UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL; NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS, Plaintiffs/ Counter-Defendants, v. PUBLIC.RESOURCE.ORG, INC., Defendant/ Counter-Plaintiff.	Case No. 1:13-cv-01215-TSC

JOINT PROPOSED SCHEDULE

The Parties jointly submit a stipulated discovery schedule and their respective proposed briefing schedules pursuant to the Court's February 26, 2019 Minute Order (the "Order").

The Parties agree to the take the additional discovery in accordance with the Order. After the Court granted Public Resource's request to reopen discovery on the limited matters of fair use and copyright ownership, Plaintiffs now indicate that they intend to take discovery as well. To allow for document discovery, interrogatories, and depositions, including depositions of government officials that may take additional time to schedule, the Parties propose the following schedule:

Event	Deadline
Deadline for serving additional document requests and interrogatories	May 27, 2019
Deadline for substantial completion of document production	July 19, 2019
Close of fact discovery	September 9, 2019

In addition, the Parties present their respective proposals for summary judgment briefing.

Plaintiffs' Proposal:

Event	Deadline
Cross-motions for summary judgment	October 4, 2019
Amicus briefs	October 18, 2019
Responses to motions for summary judgment	November 22, 2019

Plaintiffs respectfully submit that the parties should not require more than one month to prepare their cross-motions for summary judgment and one month to prepare their responses thereto. The parties already briefed the copyright and trademark fair use issues once before this Court and again before the D.C. Circuit. Nevertheless, Plaintiffs' schedule provides the parties with significantly more time to respond to the motions for summary judgment than the 14 days contemplated by Local Rule 7(b). As a result, Plaintiffs' proposed briefing schedule fairly balances the parties' interest in having adequate time to brief the remaining issues with the prejudice that Plaintiffs are suffering now that PRO has reposted Plaintiffs' copyrighted works online.

On the other hand, PRO's proposed non-consolidated briefing schedule extends

more than four months beyond the close of fact discovery. As the Court recognized the last time that PRO sought this type of protracted briefing schedule, "the longer those documents are up there, the greater the harm that [Plaintiffs] allege they're suffering." 11/4/15 Tr. at 7:10-12. As a result, the Court asked PRO if it would agree to take the standards-at-issue down from the Internet pending a decision on the motion for summary judgment if PRO wanted a protracted briefing schedule, and PRO agreed to do so. *Id.* at 19:9-18. The same logic applies this time around, and Plaintiffs respectfully request that the Court enter a briefing schedule that lasts approximately two months after the close of fact discovery unless PRO agrees to remove the works-at-issue from the Internet pending a decision on the cross-motions for summary judgment.

Finally, Plaintiffs object to PRO's attempt to force them to file a single brief with the planitiffs in the *AERA* case. This is not how the parties previously briefed summary judgment, and the parties did not file a consolidated brief on appeal. PRO offers no explanation as to why Plaintiffs should be compelled to consolidate their briefs with the briefs of numerous plaintiffs in a separate case. It will already be complicated enough for the three plaintiffs in this case to coordinate their brief given that the D.C. Circuit has made it clear that the parties and the Court will need to develop a "fuller record" regarding each of the standards at issue. Requiring Plaintiffs to consolidate the briefing that addresses each of their works with the works of the three plaintiffs in the *AERA* case will unnecessarily complicate and lengthen Plaintiffs' briefs.

Defendant's Proposal

After the close of discovery, Public Resource urges the Court to consolidate briefing in this case with briefing in the *AERA* case.[1] If these cases return to the D.C. Circuit, both cases (and their respective standards) will be evaluated together; it is in the best interests of all parties and the Court to attempt to analyze and categorize all standards together when conducting the fair use analysis, rather than allowing one case to proceed ahead of the other. If the Court chooses to consolidate, Public Resource proposes the following:

Event	**Deadline**
Consolidated opening cross-motions for summary judgment	October 17, 2019
Amicus briefs	November 14, 2019
Consolidated opposition briefs	December 5, 2019
Consolidated reply briefs	December 19, 2019

If the Court does not believe that consolidation for the purposes of summary judgment is appropriate, Public Resource requests a staggered briefing schedule, similar to the schedule for the first summary judgment briefing, to help ensure that it has an adequate opportunity to respond to each Plaintiff without overwhelming its pro bono resources.

[1] While a single, consolidated opening brief by the Plaintiffs in both cases would make the most sense, if the cases are consolidated on summary judgment Public Resource does not object to the *ASTM* case Plaintiffs and the *AERA* case Plaintiffs choosing to file separate briefs, so long as Public Resource has adequate opportunity to respond.

Event	Deadline
[ASTM] ASTM Plaintiffs' opening motion for summary judgment	October 17, 2019
[ASTM] Public Resource's joint opening motion for summary judgment/opposition to ASTM Plaintiffs' motion	November 14, 2019
[AERA] AERA Plaintiffs' opening motion for summary judgment	November 14, 2019
[ASTM] Amicus briefs due	December 5, 2019
[ASTM] Plaintiffs' joint reply/opposition to Public Resource's motion for summary judgment	December 12, 2019
[AERA] Public Resource's joint opening motion for summary judgment/opposition to AERA Plaintiffs' motion	December 12, 2019
[ASTM] Public Resource's reply	December 30, 2019
[AERA] Amicus briefs due	January 9, 2020
[AERA] Plaintiffs' joint reply/opposition to Public Resource's motion for summary judgment	January 16, 2020
[AERA] Public Resource's reply	January 30, 2020

Given that the Court of Appeals dissolved the previous injunction, and that the Plaintiffs have not sought a preliminary injunction at this stage, Public Resource does not believe it is either appropriate or necessary to take down the standards at issue pending summary judgment. Nothing in the current record establishes that the schedule proposed by Public Resource will subject Plaintiffs to any additional prejudice as compared to Plaintiffs' proposal.

Dated: March 12, 2019

Respectfully submitted,

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