

Exhibit A

Wise, Jane W.

From: Corynne McSherry <corynne@eff.org>
Sent: Wednesday, May 27, 2020 10:12 AM
To: Kelly Klaus
Cc: ANDREW BRIDGES; Matthew Becker; Mitch Stoltz; Fee, J. Kevin; Wise, Jane W.;
Cunningham, Blake; Ehler, Rose; Miller-Ziegler, Rachel G.
Subject: Re: PRO

[EXTERNAL EMAIL]

Hi Kelly,

It's unfortunate that we can't resolve this by stipulation, but if Plaintiffs wish to seek a status conference, of course they can do so. Please indicate our position as follows: "Public Resource does not oppose a status conference if it assists the Court, but prefers first to make additional efforts to work with Plaintiffs to narrow the parties' differences and commit any remaining disputes to a written filing for the Court to review."

Hope you and yours are staying safe and well.

Best,
Corynne

Corynne McSherry (she/her)
Legal Director
Electronic Frontier Foundation
415-436-9333 x122

Please note: I do not expect that you will read, respond, or act on this message outside of your normal work hours.

On May 26, 2020, at 10:32 AM, Klaus, Kelly <Kelly.Klaus@mto.com> wrote:

Hi Andrew –

Thanks for your email. I'm not sure we have agreement on the short supplement, since it appears you are not willing to include as part of that submission whether it is authorized or appropriate for PRO to file a new summary judgment motion before the Court resolves the long-pending motions that were the subject of its prior orders on summary judgment procedure following remand.

We think the parties would benefit from a status conference with the Court so that we can discuss these issues and get the Court's guidance. We intend to file a request for a status conference. If PRO opposes having a status conference, please let us know that, and we will inform the Court of your opposition.

Thanks, and best regards,
Kelly

From: Andrew Bridges <abridges@fenwick.com>
Sent: Thursday, May 21, 2020 3:54 PM
To: Klaus, Kelly <Kelly.Klaus@mto.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Cc: Fee, J. Kevin <kevin.fee@morganlewis.com>; Wise, Jane W. <jane.wise@morganlewis.com>; Cunningham, Blake <BCunningham@KSLAW.com>; Ehler, Rose <Rose.Ehler@mto.com>; Miller-Ziegler, Rachel G. <Rachel.Miller-Ziegler@mto.com>
Subject: RE: PRO

Hi Kelly and others—

Thanks for your response.

It is good that we can agree on the procedure for a short supplement to the pending motions.

Public Resource intends to move ahead on a new motion for summary judgment focusing on copyright eligibility/enforceability because (1) a number of the Supreme Court's conclusions in *Georgia* provide essential guidance on the issues; (2) the Court highlighted the practical procedural difference between those issues and fair use in a way that calls into question the D.C. Circuit's preference for addressing fair use before the other issues; and (3) it will be more efficient at this juncture to have all of these issues briefed, in the event either side seeks appellate review of these proceedings. Accordingly, Public Resource thinks it best for the parties to agree to a briefing schedule by stipulation instead of having Public Resource proceed with a motion with the default timing under LCvR 7. If the ASTM plaintiffs believe that a new motion is improper, they may raise that in opposition to Public Resource's motion.

Please let me know how your clients wish to proceed.

Best regards,

Andrew

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From: Klaus, Kelly [<mailto:Kelly.Klaus@mto.com>]
Sent: Friday, May 8, 2020 6:36 PM
To: Andrew Bridges <abridges@fenwick.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Cc: Fee, J. Kevin <kevin.fee@morganlewis.com>; Wise, Jane W. <jane.wise@morganlewis.com>; Cunningham, Blake <BCunningham@KSLAW.com>; Ehler, Rose <Rose.Ehler@mto.com>; Miller-Ziegler, Rachel G. <Rachel.Miller-Ziegler@mto.com>
Subject: RE: PRO

**** EXTERNAL EMAIL ****

Andrew, thanks. I'm cc'ing counsel for the other co-plaintiffs in the ASTM case.

We agree the parties should submit simultaneous briefs regarding the effect either side thinks *Georgia v PRO* has on the pending motions. Ten pages seems fine. And two weeks within which to file after we file the stipulation seems more than adequate.

We do not think there is a basis for PRO to file a new summary judgment motion on the copyrightability issues. We previously asked PRO to stipulate to stay the current round of briefing to await the Supreme Court's decision. PRO declined to so stipulate and vigorously opposed our motion to stay—and the District Court denied our motion. We are fine presenting the question of whether this is an appropriate juncture for a new summary judgment motion in the supplemental briefs to the Court.

Will you please send us a proposed stipulation?

Thanks, and stay well,
Kelly

From: Andrew Bridges <abridges@fenwick.com>
Sent: Wednesday, May 06, 2020 12:07 PM
To: Klaus, Kelly <Kelly.Klaus@mto.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Subject: RE: PRO

Hi Kelly,

Thanks for following up. I'm happy to talk, but here is what Public Resource is thinking. Public Resource proposes that we submit a stipulation that, within 15 days of the order approving it, both sides file supplements of no more than 10 pages addressing the effect of *Georgia* on the pending motions.

Public.Resource.Org also plans to file a new motion for summary judgment on copyrightability in light of *Georgia*, and we should discuss a stipulation for a briefing schedule. Public Resource proposes 30 days from the order approving the stipulation to file the opening brief, 30 days for an opposition, and 15 days for a reply.

Please let me know your thoughts.

Best regards, and stay safe,

Andrew

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From: Klaus, Kelly [<mailto:Kelly.Klaus@mto.com>]

Sent: Tuesday, May 5, 2020 10:22 AM

To: Andrew Bridges <abridges@fenwick.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org

Subject: RE: PRO

**** EXTERNAL EMAIL ****

Hi Andrew –

Circling back to see if we can find a time to talk in the next day or two.

Thanks,

Kelly

From: Klaus, Kelly

Sent: Monday, April 27, 2020 5:27 PM

To: 'Andrew Bridges' <abridges@fenwick.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org

Subject: RE: PRO

Sounds good. Thanks.

From: Andrew Bridges <abridges@fenwick.com>

Sent: Monday, April 27, 2020 5:09 PM

To: Klaus, Kelly <Kelly.Klaus@mto.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Subject: RE: PRO

That's fine. When we talk I think we should be able to agree on a process and timeline.

Andrew

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From: Klaus, Kelly [<mailto:Kelly.Klaus@mto.com>]
Sent: Monday, April 27, 2020 4:51 PM
To: Andrew Bridges <abridges@fenwick.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Subject: RE: PRO

**** EXTERNAL EMAIL ****

Andrew, thanks for your email. Fine with us to wait a few days to speak. End of this week or early next week are fine. Are we in agreement that neither side will file anything with the District Court until we speak? Of course, if the Court issues anything before then directing the parties to file supplemental briefs, then we'll both follow that order.

From: Andrew Bridges <abridges@fenwick.com>
Sent: Monday, April 27, 2020 2:57 PM
To: Klaus, Kelly <Kelly.Klaus@mto.com>; Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org
Subject: RE: PRO

Hi Kelly,

I hope you, your colleagues, and your loved ones are all faring well right now.

Thanks for reaching out. I think it will take a few days to absorb the significance of the decision and then to gather the team to discuss it. Shall we consider talking in about a week? If so, please suggest some days/times.

Best regards,

Andrew

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From: Klaus, Kelly [<mailto:Kelly.Klaus@mto.com>]

Sent: Monday, April 27, 2020 11:29 AM

To: Corynne McSherry (corynne@eff.org) <corynne@eff.org>; Andrew Bridges <abridges@fenwick.com>; Matthew Becker <mbecker@fenwick.com>; mitch@eff.org

Subject: PRO

**** EXTERNAL EMAIL ****

Hi all –

I hope this finds you and your families healthy and doing as well as can be during this very unsettling time.

I'm guessing you've seen the Supreme Court's decision in Georgia/PRO, and maybe you've even been able to make it through all of the opinions. I'm writing to see what you all think about jointly notifying the District Court in our case that the case has come down, and also what your thoughts are about the parties jointly requesting leave to file supplemental briefs. I'm sure the Court will let us know if it wants supplemental briefs, but we could also make a joint request now. Let me know if you'd like to get on the phone to discuss.

Take good care, all.

Best,
Kelly

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