

No. 12-3200

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

THE AUTHORS GUILD, INC., et al.,
Plaintiffs-Appellees,

v.

GOOGLE, INC.,

Defendant-Appellant.

On Appeal from an Order Granting Certification of a Class Action, Dated May 31,
2012, by the United States District Court for the Southern District of New York,
No. 1:05-cv-08136 Before the Honorable Denny Chin

**SUPPLEMENTAL DECLARATION IN SUPPORT OF EMERGENCY
MOTION FOR EXTENSION OF TIME TO FILE *AMICUS* BRIEF**

Mark A. Berube hereby declares as follows:

1. I am a partner in the law firm of Mishcon de Reya NY LLP. I submit this Supplemental Declaration in support of the emergency motion of *Amici Curiae* American Society of Media Photographers, Inc., Graphic Artists Guild, Inc., Picture Archive Counsel of America, Inc., North American Nature Photography Association, Professional Photographers of America, Leif Skoogfors, Al Satterwhite, Morton Beebe, Ed Kashi, John Schmelzer, Simms Taback, Leland

Bobb, John Francis Ficara and David W. Moser (“*Amici Curiae*”) for a seven (7) day extension of time, until February 22, 2013, to file their *Amicus* brief in the above-captioned matter.

2. The *Amici Curiae* requested the extension to allow the Honorable Denny Chin to rule upon their request to submit three (3) documents that were produced by Google to *Amici Curiae* in the related action *American Society of Media Photographers, Inc., et al. v. Google, Inc.*, Civ. Action No. 10-CV-2977 (DC) case (“ASMP Action”) and designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order (Docket No. 68) in that case.

3. On February 15, 2013, Judge Chin granted the *Amici Curiae*’s request in the ASMP Action (“Order”), which states in pertinent part:

By letter dated February 12, 2013, plaintiffs seek permission to submit documents produced in discovery in this case to the United States Court of Appeals for the Second Circuit in connection with plaintiffs’ *Amicus* brief in Authors Guild v. Google Inc., No. 12-3200. By letter dated February 14, 2013, Google opposes plaintiffs’ application. Plaintiffs’ application is granted. Plaintiffs may submit the documents under seal to the Court of Appeals. I am not deciding whether the documents are properly part of the record in the appeal. I am simply holding that the documents may be submitted to the Court of Appeals under seal as part of plaintiffs’ motion to expand the record. To the extent that Google wishes to submit similar confidential documents under seal in response, it may do so.

4. A true and correct copy of the Order is annexed as Exhibit A.

I declare that the foregoing is true and correct, in accordance with 28 U.S.C.

§ 1746.

Dated: February 20, 2013

Respectfully submitted,

/s/Mark A. Berube

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