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Case 1:11-cv-06351-HB Document 79 Filed 06/29/12 Page 1 of 14

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>THE AUTHORS GUILD, INC., et al.,</p>
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*Plaintiffs,*

v.

<p>HATHITRUST, et al.,</p>
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*Defendants.*

Case No. 11-cv-6351(HB)

**DECLARATION OF GEORGE KERSCHER  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, George Kerscher, do hereby declare that:

**Background and Qualifications**

1. I am over eighteen years of age and am competent to make this Declaration.
2. I am legally blind.
3. Attached hereto as Exhibit A is a copy of my curriculum vitae.
4. I have dedicated the last 25 years to creating and promoting digital access to print documents for the blind. I received a bachelor's degree in English Education from Northeastern Illinois University in 1974 and taught special education and English in public schools from 1975 to 1985.
5. I then began working toward a master's degree in computer science at the University of Montana in 1985.

6. While working toward my master's degree, I developed the concept of computerized books for persons with print disabilities, a term I coined during the same time. A print-disabled person is someone who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

7. I developed computerized books because, as a blind master's degree candidate in computer science, I could not access even a single book I needed to complete my degree. I therefore decided to develop the technology to create such books for myself and others with print disabilities.

8. During my time as a student at University of Montana, I founded and developed Computerized Books for the Blind and Print Disabled (CBFB), through which I began creating e-books from files from publishers. In 1988, I created the first publicly available e-book, a copy of Mastering WordPerfect 5.0.

9. I did not attempt to patent the e-book technology because I wanted it to be readily available to anyone who was willing to make accessible books for the blind.

10. Ultimately, I left University of Montana without completing my degree. Because I could not obtain books relevant to my field of study, the thesis requirement for my master's degree was nearly impossible to complete. The university would not grant me thesis credit for the work I had done developing e-books. I chose instead to pursue my professional goal of improving accessibility for the broader population through CBFB.

11. Over the last twenty years, I have served on numerous panels and committees dedicated to improving the creation and distribution of electronic accessible texts for the blind. These include: The Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities; the National Instructional Materials Accessibility Center (NIMAC)

Advisory Committee; the U.S. National File Format Technical Panel; the World Wide Web Accessibility Initiative Steering Council; and the International Committee for Accessible Document Design.

12. On May 7, 2012, I was one of fourteen individuals honored at the White House as a Champion of Change for leading the fields of science, technology, engineering, and math for people with disabilities.

13. I serve as the Senior Officer of Accessible Technology at Learning Ally. Learning Ally, formerly known as Recording for the Blind & Dyslexic, creates recorded copies of print materials for K-12, college and graduate students, and veterans and lifelong learners, who cannot read standard print due to blindness, visual impairment, dyslexia, or other learning disabilities. Learning Ally's collection of more than 70,000 digitally recorded textbooks and literature titles is one of the largest of its kind in the world. I have worked at Learning Ally since 1991, first as Research and Development Director from 1991-1995, and in my current position since 1995. Learning Ally is a 501(c)(3) non-profit corporation.

14. Currently, I also serve as Secretary General of the DAISY Consortium, an international association that develops, maintains and promotes international DAISY (Digital Accessible Information System) Standards for authorship and distribution, and am President of the International Digital Publishing Forum (IDPF), which is the global trade and standards organization dedicated to the development and promotion of electronic publishing and content consumption. Both of these organizations work to promote accessibility in electronic publishing.

15. Through my committee participation and my positions with the DAISY Consortium, IDPF, and Learning Ally, I have remained integrally involved with the development of electronic

books and am intimately acquainted with the issues surrounding the creation and distribution of materials in formats that are accessible to the blind.

### **Statement of Opinions**

16. The availability of the HathiTrust Digital Library (HDL) stands to revolutionize blind students' and scholars' ability to compete with their sighted counterparts. The HDL titles I have reviewed are the most sophisticated and accessible scanned copies of print materials in a large collection I have ever seen.

17. New digital books can be readily made accessible but rarely are. Even if new books are to be made generally accessible, the expense of converting existing library collections with many highly specialized and even out-of-print books means that the type of mass digitization conducted by the HathiTrust, with complete metadata, is unlikely to ever occur again. There simply is no market for digital copies of old and out-of-print books in which only students and scholars have an interest. Publishers have not made digital copies for sale of the vast majority of the books that are available in a university library and are unlikely to do so in the future. Thus, the only way any one of these books will become available to the blind is if someone, either the HathiTrust, a disability student services (DSS) office, Learning Ally, Bookshare, or the NLS, makes an accessible copy.

18. To truly provide equal access for blind students and scholars to a university library, mass digitization of a collection like the HDL is necessary. Without this, blind students and scholars will always be limited to ad hoc access to titles they identify and request to be scanned without being able to search the library or skim materials in the way that sighted researchers can.

Without a fully digitized collection, therefore, blind researchers will never be able to compete with their sighted counterparts in academia on a level playing field.

### **Factual Basis for Opinions**

#### **I. Explanation of accessible digital books**

19. Prior to the development of accessible digital books, the blind could access print materials only if the materials were converted to braille or if they were read by a human reader, either live or recorded. Accessible digital books that are available to sighted and blind alike are a revolutionary change for blind readers seeking access to content over either braille or human readers.

20. Although human narration was once the best access a blind reader could receive to print materials, the technology of accessible books has advanced far past the capabilities offered by human narration, making human narration alone substantially inferior to use of accessible digital books. To use a live human reader is expensive or burdensome for a family member or friend. Moreover, live readers' orations cannot be reproduced, giving the blind reader only one opportunity to hear the material. Live readers also cannot increase their speed – they are inherently limited to the pace they can reasonably read aloud. (Live readers may not be available until the wee hours the morning before a term paper is due.) Recorded human narration resolves some of these issues, like repetition and speed (and reader exhaustion), but presents its own problems. Typically, it will take six months to more than a year for a blind person to receive a requested recording of a textbook from an entity like Learning Ally. Moreover, even recorded human narration cannot be navigated like an accessible digital book and will not allow a reader to hear each character to discern spelling.

21. Today, blind readers access digital books with a screen reader or built-in text-to-speech software, both of which can output information either as a computerized vocalization of the text or as braille, through a refreshable braille pad. Unlike books narrated by human readers, accessible digital books can be read as quickly as the reader wants, or even skimmed. Further, they provide significant search and navigation capabilities, allowing readers to jump from chapter to chapter, paragraph to paragraph, and sentence to sentence, as well as to discern spelling. This allows blind readers to re-read certain sections of a work they might not grasp on the first pass, just as a sighted reader may re-read a complicated passage.

22. Not all digital information is accessible. For example, scanning a copy of print material usually results in a file in portable document format (PDF). PDFs are created essentially by taking a picture of the page. This gives a sighted person enough to read on a computer screen, but it does not allow screen reader software to recognize the text.

23. To take this next step toward accessibility, the scan must be run through optical character recognition software (OCR) and optical structural recognition software (OSR). OCR/OSR software takes a high resolution image of the page and recognizes the image of characters and even structural data like columns and images. Character recognition software looks at the characters and compares them to a database of what it knows. For example, the software will match an image of the letter "c" to image of the letter "c" in its database. The software will also check spelling, to ensure it has matched the image correctly to images of characters in known words. The OSR component will recognize word boundaries, text block boundaries, and, on occasion, headings. The software then identifies the x/y coordinates of all the characters on a page and attempts to identify the correct reading order for each page, when there are columns or images that alter the usual reading order. The OCR process also allows the text to be searched.

24. A further step called “tagging” provides additional metadata about the content, such as the existence of tables in a work or the existence of headings and other document structures. Although the OCR engine will try to add meaningful style information, no existing software can recognize document structures perfectly and this final step must be completed manually. Only materials that are originally created for digital books, or “born digital,” rather than scanned from print material do not have to be manually tagged. Tagged works provide to blind readers the closest equivalent to the experience of a sighted person reading the material in its print form, but the labor required to create them has made them very rare.

25. Accessible digital texts present a further benefit for low vision readers over human narration alone. These users often will use print and sound at the same time. They may be able to visually discern paragraphs or chapters while using sound to read characters and words. Human narration therefore is substantially inferior for low vision readers who have some usable vision.

26. Even what are commonly referred to as “audiobooks” do not provide the benefit of accessible digital books. While having Jim Dale or Stephen Fry read *Harry Potter and the Order of the Phoenix* is ideal for entertainment purposes, it does not provide equal access for academic or scholarly pursuits. The ability to access text at high-speed is crucial for students and researchers alike—accessible digital books, like those in the HDL, make high-speed access possible, where audiobooks cannot. Digitally accessible books make it possible for readers with print disabilities to “virtually” bookmark a page, to electronically jot notes in the margin, and to digitally riffle through pages to “scan” for just the right passage. While there was a time where a book read dramatically or even non-dramatically by a human was the best users with print

disabilities could hope for, advances in technology mean audiobooks do not equal (and are vastly inferior to) OCR'ed books in the modern era.

27. The DAISY Consortium and the IDPF have established standards to ensure that “born digital” material is accessible. Any digital copy of print material that is created to meet the DAISY standard will be fully accessible to the blind.

28. The IDPF develops and maintains the EPUB content publication distribution standard, which is a generally available open standard, available without royalty, for the next generation of commercial and non-commercial digital books. The standardization of a distribution file means that publishers can design their print materials using any authorship tool, convert them to an EPUB file, and then provide that file to any e-book distributor, which will be able to publish the content on whatever platform it uses.

29. The latest EPUB standard, EPUB 3, incorporates the current DAISY requirements for distribution, which ensures that all documents published using EPUB 3 that follow the accessibility guidelines will be distributed in an accessible format, unless publishers then convert the EPUB files to platforms that are themselves inaccessible.

## **II. Availability of accessible books in higher education**

30. I spoke with the University of Michigan Library back in 2005 (before it established the HathiTrust). At that time, it had already taken proactive steps to make its digital collections accessible to users with print disabilities. Even in its early incarnation, the University of Michigan Library's accessible book platform was already enabling students and scholars with print disabilities to make unprecedented and meaningful use of the library's vast collection.

31. Since then, I have had the opportunity to review a number of the digital books in the HDL and to discuss the technical specifications of these scans with personnel from the



University of Michigan Library. The HDL scans are high resolution images that have been digitized using the most sophisticated OCR/OSR software I have ever encountered. Although images are not described and tables are not tagged, the table text is present, and the scans include the vast majority of metadata necessary to make them fully accessible. They can be navigated by chapter, page, line, and character. My understanding is that the collection encompasses close to ten million books.

32. Today, as when I was a graduate student, it is virtually impossible for blind students to conduct library research. A university's disability student services office (DSS) is responsible for scanning print materials and converting them into accessible digital copies for blind students, but the vast majority of these offices will only provide the works listed on the students' syllabi. They simply do not have the resources to create copies of books that are not required reading, and certainly not do so in a timely manner. As a practical matter, this means it is impossible for blind students to conduct independent library research. Even when a student switches classes or a professor adds a reading to the syllabus after the fact, DSS offices are often overwhelmed and unable to fill the requests. It may take weeks or even months for the student to receive the scanned materials.

33. The quality of the copies made by the DSS offices varies substantially from university to university. In the vast majority of cases, the scans will only be run through very basic OCR software, without any of the structural recognition in the HDL scans.

34. Even more significant, indexes and tables of contents are not available in an accessible format in almost any university library. Thus, blind students cannot view the index or table of contents of a book to see if it contains relevant information. In the HDL, most of the tables of contents have been manually tagged, allowing blind students to recognize them and navigate to

them with a screen reader the way a sighted person would open the book and flip to the table of contents.

35. At the universities with the best DSS offices, a graduate student may be able to provide a list of materials for research that the office then will have the capacity to digitize. The office, however, is limited to the books the student initially identifies as relevant. Blind students cannot do what sighted students do, that is, browse through many books to find the chapters or sections that are relevant.

36. At the vast majority of universities, where the DSS offices do not have the capacity to honor requests for research materials, a blind student's only option is to use a scanner in the library to scan individual books of possible interest one page at a time, listening to each, until he or she finds the tables of contents. It is an impossible task for a blind student to use a library in this way; the time it would take to complete this process prohibits blind students from completing any library research at a pace at which they can compete with their sighted peers.

37. Besides universities' DSS offices, the only accessible digital books available are those available for purchase as iBooks or Blio books, and the collections of Learning Ally, Bookshare, and the National Library Service for the Blind and Physically Handicapped (NLS). Bookshare is an initiative of the non-profit organization Benetech® that creates accessible copies of popular digital books and academic textbooks on an ad-hoc basis for people with print disabilities at no cost. NLS is an affiliate of the Library of Congress.

38. From my experience with Learning Ally, I know that each of these entities has a very limited capacity to make new books. Further, Learning Ally and the NLS focus their limited resources on particular titles with the greatest appeal. NLS focuses on novels and other current popular works. Learning Ally and Bookshare place an emphasis on K-12 education. Although

they do digitize some books for higher education, both have very limited budgets. Their collections therefore are significantly different than the HDL, which naturally has an academic focus. Learning Ally has approximately 70,000 titles in its collection, Bookshare has approximately 150,000 titles, and the NLS has approximately 20,000 titles. These include many that overlap. In total these organizations have approximately 200,000 titles available to blind readers, while the HDL has ten million.

39. The AccessText Network, a membership exchange network that is intended to facilitate and support sharing of textbooks for students with diagnosed print-related disabilities, has had limited success and has only focused on textbooks identified in the syllabi of students. The Network is intended to connect DSS offices directly with publishers to receive electronic files and facilitate the sharing of scanned copies between DSS offices at different universities. As an initial matter, the program involves voluntary participation and neither have publishers joined as expected), nor have DSS offices shared their files at the rates the founders of the network had hoped. Further, the network does not have a quality control mechanism to ensure that texts scanned by different DSS offices have the necessary structure and content. In addition, it is limited to textbooks and required items in syllabi, and therefore does not include the vast majority of titles available in a university library. Finally, the Access Text network was established because there was deemed to be no meaningful market in the blind and print-disabled community. That publishers are expected to give away the electronic files for free demonstrates that those involved do not believe there is any market for accessible books created for the blind.

40. Today, for scholars and students with print disabilities, the best promise of meaningful access to an academic library exists at the University of Michigan through the HDL. It is the kind of access, at the minimum, that should be available to all in the academy.

**III. History of failed attempts to achieve market-based access to digital text for blind readers**

41. Learning Ally struggles to find charitable funding because there simply is no market for accessible books for the blind. Learning Ally, Bookshare, and the NLS exist because of this market failure.

42. In 2007, I attended a presentation at the Annual International Technology & Persons with Disabilities Conference at California State University, Northridge, at which the Association of American Publishers announced that it had conducted a study and determined that there was no exploitable market for the creation of accessible print materials for the blind.

43. Authors and publishers have not only ignored accessibility concerns related to digital texts, but actively worked to prevent the market from reaching the blind. When Microsoft created the first commercially available e-reader device in the late 1990's, Microsoft and its competitors, Adobe, Gem Star, Sony, and others, ignored persons who are blind or print disabled. They did not build in any accessibility features that a blind person could use. While the underlying content was accessible, the user interfaces did not cater to the disabled community.

44. All of these companies indicated that the effort to make the products accessible did not justify the return on investment. From contemporaneous discussions with persons in charge of the various e-book programs or in charge of accessibility at each of these companies I learned that the choice to exclude the blind to preserve anti-piracy software was a deliberate decision. They consciously decided that the work to modify software to make it accessible to the blind was not economically worthwhile in light of the perceived small incremental addition of the blind to the market. They recognized that people with disabilities would be left out, but they were not willing to develop mechanisms for the blind to access the underlying information.

45. This trend has continued. The development of popular e-book platforms that are inaccessible, like the Amazon Kindle and the Barnes & Noble Nook, demonstrates that tech companies and publishers do not believe that there is sufficient economic benefit from making accessible books, or at least that their perceived concerns about possible piracy outweigh, from a business perspective, any monetary or societal benefits from creating accessible books.

46. Indeed, I, along with representatives from the National Federation of the Blind attempted to lobby Amazon to make the Kindle accessible, but encountered opposition from copyright owners and their allies. We met with representatives from Amazon, presented statistics concerning the market for talking e-books, and demonstrated the minimal cost associated with making both the text of the books and the menus on the Kindle accessible for people with print disabilities. But, when Amazon announced that it had released the Kindle 2 with a text-to-speech function, the Authors Guild actively opposed Amazon's policy, and Amazon capitulated, allowing individual publishers to turn off text-to-speech on the Kindle for, at their selection, all or some of their booklist.

47. Further, even when Amazon activated the text to speech function on the Kindle, it only worked for the text of the book, not the menus. Blind users therefore cannot effectively use a Kindle book. Amazon's failure to make these minimal changes in its platform demonstrates that it does not consider the blind to be a significant market.

48. New books could be made accessible with little expense to publishers. All new books are created digitally. However, the design software commonly used by publishers takes the accessible word processing files submitted by authors and converts them into an inaccessible format.

49. Because of the DAISY standards and because of partnerships, we have made some progress in building accessibility into new e-books. Adobe Indesign 6, the premier electronic publishing design software, exports into EPUB 3, which makes the basic text accessible. But, these new EPUB materials may still be made inaccessible if they are transformed for use with inaccessible platforms, such as those used on the Amazon Kindle or the Barnes and Noble Nook.

50. Given the lack of a market in the blindness community even for new popular books, and the publishers and technology companies' persistent refusal to make their products accessible to the blind, the access problems faced by blind readers with respect to academic library collections are unlikely to ever be solved unless the HathiTrust is permitted to continue providing accessible digital versions of the books in the university libraries' collections.

#### Conclusion

51. Based on the facts set forth above, and my experience and expertise in providing accessible books for the blind, it is my view that the HDL represents an unparalleled opportunity to achieve true equality in higher education for blind and print-disabled students and scholars; and that the opportunity to participate in education on a basis of true equality is very unlikely to arise again if the blind are denied access to the HDL.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 28, 2012



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George Kerscher

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., et al.,

*Plaintiffs,*

v.

HATHITRUST, et al.,

*Defendants.*

Case No. 11-cv-6351(HB)

**DECLARATION OF JAMES FRUCHTERMAN  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, James Fruchterman, do hereby declare that:

**Background and Qualifications**

1. I am over eighteen years old and am competent to make this declaration.
2. I have attached here as Exhibit A a current version of my curriculum vitae.
3. Currently, I serve as Founder and Chief Executive Officer of Benetech®, a non-profit dedicated to creating new technology solutions that serve humanity and empower people to improve their lives.
4. In 1980 I earned a B.S. in Engineering and an M.S. in Applied Physics from California Institute of Technology.
5. I co-founded Calera Recognition Systems in 1982. Calera developed optical character recognition (OCR) technology that allowed computers to read virtually all printed text.
6. In 1989, I founded Arkenstone, a nonprofit social enterprise, that produced reading machines for the disabled community based on the Calera technology. The Arkenstone product

line was sold in 2000 and the resulting capital funded the next phase of Arkenstone under its new name, Benetech. I have been the CEO of Benetech/Arkenstone since 1989.

7. I have served on three U.S. federal government advisory committees for disability issues: the Section 255 Telecommunications Access Advisory Committee, the Section 508 Electronic Information and Technology Access Advisory Committee, and the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities.

8. I have received numerous other awards and recognition for my work making print materials accessible to the blind and print disabled. In 2006 I received a MacArthur Fellowship. I was named an Outstanding Social Entrepreneur in 2003 by the Schwab Foundation and have regularly participated in the World Economic Forum Annual Meetings in Davos, Switzerland. Benetech received the Skoll Award for Social Entrepreneurship under my leadership. I also received the Robert F. Bray Award from the American Council of the Blind, and the American Library Association's Francis Joseph Campbell Award in recognition of my successful efforts to make literary works more accessible to people who are blind or visually impaired.

### **Opinions**

9. Having reviewed Daniel Clancy's description of the Google Books project and the HathiTrust website, it is my opinion that the HathiTrust provides the best opportunity blind students will ever have to access a comprehensive digital library of university collections.

10. Based on my experience with the Bookshare® online library for people with print disabilities, I believe that there is no economically feasible way to digitize the print book collections of university libraries for use by people with print disabilities except through a cooperative project such as the one involving Google and its partner libraries, now members of the HathiTrust. There are no other resources available to devote to creating such a collection of



infrequently used, old, or out-of-print academic books. Although there is a small demand for accessible copies of some of these books, it cannot sustain a viable market that would offset the cost of creating these copies.

11. In addition, because commercial academic publishers have been the least willing to provide digital files to Bookshare, it is my opinion that academic works in born-digital formats will become available to people with print disabilities much more slowly than trade publishing titles.

**Facts Relied Upon**

12. One of Benetech's primary programs is Bookshare, an online library which provides people with print disabilities in the United States access to more than 150,000 books and 150 periodicals that can be converted to braille, large print or synthetic speech. Originally created by a community of volunteers, Bookshare is a subscription-based service operated by Benetech. Bookshare has the capacity to create 2,000-3,000 accessible digital books per month.

13. Bookshare texts and periodicals are organized in collections by subject area, just as they would be in a physical library. Members can search by title, author and subject. The virtual bookshelves at Bookshare feature a wide assortment of reading material including a broad collection of children's literature, titles from the New York Times bestseller list, and an array of textbooks. Bookshare staff and volunteers take pride in making sure that the library includes bestsellers such as the Harry Potter books which become available on Bookshare just hours after they are released to the public. If a particular book is not yet available in the Bookshare library, Members can submit the title to a wish list for volunteers to scan and upload to the library.

14. Bookshare's digital texts allow readers with print disabilities to easily navigate to specific pages or search for keywords, making them much more usable than audio books on tape or other media.

15. Bookshare works with state education agencies and schools to deliver digital books to students in a timely manner. The library partners with authors and publishers who contribute digital content with global permissions to make books available to print disabled readers worldwide. These partnerships allow Bookshare to deliver the best quality content possible at the lowest cost. The Bookshare library also makes extensive use of K-12 textbook files provided by publishers using the National Instructional Materials Accessibility Standard (NIMAS), to create high quality student-ready materials in digital audio, large print or Braille.

16. The vast majority of new books in the Bookshare collection now come directly from publishers in digital formats such as XML. Close to 200 publishers share these digital files with Bookshare. To make these books accessible can be done automatically in a few minutes. Unfortunately, however, the books that are available in XML formats are heavily weighted to trade books, including genre fiction, New York Times best sellers, romance novels, science fiction, mysteries, political commentary, religious books, and other books with mass-market appeal. They also typically include books published in the last ten years, since e-books have become widely available. Publishers also have focused on digitizing only that part of their backlist they think can sell enough books to justify the effort. In general, only those books published in the last ten years.

17. For books that are not available in digital formats directly from the publishers, Bookshare obtains the books in physical form and will chop, scan, OCR (optical character recognition) and proofread them to make accessible copies. Bookshare used to do this for any books sent to it by

members with disabilities, but Bookshare does not currently have the resources to do this kind of labor-intensive work for books that are not directly used in the classroom, because of the priorities of our funders.

18. REDACTED - CONFIDENTIAL

ATTORNEYS ' EYES ONLY

19. Bookshare has shifted its energy and resources in recent years to forming agreements with publishers to receive born-digital copies of their materials.

20. We get requests from university students and scholars to scan print books for their research, but we are not able to fulfill these requests because we do not have the resources to scan their books. We will only process requests for students in accredited programs in the United States who are working toward degrees, and currently only then if the books requested are assigned or required classroom reading. We do not have the capacity to make university library books more generally accessible because they are rarely assigned and we do not have the capacity to honor requests for digitization of books that a student or scholar wants to use as background research for a research paper or article.

21. The largest part of Bookshare's budget comes from the United States Department of Education, which funds Bookshare's efforts to create accessible copies books for students with print disabilities, with the highest priority on K-12 textbooks.

22. To add accessibility features to digital files received from publishers or to scan and add accessibility features to print works, Bookshare uses combination of volunteers, internal staff, and paid outsourcers.

23. Bookshare's average cost of creating an accessible book is roughly \$40 per book. This average cost includes the proofreading for scanned books and creating the metadata for all

books, including those that provided to us in digital form. Our overall average cost per book is much lower than our average cost for a scanned textbook, because of the large numbers of digital books provided by publishers in high quality formats with structure (like sections, chapters, subsections, tables of contents and the like) already included. Our average cost for a making the text and structure of a scanned textbook accessible is over \$400 per book.

24. Even once Bookshare has a scanned copy of a book, the cost of making it accessible varies enormously based on the complexity of the layout of the books. We need to proofread the text to ensure it is correct and books that have headers, footers, footnotes or other graphic features that change the reading order of the page must be tagged and properly structured to make them understandable and functional for a blind person using screen access software. Lastly, books that have images that are important for educational purposes should have image descriptions added, something that we don't have the budget to create for any but the most widely used K-12 textbooks.

25. Bookshare divides books into six levels based on their complexity. Level 1 books have no headers, footers, or pictures. Level 2 books have headers or footers and low-level formatting, such as chapters. Level 3 includes books that have images, footnotes, or line breaks, including children's chapter books, plays, and poems. Level 4 books have many images or charts, resource listings like bibliographies, insets, many foreign language words. Level 4 includes textbooks that are mainly text but have chapters. Level 5 books have complex layouts, including text in margins or text printed on image backgrounds. Level 6 includes the most complicated books, such as math or science texts, cookbooks or dictionaries.

26. The cost of making the text and structure of a scanned book for Bookshare varies by the complexity level. Level 1 books typically cost less than \$50 per book to make accessible. Level

4 books average more than \$350 per book and Level 5 and Level 6 books cost progressively more to make accessible. These costs do not include the cost of image descriptions.

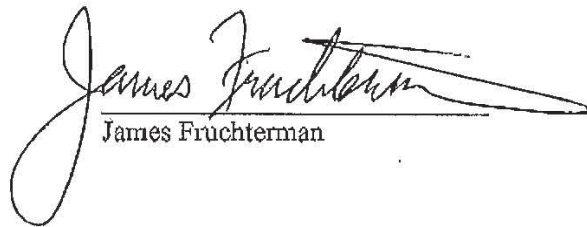
27. I believe the majority of books available in a university library would qualify as Level 3, 4 or 5 under Bookshare's complexity classifications.

28. Bookshare's budget only permits it to add image descriptions of illustrations, graphs, tables and other visually-oriented features to the K-12 textbooks in highest demand. In addition, because the U.S. Department of Education has made image descriptions in K-12 textbooks a policy priority, Bookshare must devote a significant portion of the Department of Education resources to adding image descriptions to this subset of the books in its collection.

29. For the last three years, Benetech has employed one person whose full time job is recruiting new publishers to contribute digital books to Bookshare's collection. It has been Bookshare's experience that textbook publishers and commercial academic publishers are the most reluctant to contribute to the Bookshare collection; when they do agree to provide digital files, they place more restrictions on our access to the files than trade publishers do.

30. I am not aware of a for-profit entity creating digital books from print books for the blind.

Dated: 6/28/2012

  
James Fruchterman

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al.,	:	
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Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
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**DECLARATION OF PAUL AIKEN**

I, Paul Aiken, hereby declare as follows:

1. I am the Executive Director of the Authors Guild, Inc. (the "Guild"), one of the plaintiffs in the above-captioned action. I have been employed by the Guild since April 1993, first as a staff attorney, then as Assistant Director, and finally in my current position since 1996. I am 1985 graduate of Cornell Law School and an attorney licensed to practice in New York.

2. I submit this declaration in support of Plaintiffs' motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.

3. The Guild participated in bringing this lawsuit to stop the Defendant universities and their shared digital repository HathiTrust from systematically usurping authors' rights to their literary properties by, among other things: (a) authorizing and participating in the unlawful conversion of millions of copyright-protected books into machine-readable digital formats; (b) authorizing and participating in the reproduction and distribution of those millions of unlawfully prepared digital books; (c) taking upon themselves the right to make decisions as to appropriate investments in technology, staff, and enforcement measures to secure those millions of

unlawfully prepared digital books; (d) establishing rules by which Defendants would purport to determine whether the authors of those millions of unlawfully prepared digital books should be further deprived of their literary property rights; (e) purporting to use such rules to decide whether authors were not findable without undue effort and therefore subject to Defendants' "Orphan Works Program"; and (f) authorizing Google, Inc. ("Google") to convert into machine-readable digital formats, then reproduce, store, and profit from, millions of copyright-protected books, all while Defendants avoided financial responsibility for their unlawful actions through their sovereign immunity status.

4. The Guild participated in bringing this lawsuit for another vital reason: to reduce or eliminate the risk of catastrophic economic harm -- a "Napster event" (in which digital privacy and distribution of copyrighted works became rampant) -- posed by Defendants' storage in online databases, offline databases, and backup tapes tens of millions of unauthorized reproductions of copyright-protected books, by seeking an order requiring Defendants to take the unlawfully created digital books offline until Congress takes appropriate action regarding the digitized literary works.

#### **The Authors Guild**

5. The Guild and its predecessor organization, the Authors League of America (the "League"), have been leading advocates for authors' copyright and contractual interests since the League's founding in 1912. With more than 8,500 published authors as members, the Guild is the largest advocacy group for book authors in the United States. Our members represent the broad sweep of American authorship, including literary and genre fiction, nonfiction, trade, academic, and children's book authors, textbook authors, freelance journalists, and poets. Guild members have won countless honors and all major literary awards. (Every American winner of

the Nobel Prize for Literature was a Guild members.) Our members include published authors in 38 countries.

6. The Guild had its beginnings as the Authors League of America, which was founded in 1912 by a group of book authors (including Theodore Roosevelt, who served as the League's founding vice-president), short story writers, freelance journalists, and dramatists. In the 1920s, the League broke into two groups: the Guild and the Dramatists Guild of America.

7. Virtually since the day it was founded, the Guild has been a leading advocate for published authors in the United States, pursuing its mission of promoting fair book and freelance journalism contracts, effective copyright protection and freedom of expression. As part of that mission, the Guild has participated in litigation, generally as *amicus curiae*, but occasionally as a direct party to legal actions. The activities of the Guild include reviewing members' publishing and agency contracts; intervening in disputes involving authors' rights; providing advice to members regarding developments in the law and publishing industry that affect their rights; and advocating regarding legislation in matters affecting copyright, freedom of expression, taxation and other issues of concern to professional writers.

### **The Challenges Facing Print Media**

8. Never in the Guild's long history has its straightforward mission – to maintain writing as a viable livelihood – been so daunting. The digital environment has been brutal for print media. The newspaper industry has been devastated, with many publication shuttered and many more on the brink. The magazine industry has not fared much better, as venerable publications shrink in size and ambition. The loss to our society from the collapse of these industries is immeasurable.



9. Although the book industry has fared somewhat better than our colleagues in print media, our industry is challenged as well. Finding a sustainable business model for creative work in digital form seems nearly impossible: if piracy doesn't get you, the aggregators will. In this complex, shifting environment, in which technology has the ability to both foster and decimate markets within months, it is crucial that authors have a place at the table when institutions seek to rewrite the rules governing the uncompensated uses of their literary properties, and whether and under what conditions those properties will be placed at digital risk.

#### **The Google Books Case**

10. Because of its potential effects on our members' and the Guild's own copyright interests, the Guild followed with great interest and concern Google's 2004 announcement of its Google Library Project. The Guild was particularly concerned by Google's December 14, 2004, announcement that it was working with major academic institutions in the United States to digitize millions of books, including books protected by copyright.

11. The Guild soon learned that the University of Michigan, a defendant in this case, was allowing Google to digitize vast numbers of books from its libraries. The Guild obtained a copy of the Cooperative Agreement between Google and the University of Michigan, confirming the "win-win" arrangement the two entities had reached: Michigan would allow Google to convert books from its libraries' vast collections into digital form and retain a digital copy of each book it converted, so long as Google provided the University of Michigan with an unauthorized digital copy of each book Google converted to digital form. The Cooperative Agreement made no mention of making efforts to seek permission from authors or their licensees to conduct these digital conversion and reproduction activities.

12. On September 20, 2005, representative plaintiffs and the Guild filed a class action lawsuit against Google for copyright infringement arising from its program to convert into digital format millions of copyright-protected books as part of the Google Library Project, and then display “snippets” from those books at Google’s web site. *See The Authors Guild, Inc. et al. v. Google Inc.*, No. 05 Civ. 8136 (S.D.N.Y.) (the “Google Books case”). At that time, the Guild elected to take legal action against only Google, which was providing the technology, money, and labor to convert the books into machine-readable formats, and not against any of Google’s other library partners.

13. In the spring of 2006, the Guild and Google had their first settlement meeting. By that fall, settlement negotiations formally began between and among Google, book publishers, and the Guild. Approximately two years later, on October 28, 2008, the parties filed a motion for preliminary approval of a settlement agreement reached with Google, which motion Judge John E. Sprizzo granted on November 17, 2008. On November 13, 2009, the parties executed an Amended Settlement Agreement (the “ASA”) and filed a motion for final approval. A copy of the ASA is attached as Exhibit A hereto. The ASA was preliminarily approved on November 19, 2009, by Judge Chin, who assumed responsibility for the Google Books case after Judge Sprizzo’s passing.

#### **The Amended Settlement Agreement**

14. Several features of the ASA are critically important to the instant litigation.

15. *First*, the ASA provided a mechanism to compensate the millions of authors whose copyrighted works had been digitized by Google without authorization. Under the ASA, the class of affected authors and rightsholders would have granted a license to Google to digitize works and sometimes sell, display, and make certain non-display uses of the works it had

scanned. The ASA expressly authorized Google and its partner libraries (which would have included the University of Michigan and other Defendants in this litigation) to index the contents of the digitized works for search purposes and to allow researchers to conduct “non-consumptive research” using the digitized corpus. The ASA would have covered both in-print and out-of-print works, including so-called “orphan works.” In exchange for these and other rights that would have been granted as part of the ASA, Google agreed to pay \$45 million into a settlement fund to make cash payments to rightsholders – at least \$60 per principal work. The ASA would also have provided a revenue share in which rightsholders would have received most of the subscription, sales, reproduction, and advertising revenue generated by the digitized books.

16. *Second*, the ASA included a comprehensive security protocol that Google and any partner institutions would be required to follow if they were to store digital copies of the copyright-protected works obtained through the Google Library Project. I was directly involved in some of the negotiations that led to the security protocols ultimately agreed to and incorporated into the ASA. Those protocols included contractually binding security requirements, subject to audit procedures and contractually enforceable financial penalties, to help protect against the risk of catastrophic loss of the digital book databases.

17. On March 22, 2011, the court declined to approve the ASA. An aspect of the ASA that particularly concerned Judge Chin was the ASA’s treatment of “orphan works” – books that are still in-copyright but whose author or rightsholder cannot be located. Judge Chin ruled that “the establishment of a mechanism for exploiting unclaimed books is a matter more suited for Congress than this Court. . . . The questions of who should be entrusted with guardianship over orphan books, under what terms, and with what safeguards are matters more

appropriately decided by Congress than through an agreement among private, self-interested parties.” *The Authors Guild, Inc. v. Google Inc.*, 770 F. Supp. 2d 666 (S.D.N.Y. 2011).

### **Orphan Works Project**

18. Fewer than two months after Judge Chin rejected the ASA, on or about May 16, 2011, I heard the stunning news that the University of Michigan was launching its own “Orphan Works Project” – an initiative that purported to seek to identify so-called orphans among the copyright-protected works that had been digitized through the Google Library Project and were being stored in the HathiTrust Digital Library. It was my understanding that a work identified as an “orphan” by the project would be made available for the university’s students, professors, and other users to view online, print, and download for free.

19. Incredibly, the procedures for determining whether or not the author of a copyright-protected book could be found, were unilaterally established by the University of Michigan. Moreover, the University of Michigan took unto itself the task of implementing the rules it had devised. The result of this was that if the University of Michigan determined a book was an orphan, as the University of Michigan itself defined that term, then the University of Michigan would be the beneficiary, reproducing and distributing the copyright-protected work without limit to students and faculty at the University of Michigan’s campuses. It seemed a recipe for disaster, likely to deprive countless authors of their literary property rights.

20. In July and August 2011, other universities, including Defendants the University of California, the University of Wisconsin and Cornell University, announced their participation in the Orphan Works Project and their intent to make works in their collections identified as “orphans” through the rules devised, implemented, and overseen by the University of Michigan, available to their respective students, faculty and library visitors.

**The Instant Lawsuit**

21. In light of Judge Chin's rejection of the ASA, the breakdown in settlement talks with Google, and the announcement of the Orphan Works Project, the Guild filed the instant action to enjoin Defendants from further infringing and jeopardizing authors' rights by scanning, storing, and using copyright-protected books without permission or accountability, as well as to put an end to the Orphan Works Project.

22. We filed the initial complaint on September 12, 2011. Since the books scanned as part of the Google Library Project and the purported orphan works that Defendants were threatening to distribute affected the rights of authors worldwide, authors' rights associations based in Australia (Australian Society of Authors) and Quebec (UNEQ), as well as eight individual authors from around the world joined the Guild as plaintiffs in the lawsuit.

23. Due in part to publicity surrounding the filing of the lawsuit, the Guild was able to identify several authors and copyright holders whose works were scheduled to become available for "full view" as part of the Orphan Works Project.

24. I was personally able to locate one such author, J.R. Salamanca, simply by searching "book author salamanca" at Google's search engine. Within minutes I was in contact with the wife of John White, Mr. Salamanca's literary agent. She confirmed that her husband represented Mr. Salamanca, who was alive and living in Maryland. In a conversation later that day, Mr. White told me that Mr. Salamanca's works were certainly not "orphaned," and that Mr. White had, in fact, signed a contract earlier that month to publish an e-book edition of one of Mr. Salamanca's novels. I understand that Mr. White is submitting a declaration which describes this in more detail.

25. On October 5, 2011, the Guild filed a First Amended Complaint, adding as plaintiffs Mr. Salamanca and the Authors League Fund, as well as authors' rights groups in the United Kingdom (ALCS), Sweden (SFF), Norway (NFF), and Canada (TWUC), and three additional individual authors.

#### **The Works at Issue**

26. In addition to filing this lawsuit to protect the rights of its members whose copyrighted works have been digitized and are being used by Defendants without authorization (the "Member Works"), the Guild itself owns the copyrights in and to several works that were scanned and incorporated into HathiTrust without the AG's knowledge or consent. Attached as Exhibit B is a schedule of works whose copyrights are owned by the Guild and have been infringed by Defendants ( the "AG Works"). Attached as Exhibit C is documentation evidencing the transfer of the relevant copyrights from each respective author to the Guild. A copyright registration certificate for each AG Work is attached hereto as Exhibit D.

#### **Harm Resulting From Defendants' Use of the Works**

27. I have reviewed the declarations of several individual authors who are plaintiffs in this litigation, including the declarations of Pat Cummings, T.J. Stiles, James Shapiro, and Roxana Robinson, all of whom are members of the Guild. I believe that the works written by those authors provide a fair sampling of the types of works authored by members of the Guild.

28. I agree with and incorporate by reference the description in those declarations of the various harms and potential harms that result from Defendants' unauthorized digitization and use of copyrighted works. Those descriptions need not be repeated here in full, but can be summarized as follows.

29. *First*, each digital copy of a Member Work or AG Work that is created by Defendants without purchase or license represents a lost sale to the corresponding author or rightsholder. Defendants could have purchased a copy, but instead had it scanned without compensating the rightsholder.

30. *Second*, Defendants' storage of the Member Works and AG Works in an online digital repository exposes that property to security risks for which the rightsholders receive no commensurate remuneration. Unauthorized access to copyrighted books leading to widespread piracy would gravely affect the market for those works. Professor Benjamin Edelman's expert report contains additional detail concerning the security risks posed by Defendants' unauthorized activities.

31. *Third*, Defendants' various uses of the Member Works and AG Works undermine licensing opportunities for rightsholders. For example, rightsholders routinely grant online distributors a license to index their books and make them searchable as part of a commercial arrangement intended to promote book sales. Defendants do the same thing, but without a license and not as part of an effort to sell the books and provide revenue to the author. Defendants also permit the books to be used for non-consumptive research, an emerging field that represents another potential licensing stream for authors.

32. *Fourth*, Defendants' mass digitization and orphan works programs undercut opportunities for authors to generate royalty streams by entering into collective licensing agreements – a topic addressed in more detail by in Professor Daniel Gervais's expert report. For example, I am aware of existing or proposed agreements in Sweden and Norway entered into by authors' rights organizations, on the one hand, and the national libraries of those countries, on the other hand, to digitize, archive, and make various uses of their national library collections.

Unlike Defendants, the libraries in those countries agreed to compensate authors and rightsholders for the right to use their works. Had the ASA been approved, it would have provided the same function.

33. *Fifth*, making books available through the Orphan Works Program will directly undermine efforts to revive out-of-print books and will affect future book sales. It is impossible to know what is going on with authors' and their representatives' efforts to republish their out-of-print works if one never asks, as demonstrated by the story of J.R. Salamanca. Defendants believed the rights to Mr. Salamanca's books were unclaimed, when in fact Mr. Salamanca's agent was negotiating a contract to make one of his novel's available as an e-book. The Guild itself has operated the Backinprint.com program, which now makes more than 1,400 formerly out-of-print works available through online bookstores and the nation's largest book wholesaler. Defendants should simply not be permitted to usurp an author's decision to revive an older work.

34. In short, Defendants' activities have harmed or have the potential to cause enormous harm to the rights of authors.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June 28, 2012



PAUL AIKEN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
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**DECLARATION OF T.J. STILES**

I, T. J. Stiles, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.
  
2. I am the author of numerous books about American history. I have made my living as a full-time writer for over ten years, and I put tremendous effort, care, and creativity into my works, be they full-length biographies or short-form pieces for the *New York Times Book Review*, the *Washington Post*, the *San Francisco Chronicle*, the *Minneapolis Star-Tribune*, Salon.com, *The Atlantic* online, or the *New York Observer*. Although my writings are based on intensive historical research and are considered scholarly in their rigor, I believe a biography to be a creative endeavor. I approach the task of crafting a nonfiction narrative as an author of a novel might, making conscious artistic decisions about style, narrative flow, pacing, perspective, thematic development, and description to write works that are as literary as they are scholarly. I endeavor to create vivid, fully realized worlds on the page that shed light on the human condition.

3. My first biography, *Jesse James: Last Rebel of the Civil War*, (“Jesse James”) was named a *New York Times* Notable Book, a finalist for the *Los Angeles Times* Book Prize in Biography, one of the Five Best Books of the Year by the London *Sunday Times*, an American Library Association Notable Book, one of the New York Public Library’s *25 Books to Remember*, and a Best Book of the Year by *Library Journal*, the *Chicago Sun-Times*, the *Cleveland Plain Dealer*, *Bookpage*, and the London *Independent*. It also won the English Speaking Union’s *Ambassador Book Award*, the *Peter Seaborg Award for Civil War Scholarship*, the James-Younger Gang’s *Perry Award*, and the Friends of the James Farm’s *John Newman Edwards Award*.

4. My second biography, *The First Tycoon: The Epic Life of Cornelius Vanderbilt*, won the 2010 *Pulitzer Prize* for Biography and the 2009 *National Book Award* for Nonfiction. It was also named a *New York Times* Notable Book and one of the best books of the year by *The New Yorker*, the *Financial Times*, the *Christian Science Monitor*, the *Boston Globe*, the *Philadelphia Inquirer*, and other publications.

5. I have received many honors and awards in my career. In 2011 I was named a fellow of the *John Simon Guggenheim Foundation*. From 2004-05, I held the *Gilder Lehrman Fellowship in American History at the Dorothy and Lewis B. Cullman Center for Scholars and Writers* at the New York Public Library. I have also received a *Distinguished Alumni Award* from Carleton College. Additionally, I am an elected member of the Society of American Historians, sit on the Advisory Council of the Biographers’ International Organization, and have a seat on the Board of Directors of Plaintiff The Authors Guild. I am also a member of the American Historical Association, the Organization of American Historians and the Western History Association.

**The Work At Issue**

6. I am the sole author and copyright holder of *Jesse James*, which was registered with the U.S. Copyright Office on or about February 4, 2002 and assigned Registration Number TX0005703845. A true and correct copy of the copyright registration is attached hereto as Exhibit A.

7. Although I have licensed to my publisher certain exclusive rights in connection with the commercial exploitation of *Jesse James*, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to *Jesse James*. I never assigned to any third party the copyright to *Jesse James*.

8. *Jesse James* was first published in hardcover format in 2002 by Alfred A. Knopf, Inc., and in paperback form in 2003 by Vintage Books. It is a nonfiction biography that is, as of this writing, available for sale in paperback and electronic formats, including on the Amazon Kindle, the Barnes & Noble Nook, and others. *Jesse James* was published in at least three countries, including the United States, the United Kingdom and Italy, where it was translated to and published in Italian.

**Unauthorized Uses Of My Work**

9. It has come to my attention that a print copy of *Jesse James* was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with the HathiTrust as the “Defendants”) in partnership with Google, as part of the HathiTrust and Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants

to digitize or make any other use of *Jesse James*. To date, I have received no compensation of any kind for the Defendants' digitization and various uses of this work.

**Harm Resulting From Defendants' Use Of My Work**

10. As an author who depends on the value of my writings to earn a living, I brought this action because the Defendants' unauthorized digitization and use of *Jesse James* has harmed or threatens to harm me in a number of ways.

11. First, each digital copy of *Jesse James* that Defendants created without authorization represents a lost sale. Simply put, Defendants could have purchased a digital copy of *Jesse James* (which is readily available through a number of commercial outlets) rather than scanning a print copy to create an unauthorized digital version, whether for preservation, archival or any other purpose. Just as libraries purchase or otherwise lawfully acquire print copies of books for their physical archives, libraries should purchase digital copies for their digital archives.

12. I authorized my publisher to digitize and sell *Jesse James* as an electronic book in exchange for 25% of the amount the publisher receives from the sale of the book, as shown on the agreement attached hereto as Exhibit B. By scanning *Jesse James*, Defendants avoided having to pay the retail cost of *Jesse James* which, according to a recent print-out from Amazon.com attached hereto as Exhibit C, is approximately \$13.00 per copy. Thus, Defendants deprived me of a sale and the revenue that would have resulted from it. Attached hereto as Exhibit D is a copy of the most recent royalty statement I received for *Jesse James*, which shows that over 650 copies of the electronic book have been sold, generating almost \$1,500 in revenue for me. To the extent that an electronic copy was not available at the time Defendants sought to

digitize *Jesse James*, they could have requested a license to do so. However, no such license ever was requested or granted.

13. It is my understanding that Defendants make various uses of *Jesse James* without permission. These unauthorized uses, both individually and in the aggregate, undermine existing, emerging and potential markets for *Jesse James*. For example, I understand that HathiTrust has a service that allows certain users to conduct so-called “non-consumptive research” on the corpus of digital works, including my own, stored in the HathiTrust database. From what I’ve learned about it, non-consumptive research represents a potentially exciting field for academics and therefore an emerging licensing opportunity for authors at a time when revenues are decreasing. Indeed, it is my understanding that the Amended Settlement Agreement entered into by The Authors Guild and Google would have permitted the defendant libraries to engage in non-consumptive research activities using works such as *Jesse James* – but pursuant to a license that included a mechanism to compensate authors.

14. I further understand that Defendants have made my work available for full text searching. Again, this undermines a potential source of revenue for me and for other rights holders. For example, my publisher has granted licenses to companies such as Amazon and Ebrary to store a digital copy of *Jesse James* and allow users to search through the full text of my work. But those uses are authorized for the purpose of driving sales of my book – as reflected on the royalty statement. See Exhibit D at 2-3 (ebook sales) and 4 (Ebrary revenue).

15. Moreover, as a copyright owner, I (not Defendants) should be allowed to decide whether or not my works are copied and included in a database used for non-consumptive research, full text search indexing or other uses. My understanding is that one of the fundamental rights of copyright is to decide whether or not I want my work to be copied,

distributed or displayed. And, if I am inclined to grant permission, I should be able to negotiate the terms thereof.

16. Finally, by digitizing and storing *Jesse James* in a digital archive, Defendants subjected, and continue to subject, *Jesse James* to security risks. Every digital archive runs some risk of being accessed without authorization, and it is common knowledge that even the most secured networks in the world have been victims of cyberattacks. Defendants made no effort whatsoever to inform me of any security measures they may have taken, and they never sought permission to expose *Jesse James* to whatever risks their system poses. Once an unauthorized, unprotected digital version of *Jesse James* is released online, it becomes vulnerable to unlimited, instantaneous copying and distribution - in other words, unstoppable piracy. Should the Defendants' security be compromised, it would negatively impact future sales of *Jesse James* and damage my livelihood.

17. For each of the uses above, including full text searching, digital archiving, and non-consumptive research, Defendants are seeking to establish that as a matter of law they have the right to use my work without my permission and without compensating me. If Defendants are allowed to do this, there will be little to stop other people or entities from making digital copies of copyrighted works and using them for these same (and possibly other) reasons. In other words, if Defendants and Google can do this, what is to stop anyone else in the market from doing the same thing and depriving me of the opportunity to exploit new potential revenue streams?.


18. This is a difficult and complicated period of uncertainty for the future of publishing and professional authorship, and copyright law's carefully-drawn incentive structure has been jeopardized by the changing technological landscape. I, and many other authors, see

these new uses for books as a ray of hope and a potential revenue stream to allow authors to continue to be compensated as traditional print publication suffers. By deciding unilaterally, on my behalf, that I am owed nothing for these uses, Defendants cripple this hope and preempt my rights to demand compensation for these new kinds of uses.

19. It is my hope that this action will help ensure that future generations of authors will continue to have the financial incentive to write books.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June \_\_, 2012

  
\_\_\_\_\_  
T.J. STILES



# **EXHIBIT A**

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to change.  
ght Office  
the Copy-

**FORM TX**  
For a Nondramatic Literary Work  
UNITED STATES COPYRIGHT OFFICE

TX 5-703-845



EFFECTIVE DATE OF REGISTRATION

Month Feb Day 4 Year 2003

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

**TITLE OF THIS WORK**

JESSE JAMES: Last Rebel of the Civil War

**PREVIOUS OR ALTERNATIVE TITLES**

**PUBLICATION AS A CONTRIBUTION** If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work**

If published in a periodical or serial give: **Volume** **Number** **Issue Date** **On Pages**

2

**a NAME OF AUTHOR**

T.J. Stiles

**DATES OF BIRTH AND DEATH**

Year Born Year Died

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

OR { Citizen of USA  
Domiciled in

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed. **Entire text excluding brief quotes from other sources; all photographs are preexisting**

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

**b NAME OF AUTHOR**

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

OR { Citizen of  
Domiciled in

**DATES OF BIRTH AND DEATH**

Year Born Year Died

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed.

**c NAME OF AUTHOR**

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

**AUTHOR'S NATIONALITY OR DOMICILE**

OR { Citizen of  
Domiciled in

**DATES OF BIRTH AND DEATH**

Year Born Year Died

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

**NATURE OF AUTHORSHIP** Briefly describe nature of material created by this author in which copyright is claimed.

3

**a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED**

2002 Year

**b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK**

Complete this information ONLY if this work has been published. Month September Day 17 Year 2002 USA Nation

4

**COPYRIGHT CLAIMANT(S)** Name and address must be given even if the claimant is the same as the author given in space 2.

T.J. Stiles  
c/o Scovil, Chichak, Galen Literary Agency, 381 Park Ave. South  
New York, NY 10016

**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED  
**FEB 04 2003**  
ONE DEPOSIT RECEIVED  
TWO DEPOSITS RECEIVED  
**FEB 04 2003**  
FUNDS RECEIVED

**MORE ON BACK** • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.  
• See detailed instructions. • Sign the form at line 8.

EXAMINED BY *[Signature]* FORM TX

CHECKED BY \_\_\_\_\_

CORRESPONDENCE FOR COPYRIGHT OFFICE USE ONLY

Yes

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ►

Year of Registration ►

5

**DERIVATIVE WORK OR COMPILATION**

**Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

Brief quotes from other sources; all photographs are preexisting

**Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

Entire text excluding brief quotes from other sources; all photographs are preexisting

a 6  
See instructions before completing this space.  
b

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account

Name ▼ Alfred A. Knopf Account Number ▼ 19429

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Rebecca Heisman, Alfred A. Knopf  
1745 Broadway, 3rd Floor  
New York, NY 10019

Area code and daytime telephone number ► (212)572-2706

Fax number ► (212)572-6066

Email ► rheisman@randomhouse.com

a 7  
b

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the

Check only one ►

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of Alfred A. Knopf

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ►

8

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Rebecca Heisman

Date ► January 24, 2003

Handwritten signature (X) ▼

X *Rebecca Heisman*

Certificate will be mailed in window envelope to this address:

Name ▼ Rebecca Heisman, Alfred A. Knopf

Number/Street/Apt ▼ 1745 Broadway, 3rd Floor

City/State/ZIP ▼ New York, NY 10019

**YOU MUST:**

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

**MAIL TO:**

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call: (202) 707-3000

9

\*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

# **EXHIBIT B**



**RANDOM HOUSE**

BERTELSMANN

February 23, 2010

T.J. Stiles  
c/o Scovil Galen Ghosh Literary Agency  
276 Fifth Avenue Suite 708  
New York, NY 10001

Dear Mr. Stiles,

We are pleased to inform you that your title has been selected to be included in Random House's Electronic Book, or "ebook," publishing program.

With the widespread use by consumers of electronic devices such as the iPod, the Amazon Kindle and the Sony Reader, a significant market for ebooks is beginning to emerge. Random House is committed to making its extensive backlist of titles available to consumers in new ways and we have every expectation that the wider availability of your books will increase sales to a segment of the population that has chosen ebooks as their preferred reading option.

We will pay royalties on all ebook sales of your book(s) in accordance with the following provision:

"On all copies of the Work sold as an "Electronic Book" as defined herein: 25% of the amount received.

As used in this Agreement, Electronic Book means the text of the Work in complete, condensed, adapted or abridged form by any means of distribution or transmission, whether now or hereafter known or developed, intended to make the text and any illustrations or photographs contained in the Work available in visual form for reading."

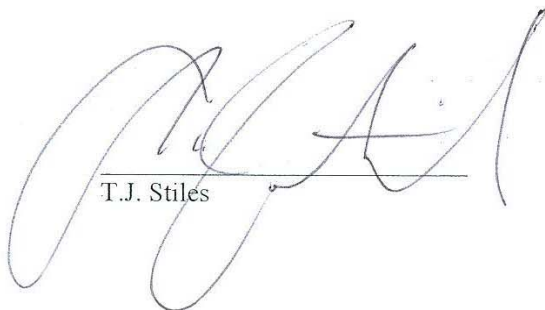
If these terms are acceptable, please sign each copy of this letter, which will serve as an amendment to our agreement dated November 9, 1998 for JESSE JAMES, and return one copy in the enclosed envelope. The other copy is for your records.

All other terms of the Agreement shall remain in full force and effect.

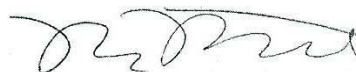
Should you have any questions about the foregoing, please contact **Joe Vilella** in our Contracts Department.

Agreed to and Accepted by:

Sincerely,



T.J. Stiles



Madeline McIntosh  
President, Sales, Operations and Digital  
Random House, Inc.

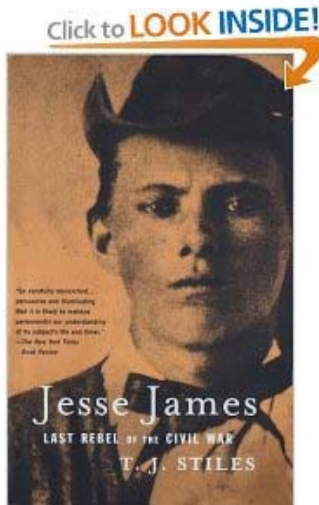
# EXHIBIT C

GO **amazon** Today's Deals | Gift Cards | Help

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## Jesse James: Last Rebel of the Civil War [Paperback]

[T.J. Stiles](#) (Author)

★★★★☆ (70 customer reviews) | Like (11)

List Price: ~~\$17.00~~

Price: **\$12.75** & eligible for **FREE Super Saver Shipping** on orders over \$25. [Details](#)

You Save: **\$4.25 (25%)**

**In Stock.**

Ships from and sold by **Amazon.com**. Gift-wrap available.

Only 17 left in stock--order soon (more on the way).

**Want it delivered Friday, April 6?** Order it in the next 0 hours and 44 minutes, and choose **One-Day Shipping** at checkout. [Details](#)

**39 new** from \$8.61 **83 used** from \$3.40

Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$12.99	--
+ Library Binding	\$25.00	\$25.00	\$22.50
+ Paperback	\$12.75	\$8.61	\$3.40
Unknown Binding	--	--	--

## Book Description

Publication Date: **October 28, 2003**

In this brilliant biography T. J. Stiles offers a new understanding of the legendary outlaw Jesse James. Alt portrayed as a Robin Hood of the old west, in this ground-breaking work Stiles places James within the co conflicts of the Civil War to reveal a much more complicated and significant figure.

Raised in a fiercely pro-slavery household in bitterly divided Misssouri, at age sixteen James became a bu savage Confederate guerrillas that terrorized the border states. After the end of the war, James continuec and murder into the brutal era of reconstruction, when his reckless daring, his partisan pronouncements, sympathetic editor John Newman Edwards placed him squarely at the forefront of the former Confederate power. With meticulous research and vivid accounts of the dramatic adventures of the famous gunman, T. resembles not the apolitical hero of legend, but rather a figure ready to use violence to command attentic many ways, a forerunner of the modern terrorist.

## Frequently Bought Together

# EXHIBIT D





January 28, 2012

SCOVIL GALEN GHOSH LITERARY  
AGENCY, INC.  
276 FIFTH AVENUE SUITE 708  
NEW YORK NY 10001

**JESSE JAMES**

Author(s): T.J. STILES

**Royalty Summary Statement  
For Period Ending September 30, 2011**

	Current Copies	Earnings	Cumulative Copies	Earnings
Hardcover	0	0.00	24,981	88,742.33
Electronic Book	359	820.08	656	1,475.88
Trade Paperback	948	1,182.31	41,042	49,238.50
Subtotal	1,307	2,002.39	66,679	139,456.71
Subsidiary Rights Income		10.87		36,946.23
Earnings		2,013.26		176,402.94
<b>Total Earnings</b>	<b>1,307</b>	<b>2,013.26</b>	<b>66,679</b>	<b>176,402.94</b>
Less: Original Guarantee				100,000.00
Less: Royalty Payments				74,389.68
<b>Total Balance Due</b>				<b>2,013.26</b>
Allocation By Participant				
SCOVIL GALEN GHOSH LITERA	Payee #38885	ACH	100.00%	2,013.26

January 28, 2012  
SCOVIL GALEN GHOSH LITERARY

Royalty Detailed Statement  
For Period Ending September 30, 2011

JESSE JAMES

Market	Royalty Rate or External Market	Royalty Per Unit or Net Receipts	Current Copies	Current Earnings	Cumulative Copies	Cumulative Earnings
9780375405839	\$ 27.50	On Sale: September 17, 2002 HC				
		Sub Total	0	0.00	24,981	88,742.33
	<b>Hardcover</b>	Total in USD	0	0.00	24,981	88,742.33
9780307773371	\$ 17.00	On Sale: October 27, 2010 EL				
U.S.	25.0000	\$ 81.09	7	20.29	298	662.73
Canada	25.0000	\$ 72.76	8	18.20	10	22.72
Export	25.0000	\$ 35.36	4	8.84	8	17.68
		Sub Total	19	47.33	316	703.13
9780307773371	\$ 12.99	On Sale: October 27, 2010 EL				
U.S.	25.0000	\$ 3,090.97	340	772.75	340	772.75
		Sub Total	340	772.75	340	772.75
	<b>eBook</b>	Total in USD	359	820.08	656	1,475.88
9780375705588	\$ 17.00	On Sale: October 28, 2003 TP				
U.S.	7.5000	1.27500	932	1,188.30	3,911	4,986.53
Canada	3.7500	0.63750	10	6.38	30	19.13
Export	5.0000	\$ 153.42	21	7.68	53	20.13
Spcl discet	5.0000	\$ 3.00	1	0.15	1	0.15
		Sub Total	964	1,202.51	3,995	5,025.94
9780375705588	\$ 16.95	On Sale: October 28, 2003 TP				
U.S.	7.5000	1.27125	(14)	(17.80)	5,643	7,173.66
Canada	3.7500	0.63563	0	0.00	56	35.60
Export	5.0000	0.00000	0	0.00	79	30.80
Spcl discet	5.0000	0.00000	0	0.00	1	0.15
		Sub Total	(14)	(17.80)	5,779	7,240.21

January 28, 2012  
 SCOVIL GALEN GHOSH LITERARY

**Royalty Detailed Statement  
 For Period Ending September 30, 2011**

**JESSE JAMES**

Market	Royalty Rate or External Market	Royalty Per Unit or Net Receipts	Current Copies	Current Earnings	Cumulative Copies	Cumulative Earnings
9780375705588	\$ 16.00	On Sale: October 28, 2003 TP				
U.S.	7.5000	1.20000	(2)	(2.40)	30,477	36,572.40
Canada	3.7500	0.60000	0	0.00	510	306.00
Export	5.0000	0.00000	0	0.00	184	69.82
Spcl disc	5.0000	0.00000	0	0.00	63	13.19
Premium	5.0000	0.00000	0	0.00	34	10.94
		<b>Sub Total</b>	<b>(2)</b>	<b>(2.40)</b>	<b>31,268</b>	<b>36,972.35</b>
<b>Trade Paperback</b>		<b>Total in USD</b>	<b>948</b>	<b>1,182.31</b>	<b>41,042</b>	<b>49,238.50</b>

January 28, 2012  
 SCOVIL GALEN GHOSH LITERARY

**Subsidiary Rights Income  
 For Period Ending September 30, 2011**

**JESSE JAMES**

Licensee	Rights Sold	Territory or Language	Current Copies	Current Receipts	Proprietor's Share %	Current Earnings	Cumulative Copies	Cumulative Earnings
<b>9780375405839</b>								
RHUK Cape		Lic.Total	0	0.00		0.00	0	27,989.86
il Saggiatore		Lic.Total	0	0.00		0.00	2,312	3,311.47
Easton Press		Lic.Total	0	0.00		0.00	0	1,000.00
AARP		Lic.Total	0	0.00		0.00	0	375.00
Bookspan		Lic.Total	0	0.00		0.00	4,185	3,766.95
The Globe Peq		Lic.Total	0	0.00		0.00	0	325.00
		<b>ISBN Total</b>	<b>0</b>	<b>0.00</b>		<b>0.00</b>	<b>6,497</b>	<b>36,768.28</b>
<b>9780375705588</b>								
Ebrary Proque	Permission	English	0	21.73	50.00%	10.87	0	177.95
		<b>ISBN Total</b>	<b>0</b>	<b>21.73</b>		<b>10.87</b>	<b>0</b>	<b>177.95</b>
<b>Subsidiary Rights</b>		<b>Total</b>	<b>0</b>	<b>21.73</b>		<b>10.87</b>	<b>6,497</b>	<b>36,946.23</b>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
THE AUTHORS GUILD, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

**DECLARATION OF TROND ANDREASSEN**

I, Trond Andreassen, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.
  
2. I have served as Secretary General of plaintiff Norsk faglitterær forfatter-og oversetterforening (“NFF”) since 1986, with the exception of 1995-1997 when I served as Head of division for the higher education department of Scandinavian University Press, a Norwegian academic publishing house. I have written and published a comprehensive account of the Norwegian literary system and the changes the book industry has gone through from a variety of perspectives in the industry including authors, readers, publishers, booksellers, book clubs, libraries, and public policy literature.

**The Work At Issue**

3. I am the sole author and copyright holder of the non-fiction work *Bok-Norge: En Litteratursosiologisk Oversikt (Norwegian Books: A Sociological Overview of Literature)* (hereafter the “*Bok-Norge*”), and holder of a valid copyright to it under Norwegian law.

4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of *Bok-Norge*, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to *Bok-Norge*. I never assigned to any third party the copyright to *Bok-Norge*.

#### **Unauthorized Uses Of My Work**

5. It has come to my attention that a print copy of my work *Bok-Norge* was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with HathiTrust as “Defendants”) in partnership with Google, as part of the HathiTrust and/or Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of *Bok-Norge*. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of *Bok-Norge*.

#### **Harm Resulting From Defendants’ Use Of My Work**

6. As an author who depends in large part on the value of my work to earn a living, I brought this action because the Defendants’ unauthorized digitization and use of *Bok-Norge* has harmed or threatens to harm me in a number of ways.

7. I have reviewed the Declaration of T.J. Stiles and I agree with and incorporate by reference Mr. Stiles’ descriptions of the various harm and potential harm caused by the Defendants’ actions. One difference between Mr. Stiles and me is that (as described below) I have not yet chosen to make *Bok-Norge* available in digital form. However, this difference does not change the fact that Defendants’ actions are causing and threatening to cause damage to me and to the value of *Bok-Norge*.

8. I believe that I am entitled to determine whether, when and under what circumstances *Bok-Norge* is scanned, digitized, copied and used. Defendants' insistence that the new, complex, technologically-enabled uses they intend to make of *Bok-Norge* should be permitted without my consent dangerously presupposes that copyright law does not give authors any right to control how their works are used and exploited in these contexts. To the best of my knowledge, this is not the law in the United States, and it certainly is not the law in Norway. While *Bok-Norge* is not yet available in digital form, I reserve the right to license the creation of digital versions of it when I choose to.

9. Defendants argue that uses of *Bok-Norge* that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of *Bok-Norge* or deprive me of licensing opportunities and therefore do not require my permission. This is not so. As the Declaration of T.J. Stiles points out, these kinds of uses represent a new market whose value is evidenced by Defendants' use of *Bok-Norge*, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and copied. I believe that I have the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if I do decide to allow them. Defendants could have asked my permission to digitize *Bok-Norge*, or offered to purchase one or more additional copies for their library collections.

10. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. Without such a contract, I am rendered powerless to dictate terms as to how *Bok-Norge* may or may not be used. I also have no ability to insist that HathiTrust take security measures to protect my work. I have no power to ensure that the infringing copies of my work are truly in a "dark archive" that is not accessible for

viewing or further copying. I have no assurance that Defendants' actual use of *Bok-Norge* is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

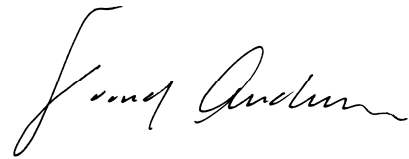
*[The rest of this page intentionally left blank]*



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Oslo, Norway

June 22nd, 2012

A handwritten signature in black ink, appearing to read "Trond Andreassen". The signature is written in a cursive style with a large initial "T".

---

TROND ANDREASSEN

Re UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
THE AUTHORS GUILD, INC., et al.,	:	
Plaintiffs,	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
HATHITRUST, et al.,	:	
Defendants.	:	
-----X	:	

**DECLARATION OF OWEN ATKINSON**

I, Owen Atkinson, hereby declare as follows:

1. I am the Chief Executive of The Authors’ Licensing and Collecting Society (the “ALCS”), one of the plaintiffs in the above-captioned action
2. I submit this declaration in support of Plaintiffs’ motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.
3. ALCS is the United Kingdom collecting society for authors of all genres of literary and dramatic copyright works. Since its founding in 1977, ALCS has paid more than £250 million to its writer-members for secondary uses of their works, including photocopying, scanning, and digital copying of its member’ works. Among its more than 80,000 members, ALCS represents more than 50,000 book authors.
4. ALCS research shows that about half of all books copied under its agreements are out of print. As a consequence, as part of its routine operations, ALCS identifies and pays authors of out-of-print works. Over a ten-year period, ALCS has found that it identifies, contacts and pays the contributors to more than 95% of the most commonly copied out-of-print books.

**The Works At Issue**

5. It is my understanding that more UK books were digitized as part of the Google Library Project than any other country other than the United States. Upon information and belief, Defendants have digitized without authority more than 35,000 books by ALCS members (the “ALCS Works”), including at least two books that Defendants had deemed “orphan work candidates” – Frederick Copelston’s *The History of Philosophy: Volume II* and Eleanor Farjeon’s *A Nursery in the Nineties*.

**Harm Resulting From Defendants’ Use Of The Works**

6. The ALCS agreed to join this lawsuit as an associational plaintiff after learning that tens of thousands of print copies of ALCS Works and millions of other copyrighted books were digitized and being used as part of the Google Library Project, and that Defendants planned to begin making digital copies of purported “orphan works” available for free.

7. I have reviewed the declarations of several individual authors who are plaintiffs in this litigation, including the declarations of Fay Weldon (who is a member of ALCS), T.J. Stiles, Pat Cummings and Roxana Robinson. I believe that the works written by those authors provide a fair sampling of the types of works authored by members of ALCS.

8. I agree with and incorporate by reference the description in those declarations of the various harms and potential harms that result from Defendants’ unauthorized digitization and use of copyrighted works. Those descriptions need not be repeated here in full, but can be summarized as follows.

9. *First*, each digital copy of an ALCS Work that is created by Defendants without purchase or license represents a lost sale to the associated rightsholder. Defendants could have purchased a copy but instead had it scanned without compensating the copyright owner. As

ALCS administers digitization rights on behalf of its members, Defendants could have investigated with ALCS the potential for a license. Whenever ALCS receives individual digitization requests, we act as an intermediary contacting the relevant member(s) to ascertain whether or not they wish to give permission.

10. *Second*, Defendants' storage of the ALCS Works in an online digital repository exposes that property to security risks for which the rightsholders receive no commensurate remuneration. Unauthorized access to copyrighted books leading to widespread piracy would gravely impact the market for those works.

11. *Third*, Defendants' various uses of the ALCS Works undermine various licensing opportunities for rightsholders. For example, authors routinely grant online distributors like Amazon a license to index their books and make them searchable as part of a commercial arrangement targeted at promoting book sales. Defendants do the same thing, but without a license and without the search function being part of an effort to sell the books and provide revenue to the author. Defendants also permit the books to be used for non-consumptive research, an emerging field that represents another potential licensing stream for authors.

12. *Fourth*, Defendants' mass digitization and orphan works programs undercut opportunities for authors to generate royalty streams by entering into collective licensing agreements. As part of a major copyright review, the UK Government is currently considering new legislation to facilitate licensing of high-volume collections of works, such as archives comprising orphan works. ALCS has been involved throughout the consultation process for this.

13. *Fifth*, making books available through the Orphan Works Project will directly undermine efforts to revive out of print books and will impact future sales of such books. The fact that Defendants' orphan works candidates list included at least two UK books whose rights

are administered by the ALCS shows the international reach of Defendants' program and the mistakes made thereunder. As mentioned, the ALCS routinely monetizes out-of-print works of its members by negotiating licenses for secondary rights.

14. In short, Defendants activities have harmed or have the potential to cause enormous harm to the rights of authors.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: London, England  
June 27 2012



OWEN ATKINSON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
THE AUTHORS GUILD, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

**DECLARATION OF PAT CUMMINGS**

I, Pat Cummings, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.
  
2. I am the author and illustrator of numerous books for children and young adults. I have made my living as a full-time illustrator and writer for over thirty-five years, and am also an adjunct professor at Pratt Institute and Parsons The New School For Design, where I teach classes on children’s book illustration and writing. In addition, I speak at many literary events and conferences each year and conduct a Children’s Book Boot Camp, an annual five week long summer workshop for writers and illustrators of picture books. I sit on the boards of The Society of Children’s Book Writers and Illustrators and The Eric Carle Museum of Picture Book Art. I am also a member of the Board of Directors of Plaintiff The Authors Guild.

**The Works At Issue**

3. I am the sole author and copyright owner of each work listed on Exhibit A hereto (hereafter referred to as the “Works”). A true and correct copy of the copyright registration for each Work is attached hereto as Exhibit B.

4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of my Works, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to my Works. I never assigned to any third party the copyright to my Works.

#### **Unauthorized Uses Of My Works**

5. It has come to my attention that print copies of my Works were copied without my permission when they were digitized by one of the defendant universities (collectively referred to herein along with HathiTrust as “Defendants”) in partnership with Google, as part of the HathiTrust and Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of my Works. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of my Works.

#### **Harm Resulting From Defendants’ Use Of My Works**

6. As an author who depends in large part on the value of my work to earn a living, I brought this action because the Defendants’ unauthorized digitization and use of my Works has harmed or threatens to harm me in a number of ways.

7. I have reviewed the Declaration of T.J. Stiles and I agree with and incorporate by reference Mr. Stiles’ descriptions of the various harm and potential harm caused by the Defendants’ actions. Two differences between Mr. Stiles and me are that (as described below) certain of my Works are no longer in print and I have not yet chosen to make any of my Works available in digital form. These differences do not, however, change the fact that Defendants’ actions are causing and threatening to cause damage to me and to the value of my Works.

8. While several of my Works are no longer in print, specifically *C.L.O.U.D.S.*, *Jimmy Lee Did It*, and *Talking With Artists: Volume 2*, my other three works, *Clean Your Room*,



*Harvey Moon!*, *Talking With Artists: Volume 1*, and *Talking With Adventurers*, are in print and available for sale. In either case, the harms articulated in the Declaration of T.J. Stiles affect me because these Works are still protected by copyright law and I still hold the copyright. Whether my Works are in print or not, I should have the right to decide how these works are copied or distributed and should have the option to resurrect these Works on my own terms, whether that means self-publishing them, making new publishing deals, or anything else I choose.

9. New technology is opening new possibilities in publishing and it is now possible, for the first time in history, to self-publish a book in print or digital forms without the aid of a publishing company. While I have not yet made a decision on how to proceed with my out-of-print Works, I am aware of this option and consider it a possibility for the future. This is why even my currently out-of-print Works are affected by the Defendants' unauthorized copying.

10. Moreover, I have received an offer to make one of my Works available in digital form. See Exhibit C. Despite this offer, I have chosen not to make my Works available in electronic format yet, though I do intend to eventually. Digital marketplaces and security protections are still developing, and I am waiting to enter this marketplace until I feel comfortable with the arrangement and with security provisions.

11. I believe that I am entitled to determine whether, when and under what circumstances my Works are scanned, digitized, copied and used. Defendants' insistence that the new, complex, technologically-enabled uses they intend to make of my Works should be permitted without my consent dangerously presupposes that copyright law does not give authors any right to control how their works are used and exploited in these contexts. To the best of my knowledge, this is not the law in the United States.

12. Defendants argue that uses of my Works that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of my Works or deprive me of licensing opportunities and therefore do not require my permission. This is not so. As the Declaration of T.J. Stiles points out, these kinds of uses represent a new market whose value is evidenced by Defendants' use of my Works, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and copied. I believe that I have the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if I do decide to allow them. Defendants could have asked my permission to digitize my Works, or offered to purchase one or more additional copies of my in-print Works for their library collections.

13. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. Without such a contract, I am rendered powerless to dictate terms as to how my Works may or may not be used. I also have no ability to insist that HathiTrust take security measures to protect my work. I have no power to ensure that the infringing copies of my work are truly in a "dark archive" that is not accessible for viewing or further copying. I have no assurance that Defendants' actual use of my work is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

*[The rest of this page intentionally left blank]*

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June 28, 2012

A handwritten signature in black ink that reads "pat cummings". The signature is written in a cursive, lowercase style.

---

PAT CUMMINGS

# EXHIBIT A

**EXHIBIT A**

<b>AUTHOR</b>	<b>TITLE</b>	<b>FIRST PUBLICATION</b>	<b>SUBSEQUENT PUB(S).</b>	<b>MOST RECENT PUB. HARDCOPY OR ELECTRONIC?</b>	<b>U.S. COPYRIGHT REGISTRATIONS OR RENEWALS</b>
Cummings, Pat	C.L.O.U.D.S	1986-04-02/New York: Lothrop, Lee & Shepard Books		Hardcopy	TX0001806038 1986-04-15
Cummings, Pat	Clean Your Room, Harvey Moon!	1991-03-01/New York: Bradbury Press	1991-03-31/New York: Simon & Schuster  1991/New York: MacMillan McGraw Hill School Division  1991-09/New York: Spoken Arts (audiobook)  1994-01-01/New York: Simon & Schuster  1996/New York: Houghton Mifflin	Hardcopy	TX0003159777 1991-08-08

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Cummings, Pat	Jimmy Lee Did It	1985-08-08/New York: Lothrop, Lee & Shepard Books	1985/Littleton, MA: Sundance Publishers 1993/Littleton, MA: Sundance Publishers 01-1995/New York: Harper Trophy 1997/New York: Macmillan McGraw Hill School Division 2000/Sacramento: Clearinghouse for Specialized Media & Technology (computer disk)	Electronic	TX0001650936 1985-09-05

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Cummings, Pat	Talking With Artists: Volume 1	1992-03-01/New York: Bradbury Press	1992/Needham, MA: Silver Burdett Ginn  1999/New York: Simon & Schuster Books for Young Readers (revised cover edition)		TX0003422950 1992-10-16
Cummings, Pat	Talking With Artists: Volume 2	1995-09-01/New York: Simon & Schuster Books for Young Readers			TX0004242559 1996-04-29
Cummings, Pat and Cummings, Linda, Ph.D.	Talking With Adventurers	1998-08-10/Washington, D.C.: National Geographic Society			VA0000932461 1998-10-27  VA0000932460 1998-10-27

# EXHIBIT B



FORM TX  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 1 650 936

TX TXU  
EFFECTIVE DATE OF REGISTRATION  
9 5 85  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK

JIMMY LEE DID IT

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

2 a NAME OF AUTHOR DATES OF BIRTH AND DEATH

Pat Cummings

Year Born Year Died

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
Citizen of USA  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Entire work

Briefly describe nature of the material created by this author in which copyright is claimed.

NOTE Under the law the "author" of a "work made for hire" is the employer or other person or organization for whom the work was prepared, if the facts and circumstances indicate that the person or organization acted as the author.

000137706  
000137706

b NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
Citizen of  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed.

c NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
Citizen of  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed.

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

1985 Year

Month: AUGUST Day: 8 Year: 1985  
USA

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Pat Cummings  
28 Tiffany Place  
Brooklyn NY 11231

APPLICATION RECEIVED  
SEP 05 1985  
ONE DEPOSIT RECEIVED  
TWO DEPOSITS RECEIVED  
SEP 05 1985  
REMITTANCE NUMBER AND DATE

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK • Complete all applicable spaces (numbers 5-11) on the reverse side of this page.  
• See detailed instructions. • Sign the form at line 10.



TX 1 650 936

EXAMINED BY          FORM TX  
 CHECKED BY           
 CORRESPONDENCE  
 DEPOSIT ACCOUNT FUNDS USED  
 FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?  
 Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box)   
 This is the first published edition of a work previously registered in unpublished form.  
 This is the first application submitted by this author as copyright claimant.  
 This is a changed version of the work, as shown by space 6 on this application.  
 If your answer is "Yes," give: Previous Registration Number  Year of Registration

5

**DERIVATIVE WORK OR COMPILATION** Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.  
 a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.   
 b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

6

**MANUFACTURERS AND LOCATIONS** If this is a published work consisting preponderantly of nondramatic literary material in English, the law may require that the copies be manufactured in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where these processes were performed must be given. See instructions for details.  
 Names of Manufacturers  Places of Manufacture   
Rea Cedar Grove, NJ  
Bookbinders Jersey City, NJ

7

**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS** A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of this work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work, or (3) both.  
 a  Copies and Phonorecords b  Copies Only c  Phonorecords Only

8

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
 Name  Account Number   
William Morrow & Company, Inc. DA 013811

9

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip   
Same as 11  
 Area Code & Telephone Number  (212) 889-3050

10

**CERTIFICATION\*** I, the undersigned, hereby certify that I am the  author  other copyright claimant  owner of exclusive rights(s)  authorized agent of William Morrow & Company, Inc.  
 of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge. Name of author or other copyright claimant, or owner of exclusive right(s)   
 Typed or printed name and date  If this is a published work, this date must be the same as or later than the date of publication given in space 3.  
David Means date  August 28, 1985

Handwritten signature (X)  David Means

**MAL CENTER GATE 10** Name  David Means/ William Morrow & Company, Inc.  
 Number/Street/Apartment Number  105 Madison Ave  
 City/State/Zip  New York, NY 10016

11

\* 17 U.S.C. § 405(a). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 405, or in any written statement filed in connection with the application, shall be fined not more than \$2,000.  
 U.S. GOVERNMENT PRINTING OFFICE: 1985 491-274-1000



FORM TX  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 1 806 038

TX TX  
EFFECTIVE DATE OF REGISTRATION

4 - 15 - 86  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

1 TITLE OF THIS WORK

C.L.O.U.D.S.

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Page

2 NAME OF AUTHOR a Pat Cummings DATE OF BIRTH AND DEATH Year Born Year Died

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizen of Domiciled in D USA

HAD THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Entire work

NOTE Under the age of 18

NAME OF AUTHOR DATE OF BIRTH AND DEATH Year Born Year Died

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizen of Domiciled in D

HAD THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP

085A1269

NAME OF AUTHOR DATE OF BIRTH AND DEATH Year Born Year Died

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizen of Domiciled in D

HAD THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous?  Yes  No Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1986 DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Month Day Year APR 11 2 1986 USA

4 COPYRIGHT CLAIMANT'S Name and address must be given even if the claimant is the same as the author given in space 2. Pat Cummings 28 Tiffany Place Brooklyn NY 11231

APPLICATION RECEIVED APR 15 1986 ONE DEPOSIT RECEIVED TWO DEPOSITS RECEIVED APR 15 1986 REMITTANCE NUMBER AND DATE



IX 1 806 038

EXAMINED BY (Signature) FORM TX

CHECKED BY \_\_\_\_\_

CORRESPONDENCE FOR COPYRIGHT OFFICE USE ONLY

DEPOSIT ACCOUNT FUNDS USED

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?  
 No  Yes. If your answer is "Yes," why is another registration being sought? (Check appropriate box) 5

This is the first published edition of a work previously registered in unpublished form.

This is the first application submitted by this author as copyright claimant.

This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number          Year of Registration         

**DERIVATIVE WORK OR COMPILATION** Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation. 6

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates.         

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.          See instructions before completing this space.

**MANUFACTURERS AND LOCATIONS** If this is a published work consisting predominantly of nondramatic literary material in English, the law may require that the names be mentioned in the United States or Canada for full protection. If so, the names of the manufacturers who performed certain processes, and the places where these processes were performed must be given. See instructions for details. 7

Name of Manufacturer Dy-nippon Place of Manufacture Japan

**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS** A signature on this form at space 10, and a check in one of the boxes here at space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbol) or (2) phonorecords embodying a fixation of a reading of that work, or (3) both. 8

Copies and Phonorecords       Copies Only       Phonorecords Only      See instructions

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 9

Name William Morrow & Company, Inc. Account Number DA 013811

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/Zip          10

Same as 11

Area Code & Telephone Number (212) 889-3050 11

**CERTIFICATION** I, the undersigned, hereby certify that I am the          10

Check one  author  
 other copyright claimant  
 owner of exclusive right(s)  
 authorized agent of William Morrow & Company, Inc.  
Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Signed or printed name and date David Means April 11, 1986  
If this is a published work, this date must be the same as or later than the date of publication given in space 1.

Handwritten signature David Means

**MAIL TO**

Name David Means/ William Morrow & Company, Inc.

Number/Street/Apartment Number 105 Madison Avenue

City/State/ZIP New York, NY 10016

More goes:

- Completed all necessary spaces?
- Signed your application in space 10?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
- Enclosed your deposit material with the application and fee?

© 1985, U.S. Register of Copyrights, Library of Congress, Washington, D.C. 20540

\* U.S.C. § 107: Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$5,000.

U.S. GOVERNMENT PRINTING OFFICE: 1985-481-880-880 February 1985-481-880



FORM TX  
UNITED STATES COPYRIGHT OFFICE  
REGISTRATION NUMBER

TX 3 159 777  
TX TXU  
EFFECTIVE DATE OF REGISTRATION  
8 8 91

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTRIBUTION SHEET

**1**

**TITLE OF THIS WORK** ▼  
Clean Your Room, Harvey Moon!

**PREVIOUS OR ALTERNATIVE TITLES** ▼

**PUBLICATION AS A CONTRIBUTION** If this work was published as a contribution to a periodical, serial, or collection, give information about the collecting work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Page ▼

**2**

**NAME OF AUTHOR** ▼ Pat Cummings

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Country: USA  
Citizen of:  USA  Other: \_\_\_\_\_  
Domiciled in: \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
Anonymous?  Yes  No  
Pseudonym?  Yes  No

**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by this author in which copyright is claimed. ▼  
text and illustrations

**NAME OF AUTHOR** ▼

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Country: \_\_\_\_\_  
Citizen of:  \_\_\_\_\_  Other: \_\_\_\_\_  
Domiciled in: \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
Anonymous?  Yes  No  
Pseudonym?  Yes  No

**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by this author in which copyright is claimed. ▼

**NAME OF AUTHOR** ▼

**DATES OF BIRTH AND DEATH**  
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?  
 Yes  No

**AUTHOR'S NATIONALITY OR DOMICILE**  
Country: \_\_\_\_\_  
Citizen of:  \_\_\_\_\_  Other: \_\_\_\_\_  
Domiciled in: \_\_\_\_\_

**WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK**  
Anonymous?  Yes  No  
Pseudonym?  Yes  No

**NATURE OF AUTHORSHIP** Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NOTE: This form is to be used for the registration of a work made for hire.

04285926

**3**

**YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED** 1990

**DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK**  
Month: March Day: 1 Year: 1991  
United States of America

**4**

**COPYRIGHT CLAIMANT'S Name and address must be given even if the claimant is the same as the author given in space 2**

Pat Cummings  
28 Tiffany Place  
Brooklyn, NY 11231

**REGISTRATION RECEIVED**  
AUG 08 1991

**ONE DEPOSIT RECEIVED**

**TWO DEPOSITS RECEIVED**  
AUG 08 1991

**REGISTRATION RECEIVED AND DATE**

TX 3 159 777

EXAMINED BY *[Signature]* ADMIN TX

CHECKED BY *[Signature]*

CORRESPONDENCE

DEPOSIT ACCOUNT FUNDS USED

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CORRESPONDENCE SHEET.

**PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▾

This is the first published edition of a work previously registered as unpublished work.

This is the first application submitted by this author as copyright claimant.

This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▾ Year of Registration ▾

5

**DERIVATIVE WORK OR COMPILATION** Complete both space 6a & 6b for a derivative work, complete only 6b for a compilation.

a. **Preexisting Material** Identify any preexisting work or works that this work is based on or comprises. ▾

6

b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▾

See instructions before completing this space

—space deleted—

7

**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS** A signature in this box at space 8, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission in the Library of Congress to reproduce and disseminate for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of this work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of this work, or (3) both.

a.  Copies and Phonorecords b.  Copies Only c.  Phonorecords Only

8

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▾ **Macmillan Publishing Company** Account Number ▾ **DA 020818**

9

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. (Name/address last City/State/Zip) ▾

**Macmillan Publishing Company**

**866 Third Avenue**

**New York, NY 10022**

Area Code & Telephone Number ▾ **212-702-5614**

Be sure to give your daytime phone number

**CERTIFICATION** I, the undersigned, hereby certify that I am the

Check one ▾

author

owner copyright claimant

owner of exclusive right(s)

authorized agent of **Pat Cummins**

Name of author or other copyright claimant, or owner of exclusive right(s) ▾

10

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and (see ▾ if this is a published work, this date must be the same as or later than the date of publication given in space 1) **Ann Dewell**

Date ▾ **August 6, 1991**

Handwritten signature (X1) ▾ *Ann Dewell*

**MAIL CERTIFICATE TO**

Name ▾ **Macmillan Publishing Company, Contract Dept.**

Number/Street/Apartment Number ▾ **866 Third Avenue**

City/State/Zip ▾ **New York, NY 10022**

**11**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_



FORM TX  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER  
TX 3 422 950

TX TXU  
EFFECTIVE DATE OF REGISTRATION  
OCT 16 1992  
Month Day Year

1 DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK  
TALKING WITH ARTISTS

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give Volume Number Issue Date On Pages

2 NAME OF AUTHOR PAT CUMMINGS DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizens of D. USA Domiciled in D.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymously?  Yes  No Pseudonymously?  Yes  No

NATURE OF AUTHORSHIP Editorial text Briefly describe nature of the material created by this author in which copyright is claimed.

NOTE Under the law the "author" of a "work made for hire" is not the person who created the work.

053172616  
053172616

NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizens of D. Domiciled in D.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymously?  Yes  No Pseudonymously?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

NAME OF AUTHOR DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire"?  Yes  No

AUTHOR'S NATIONALITY OR DOMICILE Name of Country Citizens of D. Domiciled in D.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymously?  Yes  No Pseudonymously?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1991 DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK March 1 1992 United States of America

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. Pat Cummings 28 Tiffany Place Brooklyn, NY 11231

APPLICATION RECEIVED OCT 16 1992  
ONE DEPOSIT RECEIVED  
TWO DEPOSITS RECEIVED OCT 16 1992  
REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

TK 3 422 350

EXAMINED BY Tmd

FORM TX

CHECKED BY \_\_\_\_\_

CORRESPONDENCE

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

**PREVIOUS REGISTRATION** Has registration for this work or for an earlier version of this work already been made in the Copyright Office?

- Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box)
  - This is the first published edition of a work previously registered in unpublished form
  - This is the first application submitted by the author in copyright classmate
  - This is a changed version of the work as shown by space 8 on this application

If your answer is "Yes," give Previous Registration Number \_\_\_\_\_ Year of Registration \_\_\_\_\_

**DERIVATIVE WORK OR COMPILATION** Complete both space 8a & 8b for a derivative work, except you only fill for a compilation

- a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates \_\_\_\_\_
- b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed \_\_\_\_\_

—space deleted—

**REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS** A registrant on this form at space 10 and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations provided by the regulations of the Copyright Office. (If approved the work identified in space 1 of this application in Braille (or similar tactile symbols) or (2) phonorecords embodying a fixation of that work or (3) both

- Braille and Phonorecords
- Copies Only
- Phonorecords Only

**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account Name \_\_\_\_\_ Account Number DA020818

**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent Name/Address/Zip/City/State/Zip \_\_\_\_\_  
Macmillan Publishing Company  
866 Third Avenue  
New York, NY 10022

Area Code & Telephone Number 212-702-5614

**CERTIFICATION** I, the undersigned, hereby certify that I am the \_\_\_\_\_  
Check one:  author  
 other copyright claimant  
 owner of exclusive rights(s)  
 authorized agent of Pat Cummings

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge Name of author or other copyright claimant or owner of exclusive rights: \_\_\_\_\_  
Typed or printed name and date If this application gives a date of publication in space 1, do not sign and submit it before that date

Ann Dewell Date October 8, 1992

Handwritten signature (10) Ann Dewell

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Name	Macmillan Publishing Company, Contract Dept.
Number Street Apartment Number	866 Third Avenue
City State ZIP	New York, NY 10022

11

2. Enclosure with fee to be filed in office of Copyright

3. Registration

Library of Congress  
Washington, DC 20540

\* 17 U.S.C. § 508(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any other statement filed in connection with the application shall be fined not more than \$2,500



FORM TX  
For a Literary Work  
UNITED STATES COPYRIGHT OFFICE  
REGISTRATION NUMBER



TX 4-242-559



EFFECTIVE DATE OF REGISTRATION

APR 29 1996  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

TALKING WITH ARTISTS VOLUME TWO

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

NAME OF AUTHOR

Pat Cummings

DATES OF BIRTH AND DEATH  
Year Born Year Died

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of USA  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

Introduction and compilation of essays, editing

NAME OF AUTHOR

DATES OF BIRTH AND DEATH  
Year Born Year Died

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH  
Year Born Year Died

Was this contribution to the work a "work made for hire"?  
 Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country  
OR { Citizen of  
Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK  
Anonymous?  Yes  No  
Pseudonymous?  Yes  No

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed.

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.  
1995 Year

b) DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published.  
Month Sept Day 01 Year 1995  
USA Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given space 2.

Pat Cummings  
c/o Simon & Schuster Inc., 1230 Ave. of the Americas, New York, NY 10020

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED  
APR 29 1996

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED  
APR 29 1996

REMITTANCE NUMBER AND DATE

DO NOT WRITE HERE OFFICE USE ONLY

NOTE

Under the law, the "author" of a "work made for hire" is the employer or other person or organization for whom the work was prepared.

081662136



MORE ON BACK

- Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 10.

DO NOT WRITE HERE

EXAMINED BY

TMS

FORM TX

CHECKED BY

CORRESPONDENCE  
 Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

See instructions before completing this space.

— space deleted —

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10, and a check in one of the boxes here in space 8, constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

- a.  Copies and Phonorecords
- b.  Copies Only
- c.  Phonorecords Only

See instructions.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ Simon & Schuster Inc. Account Number ▼ DA066001

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Kathleen Nolan  
(below)

Area Code & Telephone Number ▶ 212-654-7544

Be sure to give your daytime phone number.

CERTIFICATION\* I, the undersigned, hereby certify that I am the

Check only one ▶

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Simon & Schuster Inc.  
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Kevin Sullivan

date ▶ 04/17/96

Handwritten signature (X) ▼

MAIL CERTIFICATE TO

Name ▼	Kathleen Nolan Simon & Schuster Inc.	juv box 5009
Number/Street/Apartment Number ▼	1633 Broadway - 6th floor	
City/State/ZIP ▼	New York, NY 10019-6785	

Certificate will be mailed in window envelope

YOU MUST

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE

1. Application form
2. Nonrefundable \$30 filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO

Register of Copyrights  
Library of Congress  
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1998. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

\*17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.



FORM VA  
For a Work of the Visual Arts



EFFECTIVE DATE OF REGISTRATION

OCT 27 1998

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

NATURE OF THIS WORK See instructions

Talking with Adventurers

children's book

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

2

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Pat Cummings

Year Born Year Died

Was this contribution to the work a "work made for hire?"

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes No

OR Citizen of United States Domiciled in

Anonymous? Pseudonymous? Yes No Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

- 3-Dimensional sculpture, 2-Dimensional artwork, Reproduction of work of art, Design on sheetlike material, Map, Photograph, Jewelry design, Technical Drawing, Text, Architectural work

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Was this contribution to the work a "work made for hire?"

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes No

OR Citizen of Domiciled in

Anonymous? Pseudonymous? Yes No Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

- 3-Dimensional sculpture, 2-Dimensional artwork, Reproduction of work of art, Design on sheetlike material, Map, Photograph, Jewelry design, Technical Drawing, Text, Architectural work

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

a 1998 Year

b Month August Day 10 Year 1998 United States Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same author given in space 2. Pat Cummings c/o National Geographic Society 1145 17th Street, N.W. Washington, D.C. 20036

APPLICATION RECEIVED

OCT 27 1998

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

OCT 27 1998 REMITTANCE NUMBER AND DATE

DO NOT WRITE HERE OFFICE USE ONLY

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

See instructions before completing this space

MORE ON BACK Complete all applicable spaces (numbers 5-9) on reverse of this page.

DO NOT WRITE HERE

See detailed instructions.

Sign the form at line 8.

Page 1 of pages

EXAMINED BY Wm FORM VA

CHECKED BY DMH

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number  Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claim.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name  Account Number

Publications, National Geographic Society DA081817

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Z.

Suzanne Ross McDowell, Deputy General Counsel  
National Geographic Society  
1145 17th Street, N.W.  
Washington, D.C. 20036

Area Code & Telephone Number ▶ (202) 857-7523

CERTIFICATION\* I, the undersigned, hereby certify that I am the  
Check only one

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of National Geographic Society which is the authorized agent of Pat Cummings

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Suzanne Ross McDowell

date ▶ 10/26/98

Handwritten signature (X) ▼

Suzanne Ross McDowell

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Name ▼ Suzanne Ross McDowell  
Deputy General Counsel

Number/Street/Apartment Number ▼  
National Geographic Society  
1145 17th Street, N.W.

City/State/ZIP ▼  
Washington, D.C. 20036

- 1. Application form
  - 2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights
  - 3. Deposit material
- Register of Copyrights  
Library of Congress  
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1994. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

\*17 U.S.C. §506(e): Any person who knowingly makes a false representation or a material fact in the application for copyright registration provided for by section 406, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.



FORM VA  
For a Work of the Visual Arts  
UNITED STATES COPYRIGHT OFFICE

102100422



VA 932-461



EFFECTIVE DATE OF REGISTRATION

OCT 27 1998

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

NATURE OF THIS WORK See instructions

Talking to Adventurers

children's book

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Pat Cummings

Year Born Year Died

Was this contribution to the work a "work made for hire?"

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes  
 No

OR { Citizen of United States  
Domiciled in

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

- 3-Dimensional sculpture
- 2-Dimensional artwork
- Reproduction of work of art
- Design on sheetlike material
- Map
- Photograph
- Jewelry design
- Technical Drawing
- Text
- Architectural work
- Compilation*

NAME OF AUTHOR

DATES OF BIRTH AND DEATH

Linda Minor

Year Born Year Died

Was this contribution to the work a "work made for hire?"

AUTHOR'S NATIONALITY OR DOMICILE Name of Country

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Yes  
 No

OR { Citizen of United States  
Domiciled in

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). See instructions.

- 3-Dimensional sculpture
- 2-Dimensional artwork
- Reproduction of work of art
- Design on sheetlike material
- Map
- Photograph
- Jewelry design
- Technical Drawing
- Text
- Architectural work
- \* *Compilation*

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

1998

This information must be given in all cases.

Complete this information ONLY if this work has been published.

Month August Day 10 Year 1998

United States

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same author given in space 2. Pat Cummings & Linda Minor c/o National Geographic Society 1145 17th Street, N.W. Washington, D.C. 20036

APPLICATION RECEIVED

OCT 27 1998

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

OCT 27 1998

REMITTANCE NUMBER AND DATE

DO NOT WRITE HERE OFFICE USE ONLY

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK Complete all applicable spaces (numbers 5-8) on reverse of this page.

DO NOT WRITE HERE

See detailed instructions.

Sign the form at line 8.

Page 1 of pages

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

4

See instructions before completing this space.

EXAMINED BY	<i>Wm</i>	FORM VA
CHECKED BY	<i>Dault</i>	
<input type="checkbox"/> CORRESPONDENCE		FOR
Yes		COPYRIGHT
		OFFICE
		USE
		ONLY

\* Amended by C.O. on authority of Jeanne Fink of National Geographic Society in phone call of 12/1/98.

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

- Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)
- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates

pre-existing photographs

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claim.

compilation and editing of each adventurer's story which includes the selection and arrangement of pre-existing photographs

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account

Publications, National Geographic Society DA081817

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Z

Suzanne Ross McDowell, Deputy General Counsel  
National Geographic Society  
1145 17th Street, N.W.  
Washington, D.C. 20036

Area Code & Telephone Number (202) 857-7523

CERTIFICATION\* I, the undersigned, hereby certify that I am the

- author
- other copyright claimant
- owner of exclusive right(s)

authorized agent of National Geographic Society which is the authorized agent of Pat Cummings and Linda Minor

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Suzanne Ross McDowell date 10-27-98

Handwritten signature (X)

*Suzanne Ross McDowell*

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Name	Suzanne Ross McDowell Deputy General Counsel
Number/Street/Apartment Number	National Geographic Society 1145 17th Street, N.W.
City/State/ZIP	Washington, D.C. 20036

- Complete all necessary spaces
- Sign your application in space 8

1. Application form  
2. Nonrefundable \$20 filing fee in check or money order payable to Register of Copyrights  
3. Deposit material

Register of Copyrights  
Library of Congress  
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1996. Please contact the Copyright Office after July 1995 to determine the actual fee schedule.

17 U.S.C. §502(a) Any person who knowingly makes a false representation or a material fact in the application for copyright registration provided for by Section 404, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

# EXHIBIT C




**SIMON & SCHUSTER**

1230 Avenue of the Americas  
New York, NY 10020

Rubin Pfeffer  
SVP  
Simon & Schuster Children's  
Trade Publishing

June 30, 2008

Pat Cummings  
28 TIFFANY PLACE  
BROOKLYN, NY 11231

Greetings:

As you may have read in the news or observed as you've traveled, eBooks (electronic books) are becoming popular. The recent introduction of two new eBook readers - Sony's eBook Reader and Amazon's Kindle - has increased eBook sales dramatically. Simon & Schuster believes that eBooks will create a new audience for your books, capturing a generation of readers already accustomed to reading everything on a screen while converting other readers who might occasionally find this an easy to use, portable format. If you have not seen one of these eBook devices, they are roughly the size of a thin trade paperback and weigh about as much. The type on the page can be enlarged for weak eyes, and hundreds of books can be loaded onto one device. We've included a list of sites you can visit to see what these devices look like and where you can buy eBooks, as well as Frequently Asked Questions about eBooks and S&S's eBook publishing program.

S&S has already published eBook versions of thousands of its titles and for the past few years, we have been digitizing our backlist of titles, a project that is nearly complete. Now that the customers for this growing market are asking that more books be made available in eBook editions, we want to take advantage of this opportunity and publish more books in this format. I am writing to urge you to take part in this undertaking that I believe represents an important future initiative for the publishing industry in general and will surely expand readership for your books.

In order to move ahead quickly, I ask you to sign the enclosed letter amendment. As you will see, it provides for Simon & Schuster's eBook royalty rate of 15% of the eBook catalog retail price.

We have no doubt that an increasing number of readers will choose this format, and we do not want to lose potential readers for your books or those of any of our authors. If you have any questions that we have not answered in the enclosed materials please call or email:

Anne Zafian  
212.698.7044  
anne.zafian@simonandschuster.com

Sincerely,

Rubin Pfeffer  
Senior Vice President  
S & S Children's Trade Publishing

A CBS COMPANY





**SIMON & SCHUSTER**

1230 Avenue of the Americas  
New York, NY 10020

Rubin Pfeffer  
SVP  
Simon & Schuster Children's  
Trade Publishing

June 30, 2008

Pat Cummings  
28 TIFFANY PLACE  
BROOKLYN, NY 11231

Greetings:

Reference is made to the agreement between you and us (the "Agreement") for publication of the work entitled *Talking With Artists: Volume 1 (Talking with Artists)* (the "Work").

The Agreement is amended to provide that we shall publish an electronic text (eBook) edition of your Work within 12 months after signing of this letter, and that we will pay you a royalty of 15% of the catalog retail price of the eBook edition on all copies sold.

Except as herein expressly modified, the Agreement remains in full force and effect.

If the above is in accordance with your understanding, please sign this letter in the place provided below and return it to us for our countersignature.

Sincerely,

ACCEPTED AND AGREED:

SIMON & SCHUSTER, INC.

By \_\_\_\_\_

A CBS COMPANY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
THE AUTHORS GUILD, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
-----	X	

**DECLARATION OF KELLY DUFFIN**

I, Kelly Duffin, hereby declare as follows:

1. I am the Executive Director of The Writers’ Union of Canada (“TWUC”), one of the plaintiffs in the above-captioned action.
2. I submit this declaration in support of Plaintiffs’ motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.

**The Writers’ Union of Canada**

3. TWUC has approximately 2,000 members who earn their living from writing books. Since its inception in 1973, TWUC has been an advocate for effective copyright law, protection of freedom of expression, fair publishing contracts, and other issues that affect authors. TWUC’s objects include uniting authors for the advancement of their common interests and fostering writing in Canada. Certified by the Canadian Artists and Producers Professional Relations Tribunal, TWUC is the national voice of professional book writers in Canada in the English language.

### The Works At Issue

4. Upon information and belief, members of TWUC own the copyrights in hundreds or thousands of works that were digitized and are being used by Defendants without authorization (collectively, the “Member Works”).

5. One such member is Greg Hollingshead, who is a former Chair of TWUC and the author of the Governor General’s Award-winning book *The Roaring Girl* (1995/Toronto: Somerville House). Upon information and belief, *Roaring Girl* was digitized by Defendants and incorporated into the HathiTrust Digital Library. See <http://catalog.hathitrust.org/Record/007138321>. As the author and copyright owner of *The Roaring Girl* (see U.S. Copyright Reg. No. TX0004415789), it is my understanding that Mr. Hollingshead could bring a lawsuit in his own right against Defendants for digitizing and using his work without authorization.

6. In addition to filing this lawsuit to protect the rights of its members, TWUC itself owns the copyrights in and to a number of works that were scanned and incorporated into HathiTrust without TWUC’s knowledge or consent. Attached as Exhibit A is a schedule of works whose copyrights are owned by TWUC and have been infringed by Defendants ( the “TWUC Works”). Attached as Exhibit B is a copy of the Will showing the bequest of her copyrights from deceased TWUC member Edith Fowke to TWUC.

### Harm Resulting From Defendants’ Use Of The Works

7. The TWUC agreed to join this lawsuit as an associational plaintiff after learning that print copies of the TWUC Works, Member Works and millions of other copyright books were digitized and being used as part of the Google Library Project, and that Defendants planned to begin making digital copies of purported “orphan works” available for free.

8. I have reviewed the declarations of several individual authors who are plaintiffs in this litigation, including the declarations of T.J. Stiles, Pat Cummings and Roxana Robinson. I believe that the works written by those authors provide a fair sampling of the types of works authored by members of TWUC.

9. I agree with and incorporate by reference the description in those declarations of the various harms and potential harms that result from Defendants' unauthorized digitization and use of copyrighted works. Those descriptions need not be repeated here in full, but can be summarized as follows.

10. *First*, each digital copy of a TWUC or Member Work that is created by Defendants without purchase or license represents a lost sale to the associated rightsholder. Defendants could have purchased a copy but instead had it scanned without compensating the copyright owner.

11. *Second*, Defendants' storage of the TWUC and Member Works in an online digital repository exposes that property to security risks for which the rightsholders receive no commensurate remuneration. Unauthorized access to copyright books leading to widespread piracy would gravely impact the market for those works.

12. *Third*, Defendants' various uses of the TWUC and Member Works undermine various licensing opportunities for rightsholders. For example, authors routinely grant or authorize their publishers to grant online distributors like Amazon a license to scan and make portions their books viewable online as part of a commercial arrangement targeted at promoting book sales. Defendants also scan and make books searchable but without a license and without being part of an effort to sell the books and provide revenue to the author. Defendants also

permit the books to be used for non-consumptive research, an emerging field that represents another potential licensing stream for authors.

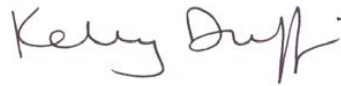
13. *Fourth*, Defendants' mass digitization and orphan works programs undercut opportunities for authors to receive royalties. If permitted to proceed, the Orphan Works Project is likely to negatively impact revenues for authors generated through a system established in Canada to address orphan works. Section 77 of the Canadian Copyright Act permits the Copyright Board of Canada (the "Board") to issue licenses to users whose reasonable efforts to locate a copyright holder have been unsuccessful. The Board sets a licensing fee for each permitted use, which compensation is generally directed to a designated collective society authorized by Canada's *Copyright Act* to license a repertoire of authors' works. In the case of a print publication in languages other than French, the user pays the fee or royalties to the collective society known as Access Copyright, which holds the payment in trust for the unlocatable author or may use the payment for the benefit of the rightsholders whose works it represents, provided that the author may claim the payment from Access Copyright within five years of the expiry of the license. Attached as Exhibit C is an example of a license issued by the Board to the University of Athabasca to digitally reproduce and distribute certain newspapers in exchange for a \$5,000 licensing fee. Defendants' Orphan Works Project allows people to make uses of orphan works but without any system to compensate rightsholders.

14. *Fifth*, making books available through the Orphan Works Project will directly undermine efforts to revive out-of- print books and will impact future sales of such books.

15. In short, Defendants activities have harmed or have the potential to cause enormous harm to the rights of authors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Toronto, Ontario  
June 28, 2012

A handwritten signature in black ink that reads "Kelly Duffin". The signature is written in a cursive, flowing style.

KELLY DUFFIN

# EXHIBIT A

**EXHIBIT A**

<b>AUTHOR(S)</b>	<b>TITLE</b>	<b>FIRST PUBLICATION</b>	<b>SUBSEQUENT PUB(S).</b>	<b>MOST RECENT PUB. HARDCOPY OR ELECTRONIC?</b>	<b>U.S. COPYRIGHT REGISTRATIONS OR RENEWALS</b>
Edith Fowke and Carole Carpenter	A Bibliography of Canadian Folklore	1976/Ontario: York University.	1981/Toronto: University of Toronto Press 1986/Penguin	Hardcopy	N/A – Foreign Work
Edith Fowke and Jay Rahn	A Family Heritage	1994/Calgary: University of Calgary Press		Hardcopy	N/A – Foreign Work
Edith Fowke	Canada's Story in Song	1960/Toronto: W. J. Gage	c1965/Toronto: W. J. Gage	Hardcopy	N/A – Foreign Work
Edith Fowke	Canadian Folklore	1988/Toronto: Oxford University Press		Hardcopy	N/A – Foreign Work
Edith Fowke	Folk songs of Canada	1954/Waterloo: Waterloo Music Co.	1955/Waterloo: Waterloo Music Co. 1958/Waterloo: Waterloo Music Co. 1967/Waterloo: Waterloo Music Co. 1970/Waterloo: Waterloo Music Co.	Hardcopy	N/A – Foreign Work
Edith Fowke	Folk Songs of Quebec	1957/Waterloo: Waterloo Music Co.		Hardcopy	N/A – Foreign Work
Edith Fowke	Folklore of Canada	1976/Toronto: McClelland & Stewart	1979-01-01/Toronto: McClelland & Stewart 1990-04-01/Toronto: McClelland & Stewart	Hardcopy	N/A – Foreign Work



<b>AUTHOR(S)</b>	<b>TITLE</b>	<b>FIRST PUBLICATION</b>	<b>SUBSEQUENT PUB(S).</b>	<b>MOST RECENT PUB. HARDCOPY OR ELECTRONIC?</b>	<b>U.S. COPYRIGHT REGISTRATIONS OR RENEWALS</b>
Edith Fowke	Lumbering Songs from the Northern Woods	1970/Austin: University of Texas Press	1985/Toronto: NC Press	Hardcopy	N/A – Foreign Work
Alice Kane; Edith Fowke (editor)	Songs and Sayings of an Ulster Childhood	c1983/Toronto: McClelland & Stewart		Hardcopy	N/A – Foreign Work
Edith Fowke	Songs of Work and Freedom	1960/Chicago: Roosevelt University	1961/New York: Doubleday	Hardcopy	N/A – Foreign Work
Edith Fowke	Songs of Work and Protest	1973/New York: Dover		Hardcopy	N/A – Foreign Work
Edith Fowke	Tales Told in Canada	1986/Toronto: Doubleday		Hardcopy	N/A – Foreign Work
Edith Fowke	The Penguin Book of Canadian Folk Songs	1973/Harmondsworth: Penguin	1974-07-30/Harmondsworth: Penguin	Hardcopy	N/A – Foreign Work
Edith Fowke	Traditional Singers and Songs from Ontario	1965/Ontario: Burns & MacEachern	1965/Hatboro, PA: Folklore Associates	Hardcopy	N/A – Foreign Work
Edith Fowke	Folktales of French Canada	1979/Toronto: N.C. Press	1981/Toronto: N.C. Press 1982/Toronto: N.C. Press 1993/Toronto: N.C. Press	Hardcopy	N/A – Foreign Work

# **EXHIBIT B**