U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

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LEEANN FLYNN HALL
CLERK OF COURT

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE MOTION FOR DECLARATORY JUDGMENT OF GOOGLE INC.'S FIRST AMENDMENT RIGHT TO PUBLISH AGGREGATE INFORMATION ABOUT FISA ORDERS.	Docket No. Misc. 13-03
IN RE MOTION TO DISCLOSE AGGREGATE DATA REGARDING FISA ORDERS	Docket No. Misc. 13-04

MOTION OF THE FIRST AMENDMENT COALITION, AMERICAN CIVIL LIBERTIES UNION, CENTER FOR DEMOCRACY AND TECHNOLOGY, ELECTRONIC FRONTIER FOUNDATION, AND TECHFREEDOM AS AMICI CURIAE FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

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October 10, 2013

The First Amendment Coalition, American Civil Liberties Union, Center for Democracy and Technology, Electronic Frontier Foundation, and TechFreedom (together, "*Amici*") are public interest organizations dedicated to the preservation of civil liberties. They have previously submitted a brief *Amici Curiae* in support of motions filed by Google, Inc. ("Google") and Microsoft Corporation ("Microsoft") seeking declaratory judgments confirming the ability of those parties to disclose limited aggregate numerical information relating to requests that each may have received from the government pursuant to the Foreign Intelligence Surveillance Act ("FISA"). *See In re Motion for Declaratory Judgment of Google Inc.'s First Amendment Right to Publish Aggregate Information About FISA Orders*, Docket No. Misc. 13-03 (June 18, 2013); *In re Motion to Disclose Aggregate Data Regarding FISA Orders*, Docket No. Misc. 13-04 (June 19, 2013). Google has since filed amended motions for declaratory judgment seeking, *inter alia*, "public oral argument." *Amended Motion for Declaratory Judgment of Google Inc.'s First Amendment Right to Publish Aggregate Information About FISA Orders*, Docket No. Misc. 13-03 (Sept. 9, 2013), at 1; *see also Microsoft's First Amended Motion to Disclose Aggregate Data Regarding FISA Orders*, Docket No. Misc. 13-04 (Sept. 9, 2013), at 1.

Amici now respectfully submit this motion for leave for their counsel, Floyd Abrams, to participate in oral argument on those motions.

The argument (and ultimately the resolution) of the Google and Microsoft motions will deal with the fundamental question of how the public is to be informed about a surveillance system undertaken to protect that public. It will explore the restrictions on disclosure imposed by statute and this Court's orders and the limitations on such compelled non-disclosure imposed by those same statutes and the Constitution. *Amici* and their counsel, while mindful of constraints imposed by considerations of national security in this area, have substantial experience in advancing arguments rooted in the public interest in open judicial proceedings. Our participation in oral argument would, we submit, assist the Court in its deliberations, facilitate the public's understanding and evaluation of government surveillance programs, and provide transparency to a

judicial oversight process that has been the subject of considerable discussion, some accurate, some not.

Transparency is especially important in "light of the active, continuing public debate" surrounding the government's investigatory powers, "which has spawned a series of Congressional hearings, academic commentary, and press coverage." *In re National Security Letter*, 930 F. Supp. 2d 1064, 1076 (N.D. Cal. 2013). The ability of *Amici* to address these issues in a public setting in this matter will "further inform the ongoing public debate." *Id.* This Court itself has recognized "the public interest" in the general subject of surveillance and oversight. *See In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things*, Docket No. BR 13-109, Amended Memorandum Opinion (Aug. 29, 2013), at 29.

* * *

Pursuant to FISC Rule of Procedure 7(h)(1), Attorneys for the *Amici* certify that each of the undersigned Attorneys for *Amici* is a licensed attorney and a member, in good standing, of the bar of Untied District Court for the Southern District of New York. Pursuant to FISC Rule of Procedure 7(i), Attorneys for the *Amici* further certify that the undersigned do not currently hold a security clearance.

October 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dean Ringel, hereby certify that on this day, October 10, 2013, pursuant to Rule 8(a) of the Rules of Procedure for the Foreign Intelligence Surveillance Court, I caused to be served two copies of the foregoing motion, on the following person by hand delivery:

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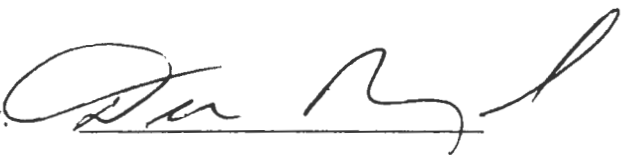
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