

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATIONAL RESEARCH ASSOCIATION, INC., AMERICAN PSYCHOLOGICAL ASSOCIATION, INC., and NATIONAL COUNCIL ON MEASUREMENT IN EDUCATION, INC.,)	
)	
Plaintiffs,)	Civil Action No. 1:14-cv-00857-CRC
)	PLAINTIFFS' RESPONSE
v.)	TO THE COURT'S MINUTE
)	ORDER OF JULY 1, 2014
)	
PUBLIC.RESOURCE.ORG, INC.,)	
)	
Defendant.)	
)	

Plaintiffs, American Educational Research Association, Inc., American Psychological Association, Inc., and National Council on Education Measurement in Education, Inc. (collectively, "Plaintiffs"), herein respond to the Court's Minute Order of July 1, 2014. Plaintiffs have continuing interest in this case, and intend to pursue it fully. Good cause exists for maintaining this action on the Court's docket.

Statement of Points and Authorities

This case concerns the copyright infringement and contributory copyright infringement of Plaintiffs' work, the *Standards for Educational and Psychological Testing* (the "Standards") by Defendant, Public.Resource.Org, Inc. ("Public Resource"). Defendant published Plaintiffs' Standards to Public Resource's website without Plaintiffs' permission. Defendant also contributed to similar activities engaged in by the Internet Archive (a/k/a Archive.org).

Public Resource was served with Plaintiffs' Summons and Complaint on June 2, 2014. Plaintiffs filed the Return of Service with the Court on June 10, 2014. Public Resource's Answer was due on June 23, 2014.

Plaintiffs had been preparing to file their motion for a preliminary injunction when, on June 11, 2014, the undersigned began discussions with defense counsel, Andrew Bridges of Fenwick & West LLP and Mitchell Stoltz of the Electronic Frontier Foundation. As a result of these discussions, Public Resource's President and Founder, Carl Malamud, provided written assurances that, "until the conclusion of a trial on the merits of this case, [Defendant] ... will keep [Plaintiffs' Standards] ... off of websites under Public Resource's control and will not disseminate the document, in whole or in part, including any revisions, and will maintain the status on the Internet Archive to prevent any public access to the document from the Archive's websites."

In exchange for Defendant's written undertaking, Plaintiffs refrained from filing their preliminary injunction motion and consented to a 21-day extension of time (or until July 14, 2014) for Public Resource to answer the Complaint. However, defense counsel did not enter an appearance, nor did Public Resource file a motion requesting an extension of time to answer, at any time during the month of June 2014.

The Court issued its Minute Order on July 1, 2014, requesting that Plaintiffs show cause why this action should not be dismissed for failure to prosecute. After consulting with our clients, the undersigned forwarded the Court's Minute Order to Messrs. Bridges and Stoltz on July 3, 2014.

As the Court's docket now reflects, on July 7 and 8, 2014: (i) defense counsel entered their appearance, (ii) Public Resource filed its Corporate Interest Disclosure Statement, and (iii) Public Resource filed its motion for an extension of time (until July 14, 2014) to answer the Complaint (noting Plaintiffs' consent) (Dkt. Nos. 6-10).

The Court's Minute Order of July 8, 2014 granted Defendant's motion for an extension

of time to answer, and the parties are prepared to move forward with the litigation of this case.

WHEREFORE, Plaintiffs continue to have interest in this case, have responded to the Court's Minute Order, and respectfully request that the Court maintain this action on its docket.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, LLP

Dated: July 9, 2014

By: /s/ Jonathan Hudis
Jonathan Hudis (DC Bar # 418872)
Kathleen Cooney-Porter (DC Bar # 434526)
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, LLP
1940 Duke Street
Alexandria, VA 22314
Tel. (703) 413-3000
Fax (703) 413-2220
E-Mail jhudis@oblon.com
E-Mail kcooney-porter@oblon.com

Attorneys for Plaintiffs

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC.
AMERICAN PSYCHOLOGICAL
ASSOCIATION, INC.
NATIONAL COUNCIL ON
MEASUREMENT IN EDUCATION, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO THE COURT'S MINUTE ORDER OF JULY 1, 2014** was filed with the Court's online CM/ECF filing system on July 9, 2014, providing Notice of Electronic Filing ("NEF") service upon the following counsel who have entered an appearance in this action:

David E. Halperin
1530 P. Street NW, First Floor
Washington, DC 20005
davidhalperindc@gmail.com

Mitchell L. Stoltz
Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA 94109
mitch@eff.org

Andrew P. Bridges
Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, CA 94104
abridges@fenwick.com

/s/ Jonathan Hudis

Jonathan Hudis (DC Bar # 418872)