

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Microsoft Corp.,
a corporation, and**

**Activision Blizzard, Inc.,
a corporation,**

Respondents.

DOCKET NO. 9412

**NON-PARTY SONY INTERACTIVE ENTERTAINMENT LLC'S MOTION FOR
LEAVE TO FILE PROPOSED REPLY IN SUPPORT OF ITS MOTION FOR
EXTENSION OF TIME TO MOVE TO LIMIT OR QUASH SUBPOENA**

Pursuant to Rule 3.22(d), Sony Interactive Entertainment, LLC respectfully requests that the Court permit SIE to file the attached Proposed Reply supporting SIE's Motion for an Extension of Time to Move to Limit or Quash Subpoena. This brief two-page reply would be helpful to the Court in resolving this issue by correcting a few discrete points.

The proposed reply is attached as Exhibit A.

Dated: February 3, 2023

Respectfully,
/s/ Isabel Tuz

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**[PROPOSED] ORDER GRANTING NON-PARTY SONY INTERACTIVE
ENTERTAINMENT LLC'S MOTION FOR LEAVE TO FILE PROPOSED REPLY IN
SUPPORT OF ITS MOTION FOR EXTENSION OF TIME TO MOVE TO LIMIT OR
QUASH SUBPOENA**

FTC Rule 3.22(d) authorizes the Administrative Law Judge to permit replies in support of motions. Based on the representations in the Proposed Reply, the Motion is GRANTED and it is hereby ORDERED that the Proposed Reply is accepted and deemed properly filed.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: February _____, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

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I also certify that I caused the foregoing document to be served via email to:

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EXHIBIT A

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DOCKET NO. 9412

**[PROPOSED] REPLY OF NON-PARTY SONY INTERACTIVE ENTERTAINMENT
LLC’S IN SUPPORT OF ITS MOTION FOR EXTENSION OF TIME TO MOVE TO
LIMIT OR QUASH SUBPOENA**

Sony Interactive Entertainment, LLC (“SIE”) respectfully submits the following in reply support of its motion for an extension of time.

First, Microsoft claims that SIE has “refused to start collecting from custodians.” Opposition (“Opp.”) at 2. This is both unsupported and untrue, as different statements elsewhere in Microsoft’s brief reveal. *See* Opp. at 3 (“*To Microsoft counsel’s knowledge, SIE has not completed collections for a single custodian...*”) (emphasis added). Microsoft neither knows nor is entitled to know what SIE’s internal privileged and work product processes are, but SIE has informed Microsoft that it is moving forward on custodial documents in good faith, and Microsoft’s contrary statement is surprising.

Second, SIE never proposed “one” custodian. Opp. at 3. SIE first proposed that the custodial set should be small—likely two to three custodians—not just because of the burden on SIE, but because of the physical difficulty of meeting the short discovery schedule that Microsoft set in this case. In all events, Microsoft concedes that the parties had agreed to seven custodians

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(with the remaining dispute over Mr. McCurdy), but as its brief makes clear, Microsoft subsequently reneged on that agreement to generate pressure. Opp. at 2 (confirming Microsoft was “willing to agree to 7”).

Third, while we will of course address custodians and other issues with the subpoena separately if the Court so prefers, we continue to believe that doing so is inefficient. Knowing what needs to be collected, reviewed, and produced is important in determining from whom that collection and production needs to be made, and vice versa. Moreover, Microsoft’s declaring an impasse on custodians late Wednesday night with a Friday deadline to file a motion is an obvious attempt to prejudice SIE by forcing SIE to file a motion to quash in just two days. This is part and parcel of Microsoft’s unprecedented and prejudicial “micro-extension” strategy, which has, among other things, burdened the Court with iterative extension requests. The Court should not countenance Microsoft’s gamesmanship.

We respectfully request that the Court grant the requested one-week extension in its totality, not just for the issues on which Microsoft wants more time.

WHEREFORE, for good cause shown, SIE respectfully requests that Your Honor grant the requested relief pursuant to 16 C.F.R. § 4.3(b).

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Dated: February 3, 2023

Respectfully submitted,

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