

**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**

**FOURTH MOTION OF NON-PARTY SONY INTERACTIVE ENTERTAINMENT  
LLC FOR EXTENSION OF TIME TO MOVE TO LIMIT OR QUASH SUBPOENA**

Non-party Sony Interactive Entertainment LLC (“SIE”) hereby moves for a seven-day extension of time to February 10, 2023, to move to limit or quash the subpoena served on SIE by Respondent Microsoft Corp. (“Microsoft”) on January 17, 2023 (the “Subpoena”). SIE also requests that the Court grant SIE’s request without awaiting a response from Microsoft, pursuant to 16 C.F.R. § 3.22(f). SIE anticipates that this will be its last request for an extension to the motion to quash deadline and that the parties will either reach final agreement or narrow any impasse by February 10, 2023. Microsoft disagrees with the relief requested in this motion.

Microsoft served SIE with the Subpoena on January 17, 2023, with a response date of January 20, 2023, just three days later. SIE filed three timely agreed motions for extension of time – collectively totaling only 14 days – which this Court granted. The current deadline for SIE to move to limit or quash or otherwise respond to the Subpoena is tomorrow, February 3, 2023.

Microsoft’s Subpoena is facially overbroad. It includes 45 distinct document requests, 13 of which have multiple subparts, for a total of more than 120 separate document requests. On

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top of that, the subpoena has 52 defined terms and 21 instructions, all of which must be worked through. These requests demand all documents related to nearly all aspects of SIE's business, as well as extensive sets of sales, financial, and personal user data (e.g., user date of birth, user country, user gender, covering what will likely be millions of users). Ten of these requests seek materials going back more than 11 years to January 2012. And even after intensive efforts by SIE to negotiate the scope of the Subpoena, SIE estimates that providing the responses that SIE has suggested from the custodians that SIE has offered—not what Microsoft is still demanding—will cost approximately \$2 million or more in fees and expenses and demand weeks of intense work and substantial efforts and involvement of SIE personnel. *See* Ex. A (C. Mahoney Declaration).

Given the breadth of the Subpoena and the scope of Microsoft's requested production, negotiations have taken time. Starting immediately after receiving the Subpoena, SIE has diligently engaged with Microsoft in an effort to negotiate a reasonable scope for the Subpoena and has promptly responded to Microsoft's communications. At Microsoft's demand, SIE served a detailed, 55-page set of responses and objections on January 24, 2023, shortly after receiving the Subpoena, and SIE participated in five separate meet and confers on January 18, 24, 25, and 26 and February 1.<sup>1</sup> After demanding detailed written responses and objections from SIE late in the evening on Thursday, January 19 and receiving them early on Tuesday morning, January 24, Microsoft then took *more than one week* to respond in writing on late Tuesday afternoon, January 31. Microsoft's response was received just three days before SIE's deadline

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<sup>1</sup> Microsoft designated its Subpoena as Confidential and so SIE has not attached a copy of it or related communications to this Motion. Should the Court wish to see the Subpoena, SIE's responses and objections, or Microsoft's January 31, 2023 response, SIE would be happy to submit a copy to the Court *in camera*.

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to respond to the Subpoena and totaled nine printed pages. SIE is in the process of analyzing Microsoft's response, but cannot resolve this process in the time remaining.

SIE believes that negotiations have been productive and expects that further negotiations may resolve nearly all issues. Microsoft agreed that it also believes further negotiations are likely to narrow or eliminate most disputes. Yet Microsoft has offered to extend SIE's time *only* to negotiate the scope of the documents requests and has refused to extend SIE's time to negotiate the scope of custodial collections (i.e., whose documents will be collected and reviewed for responsiveness), a position that Microsoft only conveyed to SIE after close of business last night, February 1. The issues of custodians and scope are intertwined, however, and cannot realistically be carved into separate negotiations and, if necessary, separate motions to quash. Moreover, Microsoft's attempt to force SIE to simultaneously negotiate parts of its subpoena while litigating others would both inefficiently subject the Court to piecemeal motions and distract SIE from focusing on reaching as reasonable a resolution as possible on the substance of the Subpoena.<sup>2</sup> As a result, absent an extension, SIE will now likely be forced to file a broad motion to limit or quash the Subpoena tomorrow, February 3, 2023, even though both Microsoft and SIE believe that many of the issues that will be addressed in the motion would ultimately be resolved in the next seven days were there an extension.

Indeed, Microsoft has already delayed resolution of the Subpoena issues by refusing to agree to a single, reasonable extension of time, and instead forcing SIE to file *four* motions for extension of time (including this one) within the span of 14 days. By contrast – and consistent with normal discovery practice before this Court – Activision agreed to a single reasonable

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<sup>2</sup> Microsoft's fragmented proposal is also inconsistent with the approach preferred by Rule 3.34(c) of the Rules of Practice, which indicate that motions to quash are expected to "set forth *all* assertions of privilege or other factual and legal objections to the subpoena, including *all* appropriate arguments, affidavits and other supporting documentation." 16 C.F.R. § 3.34(c) (emphasis added).

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multi-week extension to February 13, 2023 for third party Nvidia, Doc. No. 606798, and the FTC agreed to a single reasonable multi-week extension to February 15, 2023 for SIE, Doc. No. 606810. Microsoft is singling out SIE for unreasonable micro-extensions of two or three days at a time, distracting SIE from focusing its efforts on substantively responding to the Subpoena.

If Microsoft wanted a rapid response to its Subpoena that could have been negotiated in its unrealistically short deadlines, it should have served a narrowly tailored one focusing on the ultimate issue in this case: whether Microsoft's acquisition of Activision Blizzard, Inc., ("Activision") may lessen competition. Instead, Microsoft chose to lard up its staggeringly broad Subpoena with completely irrelevant requests, such as requests for all documents related to performance reviews and evaluations of all Sony gaming leadership or management (No. 13), all documents relating to SIE's gaming business sent to, received from, or exchanged with other Sony entities (No. 17), and executed copies of every content licensing agreement SIE has entered into with any third-party publisher over the past 11 years (No. 35), to name just a few.

Nonetheless, despite Microsoft's unreasonably broad Subpoena and infeasibly short deadlines, SIE has been diligently working with Microsoft and simply needs seven more days to complete that process. As a show of good faith, SIE has already begun producing material responsive to Microsoft's requests even while negotiations are ongoing. SIE believes that in one week's time most issues will have been resolved and both sides will have a clear picture of which disputes, if any, will require the Court's intervention. It simply makes no sense to force SIE to file a motion to quash now given the status of negotiations.

Pursuant to the January 4, 2023 Scheduling Order, Microsoft has until April 7, 2023, to complete fact discovery, and, therefore, SIE does not believe the requested extension of seven days will delay the progress of these proceedings.

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

Dated: February 2, 2023

Respectfully submitted,

/s/ Isabel Tuz

D. Bruce Hoffman (bhoffman@cgsh.com)  
Leah Brannon (lbrannon@cgsh.com)  
Carl Lawrence Malm (lmalm@cgsh.com)  
Isabel Tuz (ituz@cgsh.com)  
2112 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037  
T: +1 202 974 1500

CLEARY GOTTlieb STEEN & HAMILTON LLP

*Counsel for Non-Party Sony Interactive  
Entertainment LLC*

**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**

**[PROPOSED] ORDER GRANTING MOTION FOR EXTENSION OF TIME TO MOVE  
TO LIMIT OR QUASH SUBPOENA**

On February 2, 2023, non-party Sony Interactive Entertainment LLC (“SIE”) filed a Motion for Extension of Time to Move to Limit or Quash or Otherwise Respond to a subpoena (“Motion”) served by Respondent Microsoft Corp. (“Microsoft”) on January 17, 2023.

Under FTC Rule of Practice 3.34(c), any motion to limit or quash a subpoena must be filed within the earlier of ten days of service of the subpoena or the time for compliance therewith. SIE states that it seeks a fourth extension of time in order to continue its negotiations with Microsoft regarding the subpoena, thereby narrowing potential discovery disputes.

FTC Rule 4.3(b) authorizes the Administrative Law Judge, except in circumstances not here presented, to extend any time limit prescribed by the rules “[f]or good cause shown.” 16 C.F.R. § 4.3(b). Based on the representation in the Motion, SIE has demonstrated good cause for the requested extension. Accordingly, the Motion is GRANTED and it is hereby ORDERED that SIE’s deadline for filing any motion to limit or quash or otherwise respond to the subpoena pursuant to Rule 3.34(c) is extended to February 10, 2023.

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ORDERED:

Date: February \_\_\_\_\_, 2023

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2023, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, D.C. 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, D.C. 20580  
[OALJ@ftc.com](mailto:OALJ@ftc.com)

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

**Complaint Counsel**

James Weingarten  
James Abell  
Meredith Levert  
Jennifer Fleury  
Cem Akleman  
Taylor Alexander  
Amanda Butler  
Merrick Pastore  
Nicole Callan  
Ethan Gurwitz  
Maria Cirincione  
James Gossmann  
Stephen Santulli  
Edmund Saw  
Michael A. Franchak  
Peggy Bayer Femenella  
Kassandra DiPietro  
Justin Alexander Ansaldo  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580  
(202) 326-2289  
[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)  
[jabell@ftc.gov](mailto:jabell@ftc.gov)

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mlevert@ftc.gov  
jfleury@ftc.gov  
cakleman@ftc.gov  
talexander@ftc.gov  
abutler2@ftc.gov  
mpastore@ftc.gov  
ncallan@ftc.gov  
egurwitz@ftc.gov  
mcirincione@ftc.gov  
jgossmann@ftc.gov  
ssantulli@ftc.gov  
esaw@ftc.gov  
mfranchak@ftc.gov  
pbayerfemenella@ftc.gov  
kdipietro@ftc.gov  
jansaldo@ftc.gov

**Counsel for Respondent Microsoft Corp.**

Beth Wilkinson  
Rakesh N. Kilaru  
Kieran Gostin  
Grace L. Hill  
Anastasia M. Pastan  
Alysha Bohanon  
Sarah E. Neuman  
Wilkinson Stekloff LLP  
2001 M Street, NW  
Washington, D.C. 20036  
(202) 847-4010  
bwilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com  
ghill@wilkinsonstekloff.com  
apastan@wilkinsonstekloff.com  
abohanon@wilkinsonstekloff.com  
sneuman@wilkinsonstekloff.com

Michael Moiseyev  
Megan Granger  
Weil, Gotshal & Manges LLP  
2001 M Street, NW  
Washington, D.C. 20036  
(202) 682-7235  
michael.moiseyev@weil.com  
megan.granger@weil.com

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**Counsel for Respondent Activision-Blizzard, Inc.**

Steven C. Sunshine  
Julia K. York  
Jessica R. Watters  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 271-7860  
steve.sunshine@skadden.com  
julia.york@skadden.com  
jessica.watters@skadden.com

Maria A. Raptis  
Michael J. Sheerin  
Evan R. Kreiner  
Andrew D. Kabbes  
Bradley J. Pierson  
Matthew M. Martino  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, NY 10001  
(212) 735-2425  
maria.raptis@skadden.com  
michael.sheerin@skadden.com  
evan.kreiner@skadden.com  
andrew.kabbes@skadden.com  
bradley.pierson@skadden.com  
matthew.martino@skadden.com

Respectfully submitted,

*/s/ Isabel Tuz*

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D. Bruce Hoffman (bhoffman@cgsh.com)  
Leah Brannon (lbrannon@cgsh.com)  
Carl Lawrence Malm (lmalm@cgsh.com)  
Isabel Tuz (ituz@cgsh.com)  
2112 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037  
T: +1 202 974 1500

CLEARY GOTTlieb STEEN & HAMILTON LLP

*Counsel for Non-Party Sony Interactive  
Entertainment LLC*

# EXHIBIT A

**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**

**DECLARATION OF CHRISTIAN J. MAHONEY IN SUPPORT OF  
NON-PARTY SONY INTERACTIVE ENTERTAINMENT LLC'S  
MOTION FOR EXTENSION OF TIME TO MOVE TO LIMIT OR QUASH SUBPOENA**

I, Christian J. Mahoney, declare as follows:

1. I am an attorney admitted to practice law in the District of Columbia. I received a J.D. from the Georgetown University Law Center in 2003, and a B.A. from the University of Miami in 2000. I am the head of the Discovery & Litigation Technology group at Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"). Cleary Gottlieb is counsel to non-party Sony Interactive Entertainment LLC ("SIE") in this action.

2. Before joining Cleary Gottlieb, I worked for Xerox Litigation Services, where I advised clients on the usage of advanced technology and processes for responding to discovery requests.

3. As director of the Discovery and Litigation Technology group at Cleary Gottlieb, I lead a team that focuses on electronic discovery, artificial intelligence, data analytics, and information governance. In that capacity, I advise clients on data retention, preservation, collection, review, and production processes. I also negotiate discovery procedures with government regulators and opposing counsel.

4. In my role, I routinely supervise the preparation of cost and time estimates for the collection, processing, review, and production of electronically stored information (“ESI”). I have led and supervised teams of attorneys and subject-matter experts assisting counsel in identifying, preserving, collecting, processing, reviewing, and producing ESI pertinent to specific litigation matters for approximately 15 years.

5. I also routinely advise clients on implementing sophisticated technology processes, including technology-assisted review (“TAR”) and artificial intelligence (“AI”), for identification of data for review and production. I regularly speak at industry conferences and continuing legal education webinars on issues related to TAR and AI, served as a lead writer on issues related to the usage of AI for the Sedona Conference Working Group 11 drafting committee, and conduct research on novel implementations and training processes for TAR and AI.

6. Cleary Gottlieb also advised SIE in *Federal Trade Commission v. Meta Platforms, Inc., et al*, No. 5:22-cv-04325-EJD (SVK) (the “*Meta/Within* litigation”) currently pending before the FTC and in SIE’s acquisition of Bungie, Inc. As SIE’s counsel, I have examined its data sources and records of its collected volumes of custodial data on recent discovery matters.

7. By making this declaration, I do not intend, and am not authorized, to waive any applicable privilege or protection from discovery, including the attorney-client privilege and work product protections.

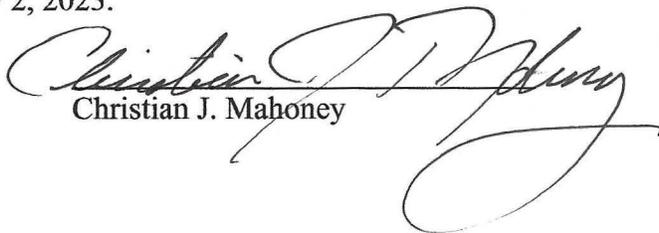
8. I have reviewed the subpoena that Microsoft has served on SIE in this action.

9. SIE has offered to review and produce responsive, non-privileged Microsoft email, attachments, and Teams chats for seven custodians, collected from 2019 through the present.

10. Based on my experience, under SIE's proposed modifications and taking into account expected SIE data volumes, SIE would incur approximately \$2 million or more in legal and related costs in connection with harvesting, processing, TAR modeling, reviewing, and producing the documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on February 2, 2023.

  
Christian J. Mahoney