

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE AMERICAN SOCIETY OF MEDIA)
PHOTOGRAPHERS, INC., GRAPHIC ARTISTS,)
GUILD, PICTURE ARCHIVE COUNCIL OF)
AMERICA, INC., NORTH AMERICAN)
NATURE PHOTOGRAPHY ASSOCIATION,)
PROFESSIONAL PHOTOGRAPHERS OF)
AMERICA, LEIF SKOOGFORS, AL)
SATTERWHITE, MORTON BEEBE, ED KASHI,)
JOHN SCHMELZER, SIMMS TABACK,)
LELAND BOBBE, JOHN FRANCIS FICARA,)
and DAVID W. MOSER, on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

GOOGLE, INC.,)

Defendant.)

Case No. _____

Principal case pending in the
United States District Court for the
Southern District of New York,
Case No. 10-CV-02977 (DC)

MOTION TO QUASH SUBPOENA

Tribune Media Services, LLC (“TMS”), a non-party, by its attorneys, respectfully moves this Court pursuant to Federal Rules of Civil Procedure 26(c) and 45(c)(3) for an Order quashing the subpoena for documents and deposition served on it by Plaintiffs (“Photographers”) in connection with a New York lawsuit (“Photographers’ Case”). In support of its Motion, TMS submits and incorporates its Memorandum in Support of Motion to Quash Subpoena and states as follows:

1. Photographers issued a subpoena to TMS (“Photographers’ Subpoena”) in connection with the action captioned *The American Society of Media Photographers et al. v. Google, Inc.*, No. 10-CV-02977 (DC), pending in the United States District Court for the Southern District of New York.

2. The underlying, principal case is a class action lawsuit, in which Photographers seek injunctive relief against and statutory damages from Google for alleged copyright infringement based on Google's reproduction of photographs from certain books that Google has imaged in connection with its "Library Project."

3. TMS's business involves the provision of TMS's proprietary compilation of information about television content, including schedule and programming information, movie showtimes and information, and other related content to various print, online, and on-screen television or "entertainment" guides and publications. TMS has no role in, interest in, or relationship to Google's Library Project.

4. Photographers' Subpoena violates both Rule 26 and Rule 45 because it improperly seeks irrelevant information, seeks TMS's confidential business information without a showing of substantial need, and subjects TMS to undue burden. TMS is not a party and has no interest in the Photographers' Case. In short, Photographers' Subpoena seeks information from TMS that has no reasonable nexus to the issues in Photographers' Case.

5. Moreover, Photographers' purported justification for their Subpoena that TMS's confidential business information is relevant to a fair-use analysis is groundless. TMS's product involves wholly different content from different sources that is provided to its customers for different uses through totally distinct trade channels than the Google Library Project. Photographers' unsupportable speculation or theory about a fictitious market in which photographs scanned from books compete with information about television programs is not an appropriate foundation for their Subpoena. *See Trading Techs. Int'l, Inc. v. eSpeed, Inc.*, 2006 U.S. Dist. LEXIS 89202, at *6 (N.D. Ill. Dec. 5, 2006).

6. Photographers' Subpoena imposes an undue burden on non-party TMS. Courts in this district routinely quash subpoenas issued to non-parties where responding to the subpoenas would subject the non-party to undue burden, even where the non-party may have some relevant discovery. *See, e.g., Nw. Mem. Hosp. v. Ashcroft*, 362 F.3d 923, 927 (7th Cir. 2004); *Patterson v. Burge*, No. 03 C 4433, 2005 U.S. Dist. LEXIS 1331, at *14 (N.D. Ill. Jan. 6, 2005); *In re Heartland Inst.*, No. 11 C 2240, 2011 U.S. Dist. LEXIS 51304, * at 9-11 (N.D. Ill. May 13, 2011).

7. Accordingly, Photographers' Subpoena should be quashed because Photographers' cannot make a substantial showing in order to enforce a subpoena against a non-party that is disinterested in the underlying litigation, and the Subpoena is unduly burdensome. *Automated Solutions Corp. v. Paragon Data Sys.*, 231 F. App'x 495 (7th Cir. 2007); *see also Patterson*, at *5; *In re Heartland Inst.*, at *9; *Builders Ass'n of Greater Chi. v. City of Chi.*, No. 96 C 1122, 2002 U.S. Dist. LEXIS 5493 (N.D. Ill. Mar. 26, 2002); *Cohn v. Taco Bell Corp.*, No. 92 C 5852, 1993 U.S. Dist. LEXIS 15346, at *14 (N.D. Ill. Oct. 28, 1993). TMS requests that this Court enter an Order quashing Photographers' Subpoena calling for TMS to produce documents and a representative witness for deposition in this matter.

8. Pursuant to Federal Rule of Civil Procedure 26(c) and 37(a)(4), TMS also requests that this Court award it reasonable attorneys' fees and expenses incurred in connection with this motion.

Dated: January 17, 2013

Respectfully submitted,

TRIBUNE MEDIA SERVICES, LLC

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 One of Its Attorneys

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