

**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:  THE AUTHORS GUILD, INC., et al.,  - against -  HATHitrust, et al.	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:  October 12, 2012	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	Counsel's Name: 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	Address:	Telephone No.:	Fax No.:	E-mail:
Attorney(s) for Appellee(s):  <input type="checkbox"/> Plaintiff  <input checked="" type="checkbox"/> Defendant	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	Counsel's Name:	Address:	Telephone No.:	Fax No.:
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**

1. <u>Federal Jurisdiction</u>		2. <u>Appellate Jurisdiction</u>	
<input type="checkbox"/> U.S. a party	<input type="checkbox"/> Diversity	<input checked="" type="checkbox"/> Final Decision	<input type="checkbox"/> Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	<input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Interlocutory Decision Appealable As of Right	<input type="checkbox"/> Other (specify): _____

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

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

<b>1. Stage of Proceedings</b>	<b>2. Type of Judgment/OrderAppealed</b>	<b>3. Relief</b>		
<input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) <input type="checkbox"/> lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) <input type="checkbox"/> failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) <input type="checkbox"/> frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) <input type="checkbox"/> 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): _____	<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

**PART C: NATURE OF SUIT (Check as many as apply)**

<b>1. Federal Statutes</b>	<b>2. Torts</b>	<b>3. Contracts</b>	<b>4. Prisoner Petitions</b>	
<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 checked="" type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Assault / <input type="checkbox"/> Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify): _____	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable <input type="checkbox"/> Instruments <input type="checkbox"/> Other Specify
<b>5. Other</b>	<b>6. General</b>	<b>7. Will appeal raise constitutional issue(s)?</b>		
<input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Attorney Disqualification <input checked="" type="checkbox"/> Class Action <input checked="" type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	<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>November 26, 2012</u>	Signature of Counsel of Record: <u>Edmund R. Nease</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.**