

**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- Google Inc.	District Court or Agency: SDNY	Judge: Hon. Denny Chin
	Date the Order or Judgment Appealed from was Entered on the Docket: 11/27/13 and 12/11/13	District Court Docket No.: 05 Civ. 8136
	Date the Notice of Appeal was Filed: December 23, 2013	Is this a Cross Appeal? Yes <input checked="" type="checkbox"/> No

Attorney(s) for Appellant(s): <input checked="" type="checkbox"/> Plaintiff Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:
	See attached Exhibit A.

Attorney(s) for Appellee(s): <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:
	Dacalyn J. Durie (Tel. 415-362-6666; fax 415-236-6300; email: ddurie@durietangri.com) Joseph C. Gratz (Tel. 415-362-6866; fax 415-236-6300; email: jgratz@durietangri.com) Durie Tangri, LLP 217 Leidesdorff Street San Francisco, CA 94111

Has Transcript Been Prepared? Yes	Approx. Number of Transcript Pages: 30	Number of Exhibits Appended to Transcript: None	Has this matter been before this Circuit previously? <input checked="" type="checkbox"/> Yes No If Yes, provide the following: Case Name: Authors Guild, Inc. v. Google Inc. 2d Cir. Docket No.: 12-3200 CV Reporter Citation: (i.e., F.3d or Fed. App.) 721 F.3d 132 (2d Cir. 2013)
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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>	
U.S. a party <input checked="" type="checkbox"/> Federal question (U.S. not a party)	Diversity Other (specify): _____	<input checked="" type="checkbox"/> Final Decision <input type="checkbox"/> Interlocutory Decision <input type="checkbox"/> Appealable As of Right	Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b)) Other (specify): _____

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

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

<p>1. <u>Stage of Proceedings</u></p> <p><input checked="" type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial</p>	<p>2. <u>Type of Judgment/Order Appealed</u></p> <table style="width:100%;"> <tr> <td style="width:50%;"> Default judgment Dismissal/FRCP 12(b)(1) lack of subj. matter juris. Dismissal/FRCP 12(b)(6) failure to state a claim Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint Dismissal/28 U.S.C. § 1915(e)(2) other dismissal </td> <td style="width:50%;"> Dismissal/other jurisdiction <input checked="" type="checkbox"/> Dismissal/merit Judgment / Decision of the Court <input checked="" type="checkbox"/> Summary judgment Declaratory judgment Jury verdict Judgment NOV Directed verdict Other (specify): </td> </tr> </table>	Default judgment Dismissal/FRCP 12(b)(1) lack of subj. matter juris. Dismissal/FRCP 12(b)(6) failure to state a claim Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	Dismissal/other jurisdiction <input checked="" type="checkbox"/> Dismissal/merit Judgment / Decision of the Court <input checked="" type="checkbox"/> Summary judgment Declaratory judgment Jury verdict Judgment NOV Directed verdict Other (specify):	<p>3. <u>Relief</u></p> <table style="width:100%;"> <tr> <td style="width:50%;"> Damages: Sought: \$ _____ Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ _____ </td> <td style="width:50%;"> Injunctions: Preliminary Permanent <input checked="" type="checkbox"/> Denied </td> </tr> </table>	Damages: Sought: \$ _____ Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ _____	Injunctions: Preliminary Permanent <input checked="" type="checkbox"/> Denied
Default judgment Dismissal/FRCP 12(b)(1) lack of subj. matter juris. Dismissal/FRCP 12(b)(6) failure to state a claim Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	Dismissal/other jurisdiction <input checked="" type="checkbox"/> Dismissal/merit Judgment / Decision of the Court <input checked="" type="checkbox"/> Summary judgment Declaratory judgment Jury verdict Judgment NOV Directed verdict Other (specify):					
Damages: Sought: \$ _____ Granted: \$ _____ <input checked="" type="checkbox"/> Denied: \$ _____	Injunctions: Preliminary Permanent <input checked="" type="checkbox"/> Denied					

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

<p>1. <u>Federal Statutes</u></p> <table style="width:100%;"> <tr> <td style="width:33%;"> Antitrust Bankruptcy Banks/Banking Civil Rights Commerce, Energy Commodities Other (specify): _____ </td> <td style="width:33%;"> Communications <input checked="" type="checkbox"/> Consumer Protection <input checked="" type="checkbox"/> Copyright <input type="checkbox"/> Patent Trademark Election Soc. Security Environmental </td> <td style="width:33%;"> Freedom of Information Act Immigration Labor OSHA Securities Tax </td> </tr> </table>	Antitrust Bankruptcy Banks/Banking Civil Rights Commerce, Energy Commodities Other (specify): _____	Communications <input checked="" type="checkbox"/> Consumer Protection <input checked="" type="checkbox"/> Copyright <input type="checkbox"/> Patent Trademark Election Soc. Security Environmental	Freedom of Information Act Immigration Labor OSHA Securities Tax	<p>2. <u>Torts</u></p> <p>Admiralty/ Maritime Assault / Defamation FELA Products Liability Other (Specify):</p>	<p>3. <u>Contracts</u></p> <p>Admiralty/ Maritime Arbitration Commercial Employment Insurance Negotiable Instruments Other Specify</p>	<p>4. <u>Prisoner Petitions</u></p> <p>Civil Rights Habeas Corpus Mandamus Parole Vacate Sentence Other</p>
Antitrust Bankruptcy Banks/Banking Civil Rights Commerce, Energy Commodities Other (specify): _____	Communications <input checked="" type="checkbox"/> Consumer Protection <input checked="" type="checkbox"/> Copyright <input type="checkbox"/> Patent Trademark Election Soc. Security Environmental	Freedom of Information Act Immigration Labor OSHA Securities Tax				
<p>5. <u>Other</u></p> <p><input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____</p>	<p>6. <u>General</u></p> <p>Arbitration Attorney Disqualification <input checked="" type="checkbox"/> Class Action Counsel Fees Shareholder Derivative Transfer</p>	<p>7. Will appeal raise constitutional issue(s)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>				

1. Is any matter relative to this appeal still pending below? Yes, specify: _____ 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. HathiTrust	Docket No. 12-4547	Citation:	Court or Agency: Second Circuit
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Name of Appellant: **The Authors Guild, Inc., et al.**

Date: January 6, 2014	Signature of Counsel of Record:
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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 \$505 docketing fee to the United States District Court or the \$500 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.

Exhibit A

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