

EXHIBIT A

1:14-cv-00857-TSC-DAR

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

| | | |
|-----------------------------|---|------------------------|
| AMERICAN EDUCATIONAL | . | Case No. 1:14-CV-00857 |
| | . | (TSC/DAR) |
| RESEARCH ASSOCIATION, INC., | . | |
| | . | |
| ET AL., | . | Washington, D.C. |
| | . | January 22, 2015 |
| Plaintiffs, | . | |
| | . | |
| v. | . | |
| | . | |
| PUBLIC.RESOURCE.ORG., INC., | . | |
| | . | |
| Defendant. | . | |
| | . | |

HEARING ON PLAINTIFFS' AMENDED MOTION TO COMPEL
(DOC. #27)
BEFORE THE HONORABLE DEBORAH A. ROBINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

| | |
|---------------------|--|
| For the Plaintiffs: | Oblon, McClelland, Maier & Neustadt, LLP By: JONATHAN HUDIS, ESQ. KATHLEEN COONEY-PORTER, ESQ. 1940 Duke Street Alexandria, VA 22314 |
|---------------------|--|

| | |
|--------------------|--|
| For the Defendant: | Fenwick & West, LLP By: MATTHEW B. BECKER, ESQ. 801 California Street Mountain View, CA 94041 |
|--------------------|--|

BOWLES REPORTING SERVICE
255 Route 12, Suite 1
GALES FERRY, CONNECTICUT 06335 - (860) 464-1083
brs-ct@sbcglobal.net

1 Public.Resource.Org.

2 THE COURT: Very well. Please, proceed.

3 MR. BECKER: So as an initial matter, Your
4 Honor, we do believe that the cases should be
5 consolidated for the purposes of discovery.

6 THE COURT: And let me ask you to please
7 articulate the basis of that request.

8 MR. BECKER: Yes.

9 THE COURT: I've heard from counsel for
10 Plaintiffs regarding, I think we can call it their
11 strenuous objection to such process. We recognize that
12 the state of the record is that the cases are assigned
13 to the same District Judge as related cases; that is,
14 the mere fact that the District Judge did not
15 consolidate the cases does not mean that this Court
16 could not consolidate for purposes of discovery, so
17 that is what I'll ask you to address, with that
18 background in mind.

19 MR. BECKER: Yes, Your Honor.

20 THE COURT: Now, please continue.

21 MR. BECKER: As you are aware, we have a
22 parallel case going on, the ASTM case, and that case
23 has produced -- has, in itself, been a great deal of
24 work. We are actually about to approach Judge Chutkan
25 about getting a discovery extension in that case, until

1 April 15th, and their -- we've encountered significant
2 issues in that case which, as have been noted, have
3 parallel legal issues to this one.

4 In that case we've discovered that where we
5 thought that the case would be decided on just a narrow
6 issue, we've instead found that there's significant
7 reason to believe that the Plaintiffs do not actually
8 own the copyright for the works that they claim and --
9 but in doing so, this has been a very document-
10 intensive process, and has required a great deal of
11 effort on our part --

12 THE COURT: Just so the record is clear, the
13 ownership issue applies to the -- or your argument
14 regarding the ownership issue is with respect, not to
15 this case, but the one we will call the "ASTM case,"
16 and I apologize, I do not have immediate recall of the
17 number, but we will call it the "ASTM case" as opposed
18 to this one.

19 MR. BECKER: Correct, Your Honor.

20 THE COURT: Very well.

21 MR. BECKER: However, we believe that similar
22 issues could be at play in this case, and we have not
23 yet had the opportunity to delve into this. We had not
24 yet received any documents, and we have only just
25 received discovery responses in this case, this past

1 Tuesday.

2 THE COURT: All right. Let me interrupt you
3 again.

4 What do you believe the Defendant would need
5 to know by way of discovery or other procedures, in
6 order to determine whether consolidation of the two
7 cases, either for discovery or for some broader
8 purpose, would be something that would be requested?

9 MR. BECKER: So, as an initial matter, Your
10 Honor, we don't believe that we would need to know
11 anything at this point, simply because of the -- the
12 burdens of responding to and participating in the
13 discovery process, for both the parallel case and this
14 case, I believe, warrant that they should be treated in
15 tandem and consolidated for discovery purposes, as
16 there's a great deal of work being put on us, and we
17 are being essentially pulled in opposite directions
18 whereas if the cases were consolidated for discovery
19 purposes, that would allow us to move forward in a more
20 collected and efficient manner.

21 THE COURT: Is there authority -- Are you
22 aware of authority at this time, which would -- which
23 stands for the proposition that the burden of
24 responding to competing or conflicting requests is a
25 basis for consolidating cases for discovery?

1 MR. BECKER: Not at the moment, Your Honor,
2 but I can look into that if that's something that you
3 would request.

4 THE COURT: The Court's concern, of course,
5 is that if there is a basis in support of your request,
6 certainly the Court must consider it. At this time I
7 have no basis to order such a consolidation because I
8 haven't been presented with authority. My question was
9 one that I posed to both sides, believing there might
10 be some agreement that that would be appropriate. If
11 there had been an agreement, perhaps we would not need
12 further discussion, at least at the moment, regarding
13 how to resolve this conflict, there would be an
14 agreement, but there is no agreement. So it is
15 imperative that the Court understand the full basis of
16 the Defendant's request.

17 In other words, is it a request based solely
18 on the logistical problems associated with responding
19 to requests in two separate cases, or is there
20 something else --

21 MR. BECKER: No, --

22 THE COURT: -- concerning an overlap of
23 issues?

24 MR. BECKER: No, Your Honor. We believe
25 there's also an overlap in terms of the issues from a

1 legal perspective, most immediately the issues that are
2 being dealt with in both cases are similar, if not
3 identical.

4 We disagree with the Plaintiffs'
5 characterization that there's a difference between
6 standards and codes, or that the standards and codes
7 have been treated differently with regards to
8 incorporation by reference into law for the ASTM case
9 verses the present case, Your Honor.

10 THE COURT: How does that affect the issues
11 with respect to the conduct of discovery?

12 MR. BECKER: Well, with regards to the
13 conduct of discovery, Your Honor, we would -- this
14 would influence the way in which we would go forward
15 with depositions and other things, such as that -- like
16 that, and will note that many of the same parties are
17 being deposed in both cases, and this may also affect
18 the particular requests for production of documents and
19 the discovery that we proceed with in that matter.

20 THE COURT: Do you believe that the
21 Defendant's request will be to consolidate both cases
22 for all purposes, or only for the purpose of discovery?

23 MR. BECKER: Your Honor, we are only just
24 contemplating that issue. It may be the case that we
25 would ask for the cases to be consolidated for all

1 purposes, though I can't answer specifically on that
2 point yet.

3 THE COURT: Very well.

4 I'll ask you to please continue with your
5 discussion of the background.

6 MR. BECKER: Thank you, Your Honor.

7 THE COURT: If you are ready to address the
8 merits of the -- or the substantive issues, the
9 remaining issues that the Plaintiffs have identified,
10 you may do that.

11 MR. BECKER: Your Honor, if I may first
12 address the matter of the status of the litigation --

13 THE COURT: Of course.

14 MR. BECKER: -- and our efforts, in terms of
15 meeting and conferring?

16 THE COURT: Yes.

17 MR. BECKER: As the Plaintiffs have noted, we
18 have met and conferred many times over the past few
19 months regarding this case, and specifically regarding
20 these -- the points that are noted here.

21 In the process of that, we also -- there were
22 ambiguities in the particular terms that Plaintiffs'
23 had used in a discovery request, and we sought to
24 clarify those ambiguities and set definitions. It was
25 Public.Resource that put forward the definitions that