

**From:** Paul Levy [mailto:[plevy@citizen.org](mailto:plevy@citizen.org)]  
**Sent:** Tuesday, November 30, 2010 11:36 AM  
**To:** Catherine T Struve  
**Subject:** Suggested topic for the Advisory Committee of Appellate Rules

Has the advisory committee on appellate rules looked at the problem of redactions in appellate briefs (and Joint Appendices) that are based on consensual district court orders that allow either side to stamp discovery materials as confidential? Then the parties get up to the Court of Appeals and file heavily redacted papers without the slightest effort to justify the decision that concealment of particular items meets the high standard for non-disclosure of arguments, and factual materials, filed in support of dispositive proceedings.

Two problems result -- in cases of great public importance, the ability of others to participate amicus curiae is reduced because even if the parties eventually unredact, that likely comes too late for meaningful briefing by amici in light of the actual record. And many cases no doubt slide by because nobody files a motion to unseal. It used to be we could count on the media bar to file these motions, but the media are so pressed economically they pick their shots much more carefully. Methinks we need a better system.

I address that here, in the context of a particular appeal (Rosetta Stone v. Google in the Fourth Circuit), but we see the problem increasingly in our practice.

<http://pubcit.typepad.com/clpblog/2010/11/continuing-issues-of-redactions-of-the-judicial-records-in-the-rosetta-stone-trademark-appeal.html>

We may well intervene in this case but again, the problem strikes me as more general.

Paul Alan Levy  
Public Citizen Litigation Group  
1600 - 20th Street, N.W.  
Washington, D.C. 20009  
(202) 588-1000