FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CINDY LEE GARCIA, *Plaintiff-Appellant*, v. GOOGLE, INC., a Delaware Corporation; YOUTUBE, LLC, a California limited liability company, *Defendants-Appellees*, and NAKOULA BASSELEY NAKOULA, an individual, AKA Sam Bacile; MARK BASSELEY YOUSSEF; ABANOB BASSELEY NAKOULA; MATTHEW NEKOLA; AHMED HAMDY; AMAL NADA; DANIEL K. CARESMAN; KRITBAG DIFRAT; SOBHI BUSHRA; ROBERT BACILY; NICOLA BACILY; THOMAS J. TANAS; ERWIN SALAMEH; YOUSSEFF M. BASSELEY; MALID AHLAWI, *Defendants*.	No. 12-57302 D.C. No. 2:12-cv-08315- MWF-VBK OPINION

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

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Argued and Submitted En Banc
December 15, 2014—Pasadena California

Filed May 18, 2015

Before: Sidney R. Thomas, Chief Judge, and Alex
Kozinski, M. Margaret McKeown, Marsha S. Berzon,
Johnnie B. Rawlinson, Richard R. Clifton, Consuelo M.
Callahan, N. Randy Smith, Mary H. Murguia, Morgan
Christen and Paul J. Watford, Circuit Judges.

Opinion by Judge McKeown;
Concurrence by Judge Watford;
Dissent by Judge Kozinski

SUMMARY[*]

Copyright / Preliminary Injunction

The en banc court affirmed the district court's denial of
Cindy Lee Garcia's motion for a preliminary injunction
requiring Google, Inc., to remove the film *Innocence of
Muslims* from all of its platforms, including YouTube.

A movie producer transformed Garcia's five-second
acting performance for a film titled *Desert Warrior* into part
of a blasphemous video proclamation against the Prophet
Mohammed. *Innocence of Muslims* was credited as a source

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[*] This summary constitutes no part of the opinion of the court. It has
been prepared by court staff for the convenience of the reader.

of violence in the Middle East, and Garcia received death threats.

The en banc court held that the district court did not abuse its discretion in denying Garcia's motion for a mandatory preliminary injunction because the law and facts did not clearly favor her claim to a copyright in her acting performance as it appeared in *Innocence of Muslims*. The en banc court credited the expert opinion of the Copyright Office, which had refused to register Garcia's performance apart from the film. The en banc court also held that in the context of copyright infringement, the only basis upon which the preliminary injunction was sought, Garcia failed to make a clear showing of irreparable harm to her interests as an author.

The en banc court dissolved the three-judge panel's amended takedown injunction against the posting or display of any version of *Innocence of Muslims* that included Garcia's performance. The en banc court held that the injunction was unwarranted and incorrect as a matter of law and was a prior restraint that infringed the First Amendment values at stake.

Concurring in the judgment, Judge Watford wrote that the majority should not have reached the issue of copyright law, but rather should have affirmed, without controversy, on the basis of Garcia's failure to establish a likelihood of irreparable harm.

Dissenting, Judge Kozinski wrote that Garcia's dramatic performance met all of the requirements for copyright protection. He wrote that her copyright claim was likely to

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succeed and that she had made an ample showing of irreparable harm.

COUNSEL

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Knowledge, Washington, D.C.; Art Neill and Teri Karobonik, New Media Rights, San Diego, California; Erik Stallman, Center for Democracy & Technology, Washington, D.C.; and Jonathan Band, Jonathan Band PLLC of Washington, D.C., for Amici Curiae Electronic Frontier Foundation, American Civil Liberties Union, Public Knowledge, Center for Democracy and Technology, New Media Rights, American Library Association, Association of College and Research Libraries, and Association of Research Libraries.

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