commerce on the Internet. For over a decade, NetChoice has worked to increase consumer

access and options via the Internet, while minimizing burdens on small businesses that are making the Internet more accessible and useful.

Based on this background and NetChoice's experience in the area of online privacy and e-commerce, *amicus* is able to provide information that is important to the Court's consideration of how this federal statute applies to City's law and causes of action like those at issue in this case.

The *Amicus* has a unique perspective on the issues the Motion presents, especially since it has enacted privacy policies that: (1) govern the digital collection and use of their users' data, and (2) strive to ensure that customers are aware of what safeguards are in-place to protect sensitive information from the threat of unwanted disclosure. Its points are not duplicative of those the parties have presented, and can be of significant assistance to Court.

The Motion squarely implicates matters of public interest by presenting the question of the power of the Government via Local Law 2018/146, N.Y. City Admin Code § 26-2101 to overcome privacy protections enshrined in the U.S. Constitution and federal and state privacy laws. In doing so, Local Law 146 engages in warrantless compulsion of online business to disclose personal information of New York citizens to the government. *Amicus* offers its own distinct views of why the Court should grant Airbnb and HomeAway.com's motion and preliminary enjoin the Homesharing Surveillance Ordinance.

Amicus has a strong and direct interest in this question. Specifically, *amicus* recognizes the importance in maintaining trust in the online ecosystem and that Local Law 146 erodes that trust. As NetChoice is designed to prevent barriers to e-commerce, such a loss of trust between customers and online businesses represents a significant barrier to the successful operation of online platforms and is at interest to *Amicus*.

CONCLUSION

For all reasons, and those set forth more fully in the proposed *amicus* brief, *Amicus* requests that the Court grant its leave to file its brief.

DATED: October 1, 2018

Respectfully submitted,

NETCHOICE

By: /s/ Carl Szabo

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HOMEAWAY.COM, INC., *Plaintiff*, v. THE CITY OF NEW YORK *Defendants*.	1:18-cv-07742

BRIEF OF NETCHOICE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS AND AFFIRMANCE

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), *Amicus Curiae* NetChoice is a trade association which has no parent corporation and no corporation owns 10% or more of its stock.

Dated: October 1, 2018

/s/ Carl Szabo
Carl Szabo
Attorney for Amicus Curiae
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Privacy Policy, NYC.gov (last visited September 27, 2018), https://www1.nyc.gov/home/privacy-policy.page. 10

INTERESTS OF *AMICUS CURIAE*[1]

NetChoice is a national trade association of e-commerce and online businesses who share the goal of promoting convenience, choice, and commerce on the Internet. For over a decade, NetChoice has worked to increase consumer access and options via the Internet, while minimizing burdens on small businesses that are making the Internet more accessible and useful.

Based on its background and experience, *amicus* is able to provide information that is important to the Court's consideration of how this federal statute applies to City's law causes of action like those at issue in this case.

[1] This brief is submitted pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure with the consent of all parties. No party or party's counsel authored this brief in whole or in part. NetChoice was entirely responsible for funding the preparation and submission of this brief.

INTRODUCTION

Today millions of American consumers and businesses rely on federal and Constitutional privacy protections against disclosure to the government of their online interactions. This includes the protections enshrined in the Fourth Amendment of the United States Constitution, U.S. Const. amend. IV, and the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2510 *et seq.* (2012).

The City of New York's demand that services like HomeAway and Airbnb disclose business records regarding New York citizens' homes pursuant to Local Law 146 is clearly unconstitutional—a violation of the 4th Amendment and the Supremacy Clause of the U.S. Constitution. Moreover, other demands of Local Law 146 violate the First Amendment of the U.S. Constitution and also New York's own privacy laws.

For these and subsequent reasons, we ask the Court to grant the Plaintiff's motion for preliminary injunction.

ARGUMENT

I. THE CITY FAILS TO ADHERE TO ITS OBLIGATION TO RESPECT CITIZENS' RIGHT TO PRIVACY UNDER THE FOURTH AMENDMENT BY FORCING SHORT-TERM RENTAL SERVICES TO DISCLOSE RECORDS PURSUANT TO LOCAL LAW 146.

Government entities may not sidestep their Fourth Amendment obligations by hiding under a façade of an administrative search. *See New York v. Burger*, 482 U.S. 691, 725 (1987) (finding that New York "circumvented the requirements of the Fourth Amendment by altering the label placed on the search" when it "used an administrative search as a pretext to search without probable cause"). However, that is precisely what the City of New York attempts to do in enacting Local Law 146. By forcing short-term rental services like Airbnb and HomeAway to categorically disclose detailed records of guest stays, the City is violating the plaintiffs' Fourth

Amendment protections. Moreover, such forced disclosure of New York City residents' personal information grants the City unprecedented access inside the walls of hosts' homes—a space that decades of Fourth Amendment jurisprudence have established as private. *See, e.g.*, *Kyllo v. United States*, 533 U.S. 27, 37–38 (2001).

The Fourth Amendment of the US Constitution protects "the right of the people to be secure in their persons, houses, papers, and effects . . . against unreasonable searches and seizures," and prohibits searches from occurring unless the government has obtained a proper warrant. U.S. Const. amend. IV; *see also Johnson v. United States*, 333 U.S. 10, 14 (1948) ("When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policemen or Government enforcement agent."). If the City of New York were allowed to evade the Fourth Amendment's warrant requirement by simply enacting an ordinance granting itself unrestricted access into short-term rental owners' private guest records, then what is to stop the City and other government actors from using this false authority to reach into other types of business records? The Fourth Amendment already protects intrusions into citizens' private records, *see, e.g.*, *Los Angeles v. Patel*, 135 S. Ct. 2443, 2452 (2015), and this ordinance erodes that protection. We respectfully urge the court to recognize the City of New York's ordinance as unconstitutional, not only to prevent this breach of privacy, but also to draw a bright line protecting citizens from future warrantless intrusions.

A. The Records Being Disclosed Under Local Law 146 Are Analogous to the Hotel Records in *Patel* and Are Therefore Protected Under the Fourth Amendment.

The Supreme Court recently held that a city ordinance requiring hotel operators to turn over guest records to police officers was unconstitutional. *See Patel*, 135 S. Ct. at 2452 ("Absent an opportunity for precompliance review, the ordinance creates an intolerable risk that search authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and

their guests."). The Court shared the respondent's concern that the ordinance skirted around the Fourth Amendment's warrant requirement. *See id.*; Brief for Respondents at 25–29, *Patel*, 135 S. Ct. 2443 (No. 13-1175). The warrant requirement of the Fourth Amendment resulted from "concern about giving police officers unbridled discretion to rummage at will among a person's private effects." Brief for Respondents at 25–29, *Patel*, 125 S. Ct. 2443 (No. 13-1175) (quoting *Arizona v. Gant*, 556 U.S. 332, 345 (2009)). By leaving the authority to allow a search in the hands of a neutral decisionmaker, and by requiring precise descriptions of places to be searched, a warrant ensures that the government's self-interest cannot get in the way of protecting an individual's right to privacy. *See id.* (citing *Nat'l Treasury Emps. Union v. Von Raab*, 289 U.S. 656, 667 (1989); *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (plurality); *Johnson*, 333 U.S. at 14).

The Court's decision in *Patel* is applicable in the instant case because like the Respondents of *Patel*, short-term rental services like Airbnb are legally able to protect their business and host records. As the United States Chamber of Commerce pointed out as *amicus* in *Patel*, "the compelled inspection of a business's records *always* constitutes a search of property under the Fourth Amendment, which must either be justified by a warrant or subject to one of the limited exceptions to the warrant requirement." Brief for United States Chamber of Commerce as Amicus Curiae Supporting Respondents at 2, *Patel*, 135 S. Ct. 2443 (2015) (No. 13-1175).

The forced disclosure of rental records under Local Law 146 is therefore a Fourth Amendment search. The ordinance plainly does not call for the procurement of a warrant before performing this search. The regulation of short-term rental services is furthermore not necessary for preserving public safety and is thus not exempt from the warrant requirement. *Cf. Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602, 620 (1989) (finding that drug testing

requirements for railroad employees were not subject to the usual warrant requirement); *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 667–68) (1989) (finding that a warrant was not required for drug testing of Customs employees in light of the government's public safety interests)). Finally, *Patel* clarified that the hotel industry is not a "pervasively regulated" industry that would be subject to a diminished expectation of privacy. Short-term rental services, while different from hotels, are likewise entitled to the same treatment by the court. *See Patel*, 135 S. Ct. at 2454–2455. Therefore, the New York City ordinance is also not qualified for any of the exceptions to the warrant requirement under the Fourth Amendment, and the ordinance thus fails to provide a constitutionally adequate protection of privacy.

B. Because of the Data Demanded by the City, Short-term Rental Companies Should Be Afforded an Even Greater Degree of Fourth Amendment Protection than Companies Like the Hotels in *Patel*.

Unlike hotel records, short-term rental services' listings describe the hosts' home and therefore merit an even greater expectation of privacy. Thus, unlike *Patel*, the records being sought by the City are even more sensitive than standard hotel records because these records are about citizens' private homes.

While hotels fall squarely within the "commercial property" category afforded a lower expectation of privacy, *see Burger*, 482 U.S. at 700; *Donovan v. Dewey*, 452 U.S. 594, 598–99 (1981), most listings for short-term rental services are homes—not businesses. The Fourth Amendment right to privacy therefore must be upheld in the short-term rental context because, as the Supreme Court has held, the protection afforded by the Fourth Amendment "applies to commercial premises as well as homes." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978). Short-term rental owners have a reasonable expectation of privacy under the Fourth Amendment for both their business records, as discussed above, and affairs within the confines of the walls of their own homes.

The home has long been afforded particular protection under the Fourth Amendment. *See, e.g.*, *Kyllo v. United States*, 533 U.S. 27, 37–38 (2001). As the Supreme Court reiterated in *Kyllo v. United States*, the Fourth Amendment protects individuals from government intrusion inside the walls of the home. *See id.* (citing *Arizona v. Hicks*, 480 U.S. 321, 324–25 (1987); *Silverman v. United States*, 365 U.S. 505, 512 (1961)) (finding that heat lamps undetectable in plain view were "intimate details because they were details of the home" that should be protected under the Fourth Amendment). New York City's Local Law 146 forces short-term rental services to disclose how and when hosts choose to invite guests into their own homes, and this type of activity is among the "details of the home" that the Fourth Amendment maintains as private.

Consumer trust in e-commerce companies hinges upon the assurance of privacy protection pursuant to the Fourth Amendment. If consumers cannot trust that their personal information will be afforded protections due under the Fourth Amendment, then e-commerce models like Airbnb that depend on consumers trusting them with sensitive information about their home and finances will be rendered unworkable. The City cannot be permitted to cause this harm to e-commerce and thwart the Fourth Amendment's protection of business and home activities.

II. THE FEDERAL STORED COMMUNICATIONS ACT AND ELECTRONIC COMMUNICATIONS PRIVACY ACT PROHIBIT THE DATA DISCLOSURE DEMANDS OF LOCAL LAW 146 AND PREEMPT THE CITY LAW.

By forcing short-term rental services like Airbnb to disclose rental records, New York City violates privacy rights enshrined in federal law. The Federal Stored Communications Act (SCA) and Electronic Communications Privacy Act (ECPA) were passed specifically to prevent the type of warrantless search the City seeks to undertake with the ordinance in question. In particular, the SCA states that "a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication

which is carried or maintained on that service," unless complying with the following provisions for disclosure to a governmental entity:

> **(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—**
>
> (A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or
>
> (B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—
>
> **(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or**
>
> (ii) obtains a court order for such disclosure under subsection (d) of this section;
>
> except that delayed notice may be given pursuant to section 2705 of this title.

Stored Communications Act, 18 U.S.C. §§ 2702(a) (2012); 2703(b) (emphasis added).

The legislative history of ECPA indicates that Congress meant to safeguard privacy in a previously "unprotected [and] important sector of the new communications technologies." H.R. Rep. No. 99-647, at 17. Judge Posner noted, as highlighted in the ECPA House Report, that "[i]n the absence of market discipline, there is no presumption that the government will strike an appropriate balance between disclosure and confidentiality." *Id.* at 19 (internal citation omitted). Furthermore, "the enormous power of the government makes the potential consequences of its snooping far more ominous than those of . . . a private individual or firm." *Id*. ECPA aimed to close these legal gaps that could erode consumer trust in communications technologies and to prevent illicit access to personal information and communications. *See id.* In enacting ECPA, Congress recognized the need to protect citizens against the "gradual erosion of [their] precious

right" to privacy in an age of increasingly advancing technology. *See id.* New York City's ordinance poses precisely the kind of threat that ECPA was enacted to prevent.

A. The City's Forced Consent to Disclosure Doesn't Overcome Stored Communications Act Limitations

The SCA expressly prohibits entities like Airbnb from "knowingly [divulging] a record or other information pertaining to a subscriber or customer . . . to any governmental entity" without the consent of that customer or subscriber. 18 U.S.C. § 2702(a)(3), (b). This prevents Airbnb and HomeAway from disclosing data required by Local Law 146. Moreover, the forced disclosures at the heart of Local Law 146 is clearly preempted by federal law.

The City attempts to sidestep the SCA's consent requirement by forcing platforms to include a description of government disclosure in their terms of service (TOS). However, this attempt to end-run around SCA has already failed repeatedly as multiple courts rejected similar efforts, instead requiring express consent. *See Suzlon Energy Ltd. v. Microsoft Corp*., 671 F.3d 726, 730 (9th Cir. 2011) (declining to recognize "implicit exception to [ECPA]" for any purpose because doing so "would erode the safety of the stored electronic information and trigger Congress' privacy concerns"); *Viacom Int'l, Inc. v. YouTube, Inc*., 253 F.R.D. 256, 264–65 (S.D.N.Y. 2008). Thus, the City's reliance on the government disclosure in the TOS is insufficient to satisfy the consent requirement under the plain language of the SCA.

B. To Allow City's Forced Disclosure Erodes the Core of Stored Communications Act Protections Against Unwarranted Government Intrusion.

The Ninth Circuit said it best: "implicit exception to [ECPA]…would erode the safety of the stored electronic information and trigger Congress' privacy concerns." *Suzlon Energy Ltd.*, 671 F.3d at 730. We agree. If the government can overcome the SCA's consent requirement for government disclosure simply by forcing parties to "consent" via notice embedded in terms of

service, then the way is paved for the government to systematically escape the SCA's consent requirement.

Should the court uphold the City's end-run around SCA and the privacy protections within, it would set a dangerous precedent for government intrusion into the exact kind of privacy that Congress sought in passing the SCA and the privacy that New York citizens expect.

Consider a city seeking to locate illegal immigrants. If the court upholds this SCA override, a city could require that email providers disclose private emails to the government and overcome SCA by mandating consent via acceptance of TOS. Furthermore, this power could be abused for tax collection, location of unflattering information, and lead to a loss of trust in the privacy of our electronic communications. Such an outcome would not only depress our use of this beneficial technology, but would also depress the use of business communications.

Thus, the City's position highlights the need for a bright-line rule ensuring that citizens' privacy rights are not eroded.

III. THE DEFINITION OF "BOOKING SERVICE" IS NOT NARROWLY TAILORED AS REQUIRED UNDER STRICT SCRUTINY.

Forcing platforms to make public statements violates Constitutional protection of free speech rights ensured under the First Amendment. *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). The City's requirement that short-term rental services provide notice of consent is therefore an infringement on fundamental constitutional rights that subject the City's ordinance to strict scrutiny review. The definition of "booking service" as provided by the New York ordinance does not hold up under strict scrutiny. Strict scrutiny requires, *inter alia*, that laws be narrowly tailored toward a specific compelling governmental interest. *See, e.g.*, *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 799 (2011). The ordinance in question here fails under the narrowly tailored prong. Even if there were a

compelling government interest underlying the ordinance, the language defining "booking service" is overly broad. As defined by the ordinance, a "booking service" is:

> A person who, directly or indirectly:
>
> 1. Provides one or more online, computer or application-based platforms that individually or collectively *can be used* to (i) list or advertise offers for short-term rentals, and (ii) either accept such offers, or reserve or pay for such rentals; and
>
> 2. Charges, collects or receives a fee for the use of such platforms or for *provision of any service* in connection with a short-term rental.

N.Y.C., Local Law No. 146, Local Law to Amend the Administrative Code of the City of New York, In Relation to the Regulation of Short-Term Residential Rentals (emphasis added). The open-ended nature of this definition, particularly in regard to language such as "*can* be used" and "provision of *any* service" leaves room for the city to abuse the power it granted itself in the ordinance. Without a narrowly tailored definition of booking service, the city can use this ordinance to gain unfettered access to information that should constitutionally and lawfully be kept private.

IV. THE ORDINANCE VIOLATES NEW YORK'S OWN LAWS PROTECTING PERSONAL INFORMATION.

New York's state constitution incorporates the privacy protections outlined in the Fourth Amendment of the U.S. Constitution. Specifically, section 12 of the New York Bill of Rights restates the Fourth Amendment's protection against unlawful search and seizure. N.Y. Const. art. I, § 12. The New York state legislature has furthermore made it unlawful for "a person, firm or corporation [to use] for advertising purpose, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained written consent of such person." N.Y. Civ. Rights Law § 51. New York state law also defines personal information as "any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can

be used to identify that data subject." N.Y. Pub. Off. Law § 6-A-93 (McKinney 2017). Finally, the City's own privacy policy promises that "[t]he City does not rent or sell personally identifiable information . . . nor would the City exchange or trade such information with third-parties without a user's explicit permission." *Privacy Policy*, NYC.gov (last visited September 27, 2018), https://www1.nyc.gov/home/privacy-policy.page.

This legislative and policy framework indicates that New York values its citizens' rights to keep their personal information private. However, New York City's short-term rental ordinance defies the privacy protections that the state requires and the city has professed to respect. The rental information that must be disclosed under the ordinance is indisputably included in the State's definition of "personal information." While the City claims to respect individuals' right to privacy by assuring it will obtain permission from its own website's users before sharing personal information, it is inconsistent and troubling for the City to force private companies like Airbnb to deny individuals the same respect on their own platforms.

CONCLUSION

For the forgoing reasons, the Court should grant the Plaintiff's motion for preliminary injunction.

Dated: October 1, 2018

/s/ Carl Szabo
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Attorney for Amicus Curiae
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EXHIBIT B

From: **Selvin, Karen (Law)** kselvin@law.nyc.gov
Subject: RE: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742
Date: September 26, 2018 at 4:42 PM
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KS

Counsel,

I'd like to thank Tech:NYC, NetChoice, and the coalition of New York tech companies for responding to my earlier inquiry. Based on your representations, the City will consent to the submission of those 3 amicus briefs on the condition that it is afforded an adequate opportunity to respond to the briefs. The City is requesting 2 weeks for its response. Please let me know if that is acceptable.

As for the Electronic Frontier Foundation, I would welcome you responding to my earlier inquiry about the general topics for your amicus brief. I'm going to be unavailable the rest of this evening, so if you respond tonight, I can let you know the City's position on your request tomorrow.

Thank you.

--Karen

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Subject: Re: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742

Thanks Karen.

The brief of the coalition of New York tech companies will discuss the implications of this type of legislation for principles of privacy, security and transparency in the digital economy and the ability of Government to seek the ongoing assistance of private parties to collect user data.

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On Sep 26, 2018, at 10:53 AM, Selvin, Karen (Law) <kselvin@law.nyc.gov> wrote:

> Before providing its response, the City would appreciate if each group would indicate the general topics of their briefs.
>
> Thank you.
>
> --Karen
>
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From: Jamie Lee Williams [mailto:jamie@eff.org]
Sent: Tuesday, September 25, 2018 7:47 PM
To: Ugalde, Carlos (Law); Selvin, Karen (Law); jdick@gibsondunn.com;

mdenerstein@gibsondunn.com; klinsley@gibsondunn.com; mccarthyj@sullcrom.com; nelless@sullcrom.com; John Quinn; rkaplan@kaplanhecker.com
Cc: Jason Schultz; Julie Samuels; Carl M. Szabo; Ivo Entchev; Michael Rosenbloom; Andrew Crocker; Cynthia Dominguez
Subject: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742

Counsel,

The Electronic Frontier Foundation (EFF), Tech:NYC, NetChoice, and a coalition of New York tech companies (which includes Bigtooth, Intersection, Linden, OfferUp, Postmates, Securonix, and TheGuarantors) each plan to file separate amicus briefs in support of Airbnb and HomeAway in Related Cases Nos. 18-cv-07712 and 18-cv-7742 on Monday, October 1. Please let us know if you consent to the filing of our respective amicus briefs. If possible, we request a response by the end of the day tomorrow, Wednesday, September 26.

Thank you,

Jamie L. Williams | Staff Attorney
Electronic Frontier Foundation | https://www.eff.org
415-436-9333 x164 | jamie@eff.org

From: **Linsley, Kristin A.** KLinsley@gibsondunn.com
Subject: Re: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742
Date: September 25, 2018 at 7:52 PM
To: John Quinn jquinn@kaplanhecker.com
Cc: Jamie Lee Williams jamie@eff.org, cugalde@law.nyc.gov, kselvin@law.nyc.gov, Dick, Joshua D. JDick@gibsondunn.com, Denerstein, Mylan L. MDenerstein@gibsondunn.com, mccarthyj@sullcrom.com, nelless@sullcrom.com, Roberta Kaplan rkaplan@kaplanhecker.com, Jason Schultz lawgeek@gmail.com, Julie Samuels julie@technyc.org, Carl M. Szabo cszabo@netchoice.org, Ivo Entchev ivo@baileyduquette.com, Michael Rosenbloom michael.rosenbloom@eff.org, Andrew Crocker andrew@eff.org, Cynthia Dominguez cynthia@eff.org

HomeAway consents as well.

Kristin Linsley

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
555 Mission Street, San Francisco, CA 94105-0921
Tel +1 415.393.8395 • Fax +1 415.374.8471
KLinsley@gibsondunn.com • www.gibsondunn.com

On Sep 25, 2018, at 4:49 PM, John Quinn <jquinn@kaplanhecker.com> wrote:

> [External Email]
>
> Airbnb consents.
>
> **John Quinn | Kaplan Hecker & Fink LLP**
> 350 Fifth Avenue | Suite 7110
> New York, New York 10118
> (W) 212.763.0886 | (M) 610.952.4726
> jquinn@kaplanhecker.com
>
> **From:** Jamie Lee Williams <jamie@eff.org>
> **Sent:** Tuesday, September 25, 2018 7:47 PM
> **To:** cugalde@law.nyc.gov; kselvin@law.nyc.gov; jdick@gibsondunn.com; mdenerstein@gibsondunn.com; klinsley@gibsondunn.com; mccarthyj@sullcrom.com; nelless@sullcrom.com; John Quinn <jquinn@kaplanhecker.com>; Roberta Kaplan <rkaplan@kaplanhecker.com>
> **Cc:** Jason Schultz <lawgeek@gmail.com>; Julie Samuels <julie@technyc.org>; Carl M. Szabo <cszabo@netchoice.org>; Ivo Entchev <ivo@baileyduquette.com>; Michael Rosenbloom <michael.rosenbloom@eff.org>; Andrew Crocker <andrew@eff.org>; Cynthia Dominguez <cynthia@eff.org>
> **Subject:** Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742
>
> Counsel,
>
> The Electronic Frontier Foundation (EFF), Tech:NYC, NetChoice, and a coalition of New York tech companies (which includes Bigtooth, Intersection, Linden, OfferUp, Postmates, Securonix, and TheGuarantors) each plan to file separate amicus briefs in support of Airbnb and HomeAway in Related Cases Nos. 18-cv-07712 and 18-cv-7742 on Monday, October 1. Please let us know if you consent to the filing of our respective amicus briefs. If possible, we request a response by the end of the day tomorrow, Wednesday, September 26.
>
> Thank you

Thank you,

Jamie L. Williams | Staff Attorney
Electronic Frontier Foundation | https://www.eff.org
415-436-9333 x164 | jamie@eff.org

From: **Carl M. Szabo** cszabo@netchoice.org
Subject: Re: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742
Date: September 27, 2018 at 6:31 PM
To: Ivo Entchev ivo@baileyduquette.com
Cc: Selvin, Karen (Law) kselvin@law.nyc.gov, Jamie Lee Williams jamie@eff.org, Ugalde, Carlos (Law) cugalde@law.nyc.gov, jdick@gibsondunn.com, mdenerstein@gibsondunn.com, klinsley@gibsondunn.com, mccarthyj@sullcrom.com, nelless@sullcrom.com, John Quinn jquinn@kaplanhecker.com, rkaplan@kaplanhecker.com, Jason Schultz lawgeek@gmail.com, Julie Samuels julie@technyc.org, Michael Rosenbloom michael.rosenbloom@eff.org, Andrew Crocker andrew@eff.org, Cynthia Dominguez cynthia@eff.org

NetChoice has no objection.

— sent from mobile device

On Sep 27, 2018, at 6:07 PM, Ivo Entchev <ivo@baileyduquette.com> wrote:

> Thanks Karen.
>
> The coalition of New York tech companies has no objection.
>
> Best,
>
> Ivo
>
> Ivo Entchev | Partner
> **BAILEY DUQUETTE P.C.**
> 100 Broadway 10th Floor
> New York NY 10005
> 646-915-5528
> www.baileyduquette.com
>
>
>
> On Sep 26, 2018, at 4:42 PM, Selvin, Karen (Law) <kselvin@law.nyc.gov> wrote:
>
> > Counsel,
> >
> > I'd like to thank Tech:NYC, NetChoice, and the coalition of New York tech companies for responding to my earlier inquiry. Based on your representations, the City will consent to the submission of those 3 amicus briefs on the condition that it is afforded an adequate opportunity to respond to the briefs. The City is requesting 2 weeks for its response. Please let me know if that is acceptable.
> >
> > As for the Electronic Frontier Foundation, I would welcome you responding to my earlier inquiry about the general topics for your amicus brief. I'm going to be unavailable the rest of this evening, so if you respond tonight, I can let you know the City's position on your request tomorrow.
> >
> > Thanks,

Thank you.

--Karen

Karen B. Selvin
Senior Counsel
Administrative Law Division
New York City Law Department
100 Church Street, Rm. 5-143
New York, New York 10007
kselvin@law.nyc.gov
212-356-2208

From: Ivo Entchev [mailto:ivo@baileyduquette.com]
Sent: Wednesday, September 26, 2018 1:37 PM
To: Selvin, Karen (Law)
Cc: Jamie Lee Williams; Ugalde, Carlos (Law); jdick@gibsondunn.com; mdenerstein@gibsondunn.com; klinsley@gibsondunn.com; mccarthyj@sullcrom.com; nelless@sullcrom.com; John Quinn; rkaplan@kaplanhecker.com; Jason Schultz; Julie Samuels; Carl M. Szabo; Michael Rosenbloom; Andrew Crocker; Cynthia Dominguez
Subject: Re: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742

Thanks Karen.

The brief of the coalition of New York tech companies will discuss the implications of this type of legislation for principles of privacy, security and transparency in the digital economy and the ability of Government to seek the ongoing assistance of private parties to collect user data.

Ivo

Ivo Entchev | Partner
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New York NY 10005
646-915-5528
www.baileyduquette.com

the sender immediately by e-mail and delete all copies of the message.

On Sep 26, 2018, at 10:53 AM, Selvin, Karen (Law) <kselvin@law.nyc.gov> wrote:

Before providing its response, the City would appreciate if each group would indicate the general topics of their briefs.

Thank you.

--Karen

Karen B. Selvin
Senior Counsel
Administrative Law Division
New York City Law Department
100 Church Street, Rm. 5-143
New York, New York 10007
kselvin@law.nyc.gov
212-356-2208

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To: Ugalde, Carlos (Law); Selvin, Karen (Law); jdick@gibsondunn.com; mdenerstein@gibsondunn.com; klinsley@gibsondunn.com; mccarthyj@sullcrom.com; nelless@sullcrom.com; John Quinn; rkaplan@kaplanhecker.com
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Subject: Request to File Amicus Briefs in Airbnb v. New York City, 18-cv-07712, and HomeAway v. New York City, 18-cv-7742

Counsel,

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Thank you,

Jamie L. Williams I Staff Attorney
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