

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: <p style="text-align: center;">THE AUTHORS GUILD, INC., et al.,</p> <p style="text-align: center;">- against -</p> <p style="text-align: center;">HATHITRUST, et al.</p>	District Court or Agency: Southern District of New York	Judge: Hon. Harold S. Baer
	Date the Order or Judgment Appealed from was Entered on the Docket: <p style="text-align: center;">October 12, 2012</p>	District Court Docket No.: 11 Civ. 6351 (HB)
	Date the Notice of Appeal was Filed: November 8, 2012	Is this a Cross Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Attorney(s) for Appellant(s): <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	<table style="width: 100%;"> <tr> <td style="width: 33%;">Counsel's Name:</td> <td style="width: 33%;">Address:</td> <td style="width: 17%;">Telephone No.:</td> <td style="width: 10%;">Fax No.:</td> <td style="width: 9%;">E-mail:</td> </tr> <tr> <td colspan="5"> Edward H. Rosenthal (Tel. 212 826-5524; email: erosenthal@fkks.com) Jeremy S. Goldman (Tel. 212 705-4843; email: jgoldman@fkks.com) Frankfurt Kurnit Klein & Selz, P.C. 488 Madison Avenue New York, NY 10022 Tel: 212-980-0120 Fax: 212-593-9175 </td> </tr> </table>	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:	Edward H. Rosenthal (Tel. 212 826-5524; email: erosenthal@fkks.com) Jeremy S. Goldman (Tel. 212 705-4843; email: jgoldman@fkks.com) Frankfurt Kurnit Klein & Selz, P.C. 488 Madison Avenue New York, NY 10022 Tel: 212-980-0120 Fax: 212-593-9175				
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Attorney(s) for Appellee(s): <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant	<table style="width: 100%;"> <tr> <td style="width: 33%;">Counsel's Name:</td> <td style="width: 33%;">Address:</td> <td style="width: 17%;">Telephone No.:</td> <td style="width: 10%;">Fax No.:</td> <td style="width: 9%;">E-mail:</td> </tr> <tr> <td colspan="5"> Joseph Petersen (Tel. 212 775-8715; email: JPetersen@kilpatricktownsend.com) Robert Potter (Tel. 212 775-8733; email: RPotter@kilpatricktownsend.com) Kirkpatrick Townsend & Stockton LLP 1114 Avenue of the Americas New York, NY 10036 Tel: 212-775-8700 Fax: 212-775-8800 </td> </tr> </table>	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:	Joseph Petersen (Tel. 212 775-8715; email: JPetersen@kilpatricktownsend.com) Robert Potter (Tel. 212 775-8733; email: RPotter@kilpatricktownsend.com) Kirkpatrick Townsend & Stockton LLP 1114 Avenue of the Americas New York, NY 10036 Tel: 212-775-8700 Fax: 212-775-8800				
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Has Transcript Been Prepared? Yes, of oral arguments	Approx. Number of Transcript Pages: 60	Number of Exhibits Appended to Transcript: None	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)								

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION

<p style="text-align: center;"><u>1. Federal Jurisdiction</u></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> U.S. a party <input checked="" type="checkbox"/> Federal question (U.S. not a party) </div> <div style="width: 45%;"> <input type="checkbox"/> Diversity <input type="checkbox"/> Other (specify): _____ </div> </div>	<p style="text-align: center;"><u>2. Appellate Jurisdiction</u></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Final Decision <input type="checkbox"/> Interlocutory Decision Appealable As of Right </div> <div style="width: 45%;"> <input type="checkbox"/> Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b)) <input type="checkbox"/> Other (specify): _____ </div> </div>
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IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

1. Stage of Proceedings <input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial	2. Type of Judgment/Order Appealed <input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal <input type="checkbox"/> Dismissal/other jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Judgment / Decision of the Court <input checked="" type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):	3. Relief <input type="checkbox"/> Damages: <input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____ <input checked="" type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied
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PART C: NATURE OF SUIT (Check as many as apply)

1. Federal Statutes <input type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input checked="" type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental <input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	2. Torts <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Assault / Defamation <input type="checkbox"/> FEHA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):	3. Contracts <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable Instruments <input type="checkbox"/> Other Specify	4. Prisoner Petitions <input type="checkbox"/> Civil Rights <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other
5. Other <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	6. General <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	7. Will appeal raise constitutional issue(s)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? ☒ Yes, specify: Defendants' motion for attorneys' fees ☐ No
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:
- (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
- (B) Involves an issue that is substantially similar or related to an issue in this appeal? ☒ Yes ☐ No
- If yes, state whether ☐ "A," or ☐ "B," or ☐ both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name: The Authors Guild, Inc. v. Google Inc.	Docket No. No. 05 Civ. 8136 (DC)	Citation:	Court or Agency:
Name of Appellant: N/A			

Date: <u>Nov 26, 2012</u>	Signature of Counsel of Record: <u>[Signature]</u>
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NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$455 docketing fee to the United States District Court or the \$450 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.