

No. 12-3200

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

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THE AUTHORS GUILD, INC., et al.,

Plaintiffs-Appellees,

v.

GOOGLE, INC.,

Defendant-Appellant.

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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

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**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 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 Bobbe, John Francis Ficara and David W. Moser (“*Amici Curiae*”) for a three (3) business-day

extension of time, until February 27, 2013, to file their sealed and redacted *Amicus* brief in the above-captioned matter (“Sealed Brief”).

2. The *Amici Curiae* respectfully submit that good cause exists for the short extension of time requested for the following reasons:

3. The *Amici Curiae* sought and obtained consent from Plaintiffs-Appellees and Defendant-Appellant (“Google”) to file an *Amicus* Brief (“Brief”) in support of Plaintiffs-Appellees’ request that the United States Court of Appeals for the Second Circuit (“Second Circuit”) affirm the District Court’s Order granting Plaintiffs’ Motion for Class Certification, dated May 31, 2012.

4. In support of the Brief, the *Amici Curiae* would like 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”)<sup>1</sup> and designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order (Docket No. 68) in that case. The *Amici Curiae* believe these documents are relevant to the Appeal because they refute certain arguments advanced by Google, and the *Amici* supporting Google, and support Appellees’ brief.

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<sup>1</sup> None of these documents were produced in the *Authors Guild v. Google Inc.*, Civil Action No. 05 CV 8136 (DC) (“AG Action”), the lawsuit at issue in the instant Appeal. As part of its production in the ASMP Action, Google produced the entirety of its production in the AG Action (“AG Production”) to the ASMP plaintiffs. The ASMP plaintiffs have reviewed the AG Production and have confirmed that these three documents were not produced in the AG Action.

5. Because of the Protective Order, the *Amici Curiae* submitted a letter request to the Honorable Denny Chin for permission to submit these documents to the Second Circuit under seal in connection with a motion for permission to file these documents and the Sealed Brief referencing them (“Motion”).

6. On February 14, 2013, the *Amici Curiae* filed a motion for extension of time to file the Sealed Brief from February 15, 2013 to February 22, 2013 (Docket No. 88) in order to allow Judge Chin time to consider *Amici Curiae*’s request.

7. On February 15, 2013, the original deadline for *Amici Curiae*’s Brief, Judge Chin granted the *Amici Curiae*’s request in the ASMP Action and a copy of Judge Chin’s Order was submitted to the Second Circuit on February 20, 2013 (Docket No. 116-2).

8. Since the Second Circuit did not rule on the *Amici Curiae*’s extension to file the Sealed Brief before the Brief was due, the *Amici Curiae* filed the Brief on February 15, 2013 (Docket No. 107).

9. This afternoon, the Second Circuit granted the *Amici Curiae*’s request for a one-week extension of time (Docket No. 126).

10. While the *Amici Curiae* greatly appreciate the Court’s extension, they could not have the Sealed Brief printed in time by a vendor to meet today’s extended deadline. The requested one-week extension expired on the day it was

granted, which was today. Accordingly, the *Amici Curiae* respectfully request a three (3) business-day extension, until February 27, 2013, to file the Sealed Brief and related Motion.

11. Plaintiffs-Appellees do not oppose the requested extension of time.

12. Google takes no position as to the requested extension of time, but requests that should the extension be granted that it also be granted a three (3) business-day extension of time to file its Reply.

I declare that the foregoing is true and correct, in accordance with 28 U.S.C. § 1746.

Dated: February 22, 2013

Respectfully submitted,

/s/Mark A. Berube

Mark A. Berube  
MISHCON DE REYA NEW YORK LLP  
750 7th Avenue, Floor 26  
New York, New York 10019  
Telephone: (212) 612-3270  
Facsimile: (212) 612-3297  
mark.berube@mishcon.com

*Attorneys for Amici Curiae The American Society of Media Photographers, Inc., Graphic Artists Guild, Picture Archive Council 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 Bobbe, John Francis Ficara and David W. Moser*