

**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,

Plaintiff-Counterdefendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant-Counterclaimant.

Case No: 1:13-cv-01215-TSC

**UNOPPOSED MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF ON BEHALF
OF LAW SCHOLARS IN SUPPORT OF DEFENDANT-COUNTERCLAIMANT
PUBLIC.RESOURCE.ORG'S SECOND MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO PLAINTIFF-COUNTERDEFENDANTS' SECOND MOTION FOR
SUMMARY JUDGMENT AND PERMANENT INJUNCTION**

On behalf of the *amici* identified in the accompanying appendix, herein referred to as “*Amici*,” the undersigned counsel respectfully moves for leave to file an *amicus curiae* brief in support of Defendant-Counterclaimant Public.Resource.Org’s Second Motion for Summary Judgment and in opposition to Plaintiff-Counterdefendants’ Second Motion for Summary Judgment and Permanent Injunction filed in the above referenced matter. A copy of the proposed brief accompanies this motion.

1. *Amici* are professors at major U.S. law schools, who teach and write about copyright, information law, intellectual property, the Internet, and related issues. *Amici* file solely as individuals and not on behalf of any institutions with which they are affiliated.

2. *Amici* do not have a financial interest in the outcome of the present litigation. *Amici*—as scholars and experts with knowledge and experience concerning copyright, information law, intellectual property, the Internet, and related issues—have an interest in ensuring the proper functioning and coherent development of the copyright system.

3. Further, as law professors, *Amici* are committed to ensuring robust and unfettered access by citizens to the laws with which they are required to comply.

4. This Court has permitted *amicus* briefs when “the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). As experts in the field, *Amici* offer the viewpoint of unbiased observers, a perspective that the Court could not otherwise get from the parties to this case.

5. *Amici* write to bring to the Court’s attention legal analysis relevant to the question of fair use of works authored by standards developing organizations and incorporated into operative law.

6. In particular, the proposed *amicus* brief provides context regarding fair use’s role in furthering the purposes of copyright law, and assesses the applicability of fair use to model codes that have been adopted in to law (like those in the present case).

7. *Amici*’s extensive knowledge of copyright law and related intellectual property issues, developed through academic research and/or real world legal practice, combined with their

understanding of the purposes of copyright and fair use, gives *Amici* valuable insight into the question at issue.

8. The parties have agreed that they will not oppose any *amicus* filing in support of either side.

DATED: November 22, 2019

Respectfully Submitted,

/s/ Marcia Hofmann

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APPENDIX

Ann Bartow

Professor of Law, University of New Hampshire Franklin Pierce School of Law
Director, Franklin Pierce Center for Intellectual Property

Ann Bartow is the Director of the Franklin Pierce Center for Intellectual Property and a Professor of Law at the University of New Hampshire Franklin Pierce School of Law. Prior to joining the University of New Hampshire in 2015, Professor Bartow was taught at the Pace Law School and the University of South Carolina School of Law. Professor Bartow was a Fulbright Scholar at Tongji University in Shanghai, China during the 2011-2012 academic year. Bartow is the current chair of the American Association of Law Schools Intellectual Property Section and a current member of the Advisory Board of the Electronic Privacy Information Center (EPIC).. Bartow is also a member of the American Law Institute.

Her scholarship focuses on the intersection between intellectual property laws and public policy concerns, privacy and technology law, and feminist legal theory. At the University of New Hampshire, Professor Bartow teaches courses about copyright law and intellectual property.

Elizabeth Townsend Gard

Professor of Law, Tulane University Law School
Director, Tulane Center for IP Law and Culture

Elizabeth Townsend Gard is a professor of law at Tulane University Law School and is the founder and co-director of the Tulane Center for IP Law and Culture. She also founded and co-directs the Law/Culture/Innovation Initiative in the Social Innovation Social Entrepreneurship Program at Tulane. Professor Townsend Gard has served as a non-resident fellow at the Center for Internet and Society at Stanford Law School since 2004. She previously taught at Seattle

University School of Law. She is also a co-inventor of the Durationer® Copyright Experiment, a software system that collects information about the copyright status of a work around the globe.

Professor Townsend Gard's research focuses on copyright law, international copyright issues, and copyright duration, among other subjects. Her writings have appeared in *Vanderbilt Law Review*, *DePaul Law Review*, *Cardozo Arts & Entertainment Law Journal*, the *Journal of the Copyright Society of the U.S.A.*, *Journal of Internet Law*, *Columbia Journal of Law & the Arts* and *Santa Clara Computer & High Technology Law Journal*.

James Gibson

Sesquicentennial Professor of Law, University of Richmond School of Law

James Gibson is the Sesquicentennial Professor of Law at Richmond School of Law. Professor Gibson teaches and writes on copyright law, the fair use doctrine, law and technology, and other subjects. He has published scholarship in the *Yale Law Journal*, *Virginia Law Review*, *Georgetown Law Journal*, *Texas Law Review*, and *UCLA Law Review*.

Brian L. Frye

Spears-Gilbert Associate Professor of Law, University of Kentucky College of Law

Brian L. Frye is the Spears-Gilbert Associate Professor of Law at the University of Kentucky College of Law. Prior to joining the University of Kentucky faculty in 2012, he was a Visiting Assistant Professor of Law at Hofstra University School of Law and a litigation associate at Sullivan & Cromwell LLP. He also clerked for Judge Andrew J. Kleinfeld of the United States Court of Appeals for the Ninth Circuit and Justice Richard B. Sanders of the Washington Supreme Court.

Professor Frye's research focuses on intellectual property and charity law, especially in relation to artists and art organizations. At the University of Kentucky, he teaches courses in intellectual property, copyright law, and trademark law, among others.

Stacey M. Lantagne

Associate Professor of Law, The University of Mississippi School of Law

Stacey M. Lantagne is the Associate Dean for Faculty Development and an Associate Professor of Law at the University of Mississippi School of Law. Professor Lantagne graduated from Boston College *summa cum laude* with a B.A. in English and a computer science minor and received her J.D. *cum laude* from Harvard Law School, where she was the co-executive editor of the Harvard *Journal of Law & Technology*. After law school, she clerked for a year for Judge Martin L.C. Feldman in the Eastern District of Louisiana. Upon completion of her clerkship, Professor Lantagne practiced law first at Drinker Biddle & Reath in Washington, D.C., and then at Goodwin Procter in Boston, where she practiced intellectual property litigation with a focus on copyright and trademark matters, including a number of trade secret and deceptive advertising cases. Prior to joining the University of Mississippi School of Law faculty, Professor Lantagne was a Westerfield Fellow at Loyola New Orleans College of Law. Professor Lantagne is admitted to practice in Massachusetts and the District of Columbia.

Jessica Silbey

Professor of Law, Northeastern University School of Law

Director of the Center for Law, Innovation, and Creativity, Northeastern University School of Law

Jessica Silbey is a Professor of Law and the Faculty Director for the Center for Law, Innovation, and Creativity at the Northeastern University School of Law. She was a 2018 Guggenheim Fellow in Law. Professor Silbey clerked for Judge Robert E. Keeton of the U.S.

District Court for the District of Massachusetts and Judge Levin H. Campbell of the U.S. Court of Appeals for the First Circuit.

Professor Silbey's work focuses on intellectual property, copyright law, trademark law, constitutional law, and cultural analysis of law. She is the author of *The Eureka Myth: Creators, Innovators and Everyday Intellectual Property* (Stanford University Press, 2015), and the co-editor of two books about depictions of law in media and popular culture. She has been published in the *Boston University Law Review*, the *Notre Dame Law Review*, the *Maryland Law Review*, and the *Columbia Journal of Law & the Arts*, among others.

Rebecca Tushnet
Frank Stanton Professor of the First Amendment, Harvard Law School

Rebecca Tushnet is the Frank Stanton Professor of the First Amendment at Harvard Law School. Professor Tushnet specializes in copyright, trademark, and false advertising law. Her publications include a casebook, *The Law of Advertising and Marketing* (2d ed., 2014), and a chapter on transformative purpose in *The Routledge Companion to Media Education, Copyright, and Fair Use* (Renee Hobbs ed., 2018). Her research has been published in the *Harvard Law Review*, the *Yale Law Journal*, and the *Texas Law Review*, among other publications.