

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 12-14676-FF

Cambridge University Press,
Oxford University Press, Inc.,
and Sage Publications, Inc.,

Plaintiffs-Appellants,

v.

Mark P. Becker, in his official capacity as Georgia State University President, et
al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. No. 1:08-cv-1425 (Evans, J.)

**APPELLANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME
TO FILE THEIR OPENING BRIEF**

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The following trial judges, attorneys, persons, associations of persons, firms, partnerships, and corporations are known to have an interest in the outcome of this case or appeal:

- Albert, J.L.
- Alford, C. Dean
- Askew, Anthony B., counsel for Appellees
- Association of American Publishers
- Bates, Mary Katherine, counsel for Appellees
- Ballard Spahr, LLP, counsel for Appellees
- Becker, Mark P.
- Bernard, Kenneth R., Jr.
- Bishop, James A.
- Bloom, Jonathan, counsel for Appellants
- The Board of Regents of the University System of Georgia
- Bondurant, Mixson & Elmore, LLP, counsel for Appellants
- Cambridge University Press
- Carter, Hugh A., Jr.

- Cleveland, William H.
- Copyright Clearance Center
- Cooper, Frederick E.
- Ellis, Larry R.
- Evans, Hon. Orinda D., United States District Judge
- Georgia State University
- Griffin, Rutledge A., Jr.
- Harbin, John Weldon, counsel for Appellees
- Hatcher, Robert F.
- Henry, Ronald
- Hopkins, C. Thomas, Jr.
- Hurt, Charlene
- Jennings, W. Mansfield, Jr.
- Jolly, James R.
- King & Spalding, LLP, counsel for Appellees
- Krugman, Edward B., counsel for Appellants
- Larson, Todd D., counsel for Appellants
- Leebern, Donald M., Jr.

- Lynn, Kristen A., counsel for Appellees
- McKeon Meunier Carlin & Curfman, LLC
- McMillan, Eldridge
- Miller, Richard William, counsel for Appellees
- Moffit, Natasha Horne, counsel for Appellees
- NeSmith, William, Jr.
- Oxford University Press, Inc.
- Oxford University Press, LLC
- Oxford University Press USA
- Palm, Risa
- Patton, Carl. V.
- Poitevint, Doreen Stiles
- Potts, Willis J., Jr.
- Pruitt, Neil L., Jr.
- Quicker, Katrina M., counsel for Appellees
- Rains, John H., IV, counsel for Appellants
- Rich, R. Bruce, counsel for Appellants
- Rodwell, Wanda Yancey

- SAGE Publications, Inc.
- Seamans, Nancy
- Schaetzel, Stephen M., counsel for Appellees
- Singer, Randi W, counsel for Appellants
- Stelling, Kessel, Jr.
- Tarbutton, Benjamin J., III
- Tucker, Richard L.
- The Chancellor, Masters and Scholars of the University of Oxford
- Walker, Larry
- Weil Gotshal & Manges, LLP, counsel for Appellants
- Wilheit, Philip A., Sr.
- Vigil, Allan
- Volkert, Mary Josephine Leddy, counsel for Appellees

Plaintiffs-Appellants, Cambridge University Press, Oxford University Press, Inc., and Sage Publications, Inc. (“Appellants”), through their undersigned counsel, respectfully submit this unopposed motion for a 30-day extension of time, to and including November 21, 2012, within which to file their opening brief.

Relevant Procedural Background

On April 15, 2008, Appellants, three academic publishers, filed a complaint against Georgia State University (“GSU” or “Appellees”)¹ in the United States District Court for the Northern District of Georgia seeking to enjoin the systematic, widespread, unauthorized copying and distribution of copyrighted academic works through a variety of university-controlled online systems. *See* Doc. No. 1.

Approximately one year after a three-and-a-half week bench trial, on May 11, 2012, the District Judge issued a 340-page order holding that Appellants had both partially prevailed and partially failed on their copyright infringement claims against GSU. *See* Order, Doc. No. 423, at 337-339 (May 11, 2012). After the parties filed submissions concerning proposed injunctive relief, on August 10, 2012, the District Court ordered Appellees to maintain copyright policies for Georgia State University that were not inconsistent with the court’s May 11, 2012 order and to disseminate to faculty and relevant staff at Georgia State the essential

¹ The named Appellees are the President and various officials of Georgia State University, sued in their official capacity, as well as the members of the Board of Regents of the University System of Georgia.

points of the District Court's ruling. The District Court also found that Appellees were entitled to reasonable attorneys' fees based on its determination that they were "prevailing parties," and it set a briefing schedule and a date for a hearing on the amount of fees. *See* Order, Doc. No. 441, at 14-15 (Aug. 10, 2012). During the hearing, held on September 14, 2012, the court stated that an award of attorneys' fees would be forthcoming.

On September 10, 2012, Appellants timely filed a Notice of Appeal from several orders. Although this Court did not acknowledge the appeal until September 25, 2012, Appellants' opening brief currently is due on October 22, 2012. *See* USCA Acknowledgement of Doc. No. 449 Notice of Appeal, Doc. No. 457 (Sept. 26, 2012). Appellants have not previously requested an extension of time for the opening brief. Appellees have consented to the relief requested in this motion.

Reasons For Granting The Request

This case involves a complex set of legal issues of surpassing importance to academic publishers involving application of the fair use doctrine of copyright law. This appeal follows a lengthy bench trial, extensive pre-trial proceedings, and a 340-page merits determination by the district court. *See* Order, Doc. No. 423 (May 11, 2012).

Counsel for Appellants respectfully requests that the Court grant this motion for a 30-day extension of time, to and including November 21, 2012, within which to file their opening brief because R. Bruce Rich, Appellants' lead counsel, has several conflicting professional obligations in matters in which he is also acting as lead counsel that will occupy substantially all of the period between now and the October 22 due date of Appellants' brief. These include: the completion of post-hearing briefing (by October 12) and closing arguments (October 16) in a matter tried this past summer before the Copyright Royalty Board;² an October 24 oral argument before the Second Circuit in *Marvel Characters, Inc. v. Lisa R. Kirby*, Case No. 11-3333; and the completion of summary judgment briefing by November 2 in *White v. West Publishing Corp.*, No. 12 Civ. 1340(JSR) (S.D.N.Y.) (Rakoff, J.), a copyright infringement case pending in the Southern District of New York.³ Appellees do not oppose the request for additional time.

² The Copyright Royalty Board is an administrative tribunal that sets the rates and terms of certain statutory licenses for the digital performance of sound recordings pursuant to 17 U.S.C. § 801, *et. seq.*

³ In addition, Appellants did not receive notice of the current briefing deadline until September 25, 2012 – allowing them only 25 days to brief a complex case involving important legal issues as applied to an extensive factual record.

Conclusion

For the foregoing reasons, Appellants respectfully request that this Court grant them a 30-day extension of time, to and including November 21, 2012 within which to file their opening brief.

Respectfully submitted this 28th day of September, 2012.

/s/ John H. Rains IV

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CERTIFICATE OF SERVICE

I certify that I have this day caused a true and correct copy of

APPELLANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME

TO FILE THEIR OPENING BRIEF to be served by United States mail on the

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This 28th day of September, 2012.

/s/ John H. Rains IV
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