

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 12-3200 Caption [use short title]

Motion for: Extension of time to seek leave and file amicus curiae brief

Set forth below precise, complete statement of relief sought:

The Authors Guild, Inc. et al. v. Google Inc.

Movants (Amici Curiae) seek an extension of time to file an amicus brief and the accompanying motion for leave to file to November 30, 2012 (a 14-day extension).



MOVING PARTY: Electronic Arts et al. OPPOSING PARTY: N/A (Amici Curiae)
Plaintiff Defendant X -- non-parties
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Andrew P. Bridges OPPOSING ATTORNEY: N/A
Fenwick & West LLP Appellants consent to the proposed extension of the deadline; Appellees do not consent.
555 California Street, 12th Floor
San Francisco, CA 94104
Telephone: 415.875.2300
Facsimile: 415.281.1350; abridges@fenwick.com
Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York, Hon. Denny Chin

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
[checked] Yes [ ] No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? [ ] Yes [ ] No
Has this relief been previously sought in this Court? [ ] Yes [ ] No
Requested return date and explanation of emergency:

Opposing counsel's position on motion: Appellants consent; Appellees do not consent but have not stated that they oppose.
[checked] Unopposed [ ] Opposed [checked] Don't Know
Does opposing counsel intend to file a response:
[ ] Yes [ ] No [checked] Don't Know

Is oral argument on motion requested? [ ] Yes [checked] No (requests for oral argument will not necessarily be granted)
Has argument date of appeal been set? [ ] Yes [checked] No If yes, enter date:

Signature of Moving Attorney: /s/ Andrew P. Bridges Date: 11/14/12 Service by: [checked] CM/ECF [ ] Other [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT: CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

ANDREW P. BRIDGES  
FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: 415.875.2300  
Facsimile: 415.281.1350

Attorneys for Prospective Amici Curiae  
ELECTRONIC ARTS INC., PINTEREST,  
INC., and YAHOO! INC.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE AUTHORS GUILD, INC.,  
Associational Plaintiff, BETTY MILES,  
JOSEPH GOULDEN, and JIM BOUTON,  
individually and on behalf of all others  
similarly situated,

*Plaintiffs-Appellees,*

v.

GOOGLE INC.,

*Defendant-Appellant.*

No. 12-3200

**DECLARATION OF ANDREW  
P. BRIDGES IN SUPPORT OF  
MOTION BY PROPOSED  
AMICI CURIAE COPYRIGHT  
HOLDERS AND ONLINE  
PLATFORMS FOR  
EXTENSION OF TIME TO  
SEEK LEAVE AND FILE  
AMICUS CURIAE BRIEF**

I, ANDREW P. BRIDGES, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a member of the bar of this Court and a partner at the law firm of Fenwick & West LLP. Electronic Arts Inc., Pinterest, Inc., and Yahoo! Inc. (collectively “Amici Curiae”), wish to seek leave to file (if necessary), and to file, a brief of amici curiae in support of Defendant-Appellant Google’s appeal of the district court’s May 31, 2012 order certifying a class action. Counsel for Appellant Google Inc. has consented to the Amici Curiae’s filing of an amicus brief, while counsel for Plaintiff-Appellees have represented that although they do not oppose the filing of an amicus brief by the Amici Curiae, they do not consent to a short extension of time for the prospective Amici Curiae to file their brief. I respectfully submit this Declaration in support of the motion of these prospective Amici Curiae for a two-week extension of time to file a brief in support of Google.<sup>1</sup>

2. Amici Curiae are leading creators of interactive online services and interactive media. They own important intellectual property; they depend upon intellectual property laws; and they thrive in a strong but fair intellectual property enforcement environment. All of them enforce their own intellectual property rights and may from time to time defend against intellectual property and related

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<sup>1</sup> A few other companies have expressed possible interest in joining these prospective Amici Curiae, and these movants ask the Court to allow a small number of others to join the proposed brief if they desire to.

claims. They are therefore interested in the development of clear, consistent, and fair principles of law involving intellectual property and related claims, especially in this case with respect to class actions. Amici Curiae have substantial experience with intellectual property legal issues.

3. Amici Curiae seek to offer the Court valuable insight in a broader context than the narrow issues before the Court with respect to a presumed class of authors and the Google Books project. Amici Curiae believe they can place the issues of this case in the broader context of intellectual property and related disputes, particularly with regard to innovative creators of interactive content and services. Amici Curiae respectfully believe that they offer a perspective that may assist the Court in its analysis.

4. Under the briefing schedule set by the Court and Federal Rule of Appellate Procedure 29(e), Amici Curiae must move for leave to file an amicus brief and file the proposed brief by November 16, 2012.

5. Only after Google filed its opening brief on November 9, 2012 – a brief that the Amici Curiae believe admirably stated Google’s case – did these Amici Curiae coalesce around a decision to furnish their own perspectives, although they first contemplated the possibility of an amicus brief in late October 2012. After reviewing the Google brief, Amici Curiae concluded that they may assist the Court by highlighting their broader concerns with class treatment of

intellectual property and related disputes, some of which involve extraordinary amounts in controversy and risks for innovators and creators of new interactive works and online platforms. While the plaintiffs in Google's case seek statutory damages of only \$750 per work (a figure that could yield damages of well over a billion dollars if plaintiffs prevail), in other class actions plaintiffs may seek up to \$150,000 per work, and if the plaintiff class were to seek \$150,000 per work in the Google case – assuming that only 2 million books are at issue out of the 20 million books Google has digitized – the amount at issue would be \$300 billion. Even non-class cases against some defendants have involved damages that may reach billions or trillions of dollars. *See, e.g., Arista Records v. Lime Group LLC*, 784 F. Supp. 2d 313, 317 (S.D.N.Y. 2011). Class actions aggregating a large number of claims may involve statutory damages risks that defy reason. Moreover, class actions seeking injunctions against online services or interactive media that challenge fundamental premises of how they operate – as this case challenges the entire Google Books project – can threaten a wide range of innovative companies with extinction. For these important reasons, Amici Curiae wish to provide important additional information and insight to the Court.

6. Amici Curiae require more time to prepare a brief that will be helpful in aiding the Court's understanding of the unique pressures on, and distortions of, intellectual property and related litigation that class actions cause.

7. The prospective Amici Curiae retained my firm only very recently to represent them in this matter, and articulating the views of several different companies on these issues will require extra time for coordination. As a consequence, these Amici Curiae seek an additional two weeks, until November 30, 2012, to file their motion for leave (if necessary) and their proposed brief.

8. Assuming the Court grants this Motion to extend deadlines, Amici Curiae will formally seek leave to file their amicus brief (if necessary) on or before November 30, 2012, and will include a copy of their proposed amicus brief to their motion for leave.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 14<sup>th</sup> day of November 2012.

By: /s/ Andrew P. Bridges

Andrew P. Bridges

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