

## ADDENDUM A

### 1. The Nature of the Action

Plaintiff-Appellant The Authors Guild, Inc. is a not-for-profit corporation which, along with its predecessor organization, has been a leading advocate for authors' copyright and contractual interests for the past 100 years. The Authors Guild, along with seven other authors' rights organizations (the "Associational Plaintiffs") and eight individual authors from around the world (collectively, "Plaintiffs-Appellants") brought this copyright infringement action in September 2011 in the United States District Court for the Southern District of New York (Baer, J.). The defendants (collectively, "Defendants-Appellees") in the case are the University of Michigan ("UM"), the University of California, the University of Wisconsin, Indiana University, and Cornell University, along with HathiTrust, a service of UM, in which defendant universities and other institutions participate.

In the Complaint, Plaintiffs-Appellants allege that Defendants-Appellees' unauthorized digitization and use of millions of copyright-protected literary works as part of a mass digitization program ("MDP") undertaken in partnership with Google Inc. ("Google"), and UM's launch of an orphan works project ("OWP") infringed Plaintiffs-Appellants' copyrights. Plaintiffs-Appellants seek declaratory and injunctive relief. Plaintiffs-Appellants do not seek monetary damages against Defendants-Appellees, most of whom likely are immune from such relief due to their sovereign status.

The gravamen of Plaintiffs-Appellants' complaint is that the mass digitization of copyright-protected books by Defendants-Appellees, accomplished in conjunction with Google, infringes the copyrights owned by the individual Plaintiffs-Appellants as well as those owned by the members of the various Associational Plaintiffs. Plaintiffs-Appellants claim that the activities of Defendants-Appellees, including the digitization and copying of more than seven million works protected by copyright, go far beyond the limited rights granted to libraries and archives to reproduce copyright-protected works for specified purposes in Section 108 of the Copyright Act, 17 U.S.C. § 108. In addition, Plaintiffs-Appellants claim that the OWP, under which UM and other Defendants-Appellees plan to make so-called "orphan works" -- works still protected by copyright but whose owners purportedly cannot readily be found -- available on the Internet for tens of thousands of people to view, display, download and print, infringes Plaintiffs-Appellants' copyrights.

Defendants-Appellants and Defendants-Intervenors answered the complaint in December 2011 and, shortly thereafter, Defendants-Appellees filed a motion for partial judgment on the pleadings on the ground that the various Associational Plaintiffs lack standing to assert copyright claims on their members' behalf and that Plaintiffs-Appellants' claims with respect to the OWP are not ripe because Defendants-Appellees suspended the project shortly after the lawsuit was filed (and after it became clear that Defendants-Appellees' list of "orphan candidates" included works whose owners easily could be found). Defendants-Appellees also argued that Plaintiffs-

Appellants lack standing to challenge the OWP because none of the works owned by any of the Plaintiffs-Appellants had ever actually been made available for use by users of the defendant libraries. Plaintiffs-Appellants then moved for partial judgment on the pleadings on the ground that the allegations in their pleading that had been admitted by Defendants-Appellees established that Defendants-Appellees affirmative defenses, including the defense of fair use, cannot stand as a matter of law.

Following briefing and oral argument, the District Court reserved decision on the various motions for judgment on the pleadings and the parties, Defendants-Intervenors, including, each proceeded to file a motion for summary judgment. Oral argument was held on August 6, 2012, and on October 10, 2012, the District Court issued the decision which is the basis for this appeal and which is described below.

## **2. The Result Below**

In an Opinion and Order dated October 10, 2012, the District Court granted the motions by Defendants-Appellees and Defendant-Intervenors for summary judgment and denied Plaintiffs-Appellants' motion for summary judgment. With respect to the motions for judgment on the pleadings, the District Court granted Defendants-Appellees' motion in part, determining that Section 501(b) of the Copyright Act 17 U.S.C. § 501(b) precludes the U.S. Associational Plaintiffs from pursuing copyright claims on behalf of their members, and that the claims with respect to the OWP are not ripe. The District Court denied Plaintiffs-Appellants' motion for judgment on the pleadings. In its decision, the District Court held that Defendants-

Appellees' MDP is protected by fair use and that UM could make works available to the visually-disabled as an "authorized entity" under Section 121 of the Copyright Act, 17 U.S.C. § 121.

**3. The Notice of Appeal and Lower Court Docket Sheet**

Attached hereto as Exhibit 1 is a copy of the Notice of Appeal, filed on November 8, 2012

Attached hereto as Exhibit 2 is a copy of the current docket sheet for *The Authors Guild v. HathiTrust*, No. 11 Civ. 6351 (HB) (S.D.N.Y.).

**4. The Relevant Opinions/Orders**

Attached hereto as Exhibit 3 is a copy of the Opinion and Order dated October 10, 2012, in *The Authors Guild v. HathiTrust*, No. 11 Civ. 6351 (HB) (S.D.N.Y.).

Attached hereto as Exhibit 4 is the Judgment entered in the District Court on October 12, 2012.