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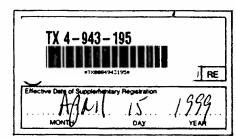
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Registration Number TX 7-138-911

Effective date of registration:

January 20, 2010

Title —

Title of Work: The Spa

Completion/ Publication

Year of Completion: 2007

Date of 1st Publication: September 15, 2007 Nation of 1st Publication: United States

Author -

Author: Fay Weldon

Author Created: text

Work made for hire: No

Citizen of: United Kingdom Domiciled in: United Kingdom

Copyright claimant -

Copyright Claimant: Fay Weldon

c/o InkWell Management, 521 Fifth Avenue, 26th floor, New York, NY,

10175, United States

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Organization Name: Grove/Atlantic, Inc.

Email: permissions@groveatlantic.com

Address: 841 Broadway

New York, NY 10003 United States

Certification

Name: Mary Flower

Date: January 13, 2010

A-484

Registration #: TX0007138911

Service Request #: 1-313059249

Grove/Atlantic, Inc. Mary Flower 841 Broadway New York, NY 10003 United States Case 1:11-cv-06351-HB Document 101 Filed 06/29/12 Page 1 of 7

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 JOHN WHITE

- I, John Warren White, hereby declare as follows:
- 1. I am the literary agent for Jack R. Salamanca, one of the plaintiffs in the above-captioned action and I submit this declaration in support of Plaintiffs' motion for summary judgment.
- 2. In light of Mr. Salamanca's poor health, I have assisted Mr. Salamanca in connection with this litigation, including providing documents and information concerning Mr. Salamanca's works in response to written discovery requests that Defendants issued to Mr. Salamanca and appearing for a deposition taken by Defendants' counsel. I am fully familiar with all of the facts set forth in this declaration and am able and authorized to submit this declaration regarding Mr. Salamanca's works.
- 3. I began my career as a full-time literary agent in 1995 and presently represent approximately 36 authors. I have been Mr. Salamanca's literary agent since 1999.
- 4. Mr. Salamanca is Professor Emeritus of the English Department at the University of Maryland. He is the author of six novels, two of which have been made into movies.

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Although only one of Mr. Salamanca's novels was published while I was his agent, I am familiar with all of his prior works.

The Works At Issue

- 5. Mr. Salamanca is 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 of his six Works that is registered with the U.S. Copyright Office is attached hereto as Exhibit B.
- 6. Although Mr. Salamanca licensed to his publishers certain exclusive rights in connection with the commercial exploitation of the Works, he did so in exchange for the payment of royalties and he remains the legal and/or beneficial owner of all rights in and to his Works. He never assigned to any third party the copyright to the Works.

Orphan Works Program

- 7. In or around September 2011, I was contacted by Paul Aiken, the Executive Director of The Authors Guild. Mr. Aiken informed me that as part of a so-called "Orphan Works Program," an organization called HathiTrust had listed one of Mr. Salamanca's novels, entitled *The Lost Country*, as an "orphan candidate," and that HathiTrust intended to make a digital copy of the book available on the Internet for students, faculty and users of the University of Michigan library to view, download, print and copy without providing any compensation to Mr. Salamanca. I informed Mr. Aiken that Mr. Salamanca's works were certainly not "orphan works," as Mr. Salamanca is still alive and I am his literary agent.
- 8. I was particularly troubled by HathiTrust's imminent plans to distribute electronic copies of *The Lost Country* for free because at that time I was in the process of finalizing an agreement with Tantor Media, Inc. ("Tantor") to have that novel and four others authored by Mr.

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Salamanca, digitized and released for sale as electronic books. A copy of that agreement, which was finalized and entered into on or about November 29, 2011, is attached hereto as Exhibit C. A prior agreement with Tantor covering the digitization and electronic release of *Lilith*, entered into on September 1, 2011, is attached as Exhibit D. As shown on the schedule attached as Exhibit A, each of Mr. Salamanca's works has now been digitized and is available for sale as an electronic book on Amazon.com and other online retailers.

- 9. Had Plaintiffs not intervened to stop the Orphan Works Project and, as Defendants had planned, digital copies of *The Lost Country* were made available for others to view, print and/or download in full, Mr. Salamanca may have lost the opportunity to license the work for digital distribution. In addition, it is likely that Defendants' unauthorized digital release of *The Lost Country* would have adversely impacted Plaintiff's anticipated revenues from sales of both the paper and electronic versions of the novel.
- 10. While this lawsuit apparently caused HathiTrust to halt its Orphan Works

 Program and prevented Mr. Salamanca's works from being distributed online, I am deeply
 concerned about the potential harm to him and others if the program resumes. Mr. Salamanca is
 easily locatable and, in fact, was found by The Authors Guild through a simple Internet search.

 Had The Authors Guild not contacted me, neither Mr. Salamanca nor I likely would have
 become aware of HathiTrust's plans to display and distribute electronic copies of his books until
 it was too late to prevent their harmful effects. Defendants' missteps strongly suggest a lack of
 thoroughness on their part and an ineffective system of notice for authors whose works are listed
 as orphans. This is likely to result in substantial economic harm and to undermine the potential
 of bringing older books back into print, a possibility that was imminent for Mr. Salamanca and
 likely very real for many other authors whose works are supposedly "orphans."

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Other Unauthorized Uses Of The Work

11. In addition to misidentifying *The Lost Country* as an orphan candidate, it has come to my attention that print copies of Mr. Salamanca's Works were copied without his permission when they were 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 Mr. Salamanca's or my knowledge, consent, or approval. We did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of his Works. To date, Mr. Salamanca has received no compensation of any kind for Defendants' digitization and various uses of his Works.

Harm Resulting From Defendants' Other Uses Of The Works

- 12. As an author who depends in large part on the value of his work to earn a living, Mr. Salamanca agreed to join this lawsuit as a plaintiff because he believes Defendants' unauthorized digitization and use of his Works has harmed or threatens to harm him in a number of ways.
- 13. I have reviewed the Declaration of T.J. Stiles and agree with and incorporate by reference Mr. Stiles' descriptions of the various harms and potential harms caused by the Defendants' actions. Two differences between Mr. Stiles and Mr. Salamanca are that (as described below) Mr. Salamanca's works were out-of-print at the time Defendants' digitized his work, and he had not yet chosen to make his Works available in digital form. However, these differences do not change the fact that Defendants' actions are causing and threatening to cause damage to him and to the value of his Works.

4

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- 14. Although his Works were not in print at the start of Defendants' digitization, the harms articulated in the Declaration of T.J. Stiles nevertheless apply because all of his Works are still protected by copyright law and he still held the copyrights. Whether his Works are in print or not, he has the right to choose whether or not to engage in licensing agreements for any uses of his Works, be they electronic publication, digital archiving, non-consumptive research, full-text searching, or other derivative uses. By preempting his right to make a decision as to how he wishes to exploit his Works, Defendants have narrowed the scope of his rights and lessened the strength of his control over his own Works. This is illustrated all the more deeply by the fact that Mr. Salamanca was engaged in negotiations to electronically publish his Works while Defendants were proceeding with their own unauthorized digitization and imminent distribution of *The Lost Country* in connection with the Orphan Works Program.
- 15. Mr. Salamanca is entitled to determine whether, when and under what circumstances his Works are scanned, digitized, copied and used. Defendants' insistence that the new, complex, technologically-enabled uses they intend to make of his Works should be permitted without his 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.
- 16. Defendants argue that uses of Mr. Salamanca's Works that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of his Works or deprive him 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 his Works, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and

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copied. Mr. Salamanca has the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if he does decide to allow them. Defendants could have asked permission to digitize his work, but they chose not to.

17. 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. When Mr. Salamanca has licensed the electronic rights in certain of his works, for example to Tantor, his representatives, myself in particular, have been careful to ensure that he obtained appropriate financial benefits and other contractual protections. When Defendants make digital copies without his consent and without a contract, he is rendered powerless to dictate terms as to how his Work may or may not be used. He also has no ability to insist that HathiTrust take security measures to protect his work. He has no power to ensure that the infringing copies of his work are truly in a "dark archive" that is not accessible for viewing or further copying. He has no assurance that Defendants' actual use of his work is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

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

Dated: Cheshire, Connecticut June 21, 2012

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EXHIBIT A

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EXHIBIT A

АЛТНОК	Time	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPVRIGHT REGISTRATIONS OR RENEWALS
Jack R. Salamanca	Southern light: a novel	1986-02-12/New York: Knopf	2012-03-08/Connecticut: Tantor Media	Electronic	TX0001800562 1986-04-08
Jack R. Salamanca	Embarkation	1973/New York: Knopf	1974-10-24/London: Cassell	Electronic	A501943 1973-10-31
			1976/New York: Bantam		
			2012-02-14/Connecticut: Tantor Media		
Jack R. Salamanca	The lost country: a novel	1958/New York: Simon & Schuster	1961/New York: Pocket Books (under title "Wild	Electronic	A00000364416 1958-10-29
			in the Country")		
					RE0000313041
			2012-03-08/Connecticut: Tantor Media		1986-12-11
Jack R. Salamanca	A sea change	1969/New York:	1970/New York: Bantam	Electronic	A149560
		Knopf	2012 02 080 50 5105		6961
			2012-03-08/Connecticut:		Company
			i antor ivicuia		Screenplay. PAu001187325
					1984-06-25
Jack R. Salamanca	That summer's	2000-06/New	2001-07-10/New York:	Electronic	TX0007502316
	trance: a novel	York: Welcome Rain	Welcome Rain		2012-03-12
			2012-02-16/Connecticut: Tantor Media		

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Jack R. Salamanca	Lilith	1961/New York:	1962/New York: Bantam	Electronic	A00000515978
		Schuster	1962/London: Heinemann		1901-0/-24
			1963/Paris: Stock (French		RE0000459151 1989-12-21
			translation)		
			1963/Milan: Longanesi & C. (Italian translation)		RE0000463295 1989-12-27
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			1904/London: ran Books		
			1964/Geneva & Hamburg: Verlag Helmut Kossodo		
			AG (German translation)		
			1964/New York: Bantam		
			1965/Barcelona: Plana & Janes (Spanish translation)		
			1973/I ondon: Bruce &		
			Watson		
			2000-04-01/New York:		
			Welcome Rain		
			2002-02-20/New York:		
			Welcome Rain		
			2011-10-10/Connecticut: Tantor Media		

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EXHIBIT B

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Registration Number TX 7-502-316

Effective date of registration:

March 13, 2012

Title —

Title of Work: That Summer's Trance

Completion/ Publication •

Year of Completion: 2000

Date of 1st Publication: June 1, 2000 Nation of 1st Publication: United States

International Standard Number: ISBN 9781566491258

Author -

■ Author: J. R. Salamanca

Author Created: text

Work made for hire: No

Citizen of: United States

Year Born: 1921

Copyright claimant —

Copyright Claimant: J. R. Salamanca

10843 Deborah Dr., Potomac, MD, 20854, United States

Certification

Name: Anita Fore

Date: March 9, 2012

Copyright Office notes: Regarding limitation of claim: statements on deposit indicate some text

preexisting.

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Registration #: TX0007502316 **Service Request #:** 1-722867979

> Anita Fore The Authors Guild 31 E. 32nd Street, 7th Floor New York, NY 10016 United States

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EXHIBIT C

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TANTOR MEDIA, INC.

2 BUSINESS PARK ROAD, OLD SAYBROOK, CT 06475 - (860) 395-1195 - FAX (860) 395-1154

This Agreement (the "Agreement") is effective as of November 29, 2011 (the "Effective Date") by and between J.R. Salamanca, 10843 Deborah Drive, Potomac, MD 20854, represented by the John W. White Literary Agency located at 60 Pound Ridge Rd., Cheshire, CT 06410, (hereinafter referred to as the "Licensor") and Tantor Media, Inc. (hereinafter referred to as "Tantor") located at 2 Business Park Road, Old Saybrook, CT 06475, a Connecticut corporation.

WHEREAS, the Licensor is the owner of the electronic rights in and to the book(s) set forth in Exhibit A attached hereto and incorporated hereby (hereafter referred to as the "Work(s)"); and

WHEREAS, Tantor is in the business of the publication and sale of literary Work(s) in electronic formats and desires to acquire from the Licensor the rights to the Work(s) as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Licensor and Tantor agree as follows:

1. Grant of Rights.

- A. The Licensor hereby grants, conveys, and transfers the following rights to Tantor:
 - (i) The right to produce, publish, promote and sell electronic formats of the Work(s), including on disks and electronic downloads for the E-reader format or any other digital format or media now known or hereafter developed or devised during the term of this Agreement (the "Electronic Format")
 - (ii) In the territory of the World
 - (iii) In the World English language
 - (iv) For the initial term of 10 years, commencing from the Effective Date of this Agreement; with subsequent automatic renewal term(s) of 1 year each, unless and until terminated at the end of the then current term with ninety (90) days prior written notice to the other party.
 - (v) In All Markets (=Library + Retail)
 - (vi) This grant of rights shall be exclusive
 - (vii) In unabridged format.
- B. The parties agree that the Electronic Format contemplated herein shall be the entire text of the Work(s) and that no changes, additions, or revisions to the text shall be made without the Licensor's prior written approval.

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- C. The parties agree that Tantor shall be the owner of the Electronic Format of the Work(s) produced by Tantor hereunder. In the event and to the extent necessary, Licensor agrees to and does hereby grant to Tantor any rights necessary for Tantor to be the owner of such Electronic Format as contemplated in the previous sentence. This paragraph shall survive termination of this Agreement.
- D. Upon request by Licensor at the termination of this Agreement, Tantor and Licensor may negotiate in good faith an agreement reasonably acceptable to the parties to provide a copy of the file containing such Electronic Format of the Work(s) to Licensor. This paragraph shall survive termination of this Agreement.
- E. Tantor shall have the right to sell the Work(s) in Electronic Format in a digital, downloadable format ("Downloadable Format"), with or without digital rights management protection. ("DRM").
- F. If the Licensor has a website for its Work(s), the Licensor may use up to two (2) chapters, including prologue, of the final, approved Electronic Format of the Work(s) for promotional purposes on his/her website, depending on the length of the book, upon agreement between the parties.

2. Reservation of Rights

All rights not specifically granted to Tantor herein are reserved by the Licensor, including but not limited to the retention of any print editions, abridged version; or audio and video rights in any recording based on a dramatic adaptation or dramatization in connection with the grant of motion picture, television, radio, or dramatic rights.

3. Royalties

Tantor shall pay Licensor or its Agent semi-annually (a) for Electronic Format of a Work a sum equal to **Fifty Percent (50%)** of Tantor's Net Sales Receipts ("Royalty") on sales of the electronic format;

4. Original Materials

The Licensor shall make every reasonable effort to promptly provide Tantor with the finished copyedited computer file of the Work(s), (TXT, DOC, RTF, or any other mutually agreeable format).

Tantor will provide **one** (1) finished copy of the PDF version of the Work for Licensor and its Agent for personal use only and for no other purpose.

5. Promotion Materials

The Licensor consents to the use by Tantor of subsidiary promotional materials that shall include: the Author's name, approved photograph, and approved biographical material, plus text and

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graphic elements of the book jacket, and other materials which may be available in connection with the Work(s) (the "Material").

In any case where a third party owns or controls any of the Material described in this Section 5, the Licensor will make best efforts to provide accurate contact information for the owners/rightsholders. At Tantor's reasonable discretion, Tantor will make reasonable efforts to clear ownership of such Materials and, if cleared to Tantor's reasonable satisfaction, will pay any fees related to their use in the Electronic Format. Any such Materials will be used in an appropriate and tasteful manner.

Licensor grants to Tantor the following promotional rights:

- (a) the right to promote other Tantor e-books alongside the Work(s);
- (b) the right to be able to give away first chapter samples of Work(s);
- (c) the right to provide portions of the Electronic Format of a Work for the "Look Inside" function on Amazon so that sample pages will be available on Amazon, as well as for any similar feature that is available during the term of this Agreement; and
- (d) the right to give away copies of the Electronic Format of Work(s) for promotional purposes.

6. Artistic Control

Tantor shall have full artistic control over the production of the Electronic Format of the Work(s).

7. Accounting

Tantor shall keep accurate books of account and records covering all transactions relating to this Agreement. Tantor shall provide Licensor with a commercially reasonable detailed statement of Royalties rendered as semi-annual statements of account as of June 30th and December 31st of each calendar year and shall mail such statements along with any amount due within sixty (60) days of the close of each accounting period commencing with the first full six months after the Electronic Format of the Work(s) is first offered for distribution hereunder. Statements of Royalties will set forth the specific allocations of Licensor's earning by each Electronic Format from which such earnings are derived, and will be sent regardless of whether a payment is due.

Licensor or its representative may, upon reasonable written notice, examine Tantor's records relating to Royalties during normal business hours under such conditions as Tantor may reasonably prescribe. Such examination may take place not more than once every twelve (12) months. If an error in the Licensor's favor is discovered as a result of any such examination, Tantor shall promptly pay for the amount of the error. Any such examination shall be at the Licensor's expense unless errors of accounting in Tantor's favor amounting to five percent (5%) or more of the calendar year being examined in such audit are found, in which event all reasonable and customary examination expenses shall be at Tantor's expense.

8. Copyright and Authorship Credit

Tantor shall, as an express condition of receiving the grant of rights specified in Paragraphs 1, publish a copyright notice on the Electronic Format of the Work(s) as follows:

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At the beginning of the Electronic Format of the Work: Copyright (C) (1958), (1969), (1973), (1986), (2000) by J.R. Salamanca. This electronic format is published by Tantor eBooks, a division of Tantor Media, Inc, and was produced in the year 2011.

9. Duty to Publish

Tantor shall publish the Electronic Format of the Work(s) no later than six (6) months after the Effective Date. Failure to so publish shall give the Licensor the right to terminate this Agreement (without prejudice to monies paid) upon sixty (60) days prior written notice of Tantor's failure to make timely publication and opportunity to cure. At its reasonable discretion, Tantor will make best efforts to publish and promote the Work(s) using appropriate e-book sales channels and options consistent with industry standards.

10. Representation and Warranty; Indemnity

Licensor represents and warrants that (a) it is free to enter this Agreement; (b) this Agreement does not violate the terms of any other agreement between a party and any third party: (c) it has all the rights necessary to enter into this Agreement and grant the rights herein, including all intellectual property rights and, as to out of print Work(s), print rights to those Work(s), and that such rights are owned or controlled by the Licensor without encumbrance; (c) that the Work(s) does not violate the right of privacy or any other right of any person; (d) that the Work(s) is not libelous or obscene (to the best of Licensor 's knowledge); and (e) that the Work(s) does not infringe upon the statutory or common law copyright or other intellectual property of any other party. Licensor agrees to indemnify, defend and hold Tantor harmless against any loss, expense or damage occasioned by any claim, action, proceeding or recovery arising out of a claim inconsistent with any of the foregoing representations and warranties. The representations, warranties and indemnities made herein shall survive the termination of this Agreement.

11. Default and Termination

<u>Termination</u>. Either party may terminate this Agreement if: (i) the other party fails to perform any of the material terms, conditions, agreements, or covenants in this Agreement and such failure is not cured within thirty (30) days following receipt of a written notice of such failure from the non-breaching party, or (ii) if the other party files a voluntary petition in bankruptcy or applies for appointment of a receiver for its business, or if a petition in bankruptcy is filed against the other party by any third party, which is not dismissed within sixty (60) days after filing.

12. Assignment

Any and all of the rights granted to Tantor under the terms of this Agreement shall be assignable upon the sale of all or substantially all of Tantor's assets. Except for the sale of all or substantially all of the assets of Tantor, any and all of the rights granted to Tantor under the terms of this Agreement shall be assignable provided that Licensor extends advance written approval for the assignment. Upon the written assumption of those obligations by the assignee. Tantor shall forward a copy of the written and fully executed assumption of obligations to the Licensor, and Tantor shall be discharged of all further obligations and have no further rights under this Agreement.

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13. Liability

In no event shall either party be liable under this Agreement (whether in an action in negligence, contract or tort or based on a warranty or otherwise) for loss, profits, revenue or any indirect, incidental, punitive, special or consequential damages incurred by either party.

In no event shall Tantor's total liability, howsoever arising, whether arising out of contract, negligence, strict liability in tort or breach of warranty or any other cause of action, exceed the royalties paid to Licensor by Tantor for the six months immediately preceding the event that gave rise to such liability under this agreement.

14. Interpretation and Choice of Law

This Agreement shall be governed by and construed under the laws of the State of Connecticut, applicable to agreements made and fully performed therein without regard to conflict of law principles.

15. Fees and Costs

If any action to enforce or interpret this Agreement is taken by the Licensor or Tantor against the other, then the substantially prevailing party in such action will be entitled to recover from the other all reasonable costs and expenses incurred in taking or defending such action, including reasonable fees of attorneys, the fees of experts and other technical advisors, inclusive of appeal.

16. Waiver

Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

17. Notices

Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to Licensor:

John W. White Literary Agency 60 Pound Ridge Rd. Cheshire, CT 06410

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If to Tantor:

Tantor Media, Inc. Att: Ron Formica 2 Business Park Road Old Saybrook, CT 06475

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

18. Independent Status.

The performance by Tantor of its duties and obligations under this Agreement shall be that of an independent contractor, and nothing herein shall create or imply an agency or employment relationship between Licensor and Tantor.

19. Modification or Amendment

No amendment, change, or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

20. Entire Understanding

This Agreement and any exhibit attached hereto constitutes the entire understanding and agreement of the parties as to the subject matter herein, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

21. Unenforceability of Provisions

If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

22. Survival

All provisions of this Agreement regarding indemnification, warranty, liability and such other provisions that by fair implication required performance beyond the term of this Agreement shall survive expiration or termination of the Agreement until fully performed or otherwise are inapplicable.

23. Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, acts of terrorism, fire, epidemic, flood, earthquake, riot, war, sabotage, labor shortage or dispute, failure of suppliers to perform or failures in supply chains, and governmental action, provided that the delayed party: (i) gives the other party written notice of such cause promptly, and in any event within fifteen (15) days of discovery thereof; and (ii) uses its

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reasonable efforts to correct such failure or delay in its performance.

24. Arbitration

Any claim, dispute or controversy arising out of or in connection with this Agreement or any breach thereof shall be arbitrated by the parties before the American Arbitration Association under the rules obtaining of that Association. Such arbitration shall be held in the City of New Haven. Judgment may be entered on the award in any court having jurisdiction thereof. The arbitrator shall be one mutually agreeable to both parties in the claim, dispute or controversy.

25. Bankruptcy

In case of (a) bankruptcy, receivership or assignment for benefit of creditors of the Publisher, or (b) if a petition in bankruptcy is filed by the Publisher, all rights granted herein shall revert to the Author and thereupon this Agreement shall terminate but the Author shall have the right to buy back any remaining copies or sheets at a fair market value, to be determined by agreement.

26. Agency

The Author hereby authorizes the Author's agent, John White, 60 Pound Ridge Road, Cheshire. Connecticut 06410-3412 to collect and receive all sums of money payable to the Author under the terms of this agreement and declares that the receipt by said agent shall be a good and valid discharge in respect thereof, and the said agent is hereby empowered to act on behalf of the Author in all matters arising out of this agreement; said authorization shall continue in effect unless and until the Publisher shall be otherwise instructed in writing by the Author.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

Tantor Media, Inc.	Licensor: 1.15. Jalamanca		
	John W. White		
Signature	Signature		
1	John White / agent for JRS		
Ron Formica	Printed Name		
17/7/7011	29 November 2011		
Date	Date		

T 0 0 1

EXHIBIT A The Work(s)

	TITLE	AUTHOR	
1.	The Lost Country	J.R. Salamanca	
2.	A Sea Change	J.R. Salamanca	
3.	Embarkation	J.R. Salamanca	
4.	Southern Light	J.R. Salamanca	
5.	That Summer's Trance	J.R. Salamanca	

EXHIBIT D

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TANTOR MEDIA, INC.

2 BUSINESS PARK ROAD, OLD SAYBROOK, CT 06475 - (860) 395-1195 - FAX (860) 395-1154

This Agreement (the "Agreement") is effective as of September 1, 2011 (the "Effective Date") by and between J.R. Salamanca, 10843 Deborah Drive, Potomac, MD 20854, represented by the John W. White Literary Agency located at 60 Pound Ridge Rd., Cheshire, CT 06410, (hereinafter referred to as the "Licensor") and Tantor Media, Inc. (hereinafter referred to as "Tantor") located at 2 Business Park Road, Old Saybrook, CT 06475, a Connecticut corporation.

WHEREAS, the Licensor is the owner of the electronic rights in and to the book(s) set forth in Exhibit A attached hereto and incorporated hereby (hereafter referred to as the "Work(s)"); and

WHEREAS, Tantor is in the business of the publication and sale of literary Work(s) in electronic formats and desires to acquire from the Licensor the rights to the Work(s) as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Licensor and Tantor agree as follows:

1. Grant of Rights.

- A. The Licensor hereby grants, conveys, and transfers the following rights to Tantor:
 - (i) The right to produce, publish, promote and sell electronic formats of the Work(s), including on disks and electronic downloads for the E-reader format or any other digital format or media now known or hereafter developed or devised during the term of this Agreement (the "Electronic Format")
 - (ii) In the territory of the World
 - (iii) In the World English language
 - (iv) For the initial term of 10 years, commencing from the Effective Date of this Agreement; with subsequent automatic renewal term(s) of 1 year each, unless and until terminated at the end of the then current term with ninety (90) days prior written notice to the other party.
 - (v) In All Markets (=Library + Retail)
 - (vi) This grant of rights shall be exclusive
 - (vii) In unabridged format.
- B. The parties agree that the Electronic Format contemplated herein shall be the entire text of the Work(s) and that no changes, additions, or revisions to the text shall be made without the Licensor's prior written approval.

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- C. The parties agree that Tantor shall be the owner of the Electronic Format of the Work(s) produced by Tantor hereunder. In the event and to the extent necessary, Licensor agrees to and does hereby grant to Tantor any rights necessary for Tantor to be the owner of such Electronic Format as contemplated in the previous sentence. This paragraph shall survive termination of this Agreement.
- D. Upon request by Licensor at the termination of this Agreement, Tantor and Licensor may negotiate in good faith an agreement reasonably acceptable to the parties to provide a copy of the file containing such Electronic Format of the Work(s) to Licensor. This paragraph shall survive termination of this Agreement.
- E. Tantor shall have the right to sell the Work(s) in Electronic Format in a digital, downloadable format ("Downloadable Format"), with or without digital rights management protection. ("DRM").
- F. If the Licensor has a website for its Work(s), the Licensor may use up to two (2) chapters, including prologue, of the final, approved Electronic Format of the Work(s) for promotional purposes on his/her website, depending on the length of the book, upon agreement between the parties.

2. Reservation of Rights

All rights not specifically granted to Tantor herein are reserved by the Licensor, including but not limited to the retention of any print editions, abridged version, or audio and video rights in any recording based on a dramatic adaptation or dramatization in connection with the grant of motion picture, television, radio, or dramatic rights.

3. Royalties

Tantor shall pay Licensor or its Agent semi-annually (a) for Electronic Format of a Work a sum equal to **Fifty Percent** (50%) of Tantor's Net Sales Receipts ("Royalty") on sales of the electronic format;

4. Original Materials

The Licensor shall make every reasonable effort to promptly provide Tantor with the finished copyedited computer file of the Work(s). (TXT. DOC, RTF, or any other mutually agreeable format).

Tantor will provide **one** (1) finished copy of the PDF version of the Work for Licensor and its Agent for personal use only and for no other purpose.

5. Promotion Materials

The Licensor consents to the use by Tantor of subsidiary promotional materials that shall include: the Author's name, approved photograph, and approved biographical material, plus text and

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graphic elements of the book jacket, and other materials which may be available in connection with the Work(s) (the "Material").

In any case where a third party owns or controls any of the Material described in this Section 5, the Licensor will make best efforts to provide accurate contact information for the owners/rightsholders. At Tantor's reasonable discretion, Tantor will make reasonable efforts to clear ownership of such Materials and, if cleared to Tantor's reasonable satisfaction, will pay any fees related to their use in the Electronic Format. Any such Materials will be used in an appropriate and tasteful manner.

Licensor grants to Tantor the following promotional rights:

- (a) the right to promote other Tantor e-books alongside the Work(s);
- (b) the right to be able to give away first chapter samples of Work(s);
- (c) the right to provide portions of the Electronic Format of a Work for the "Look Inside" function on Amazon so that sample pages will be available on Amazon, as well as for any similar feature that is available during the term of this Agreement; and
- (d) the right to give away copies of the Electronic Format of Work(s) for promotional purposes.

6. Artistic Control

Tantor shall have full artistic control over the production of the Electronic Format of the Work(s).

7. Accounting

Tantor shall keep accurate books of account and records covering all transactions relating to this Agreement. Tantor shall provide Licensor with a commercially reasonable detailed statement of Royalties rendered as semi-annual statements of account as of June 30th and December 31st of each calendar year and shall mail such statements along with any amount due within sixty (60) days of the close of each accounting period commencing with the first full six months after the Electronic Format of the Work(s) is first offered for distribution hereunder. Statements of Royalties will set forth the specific allocations of Licensor's earning by each Electronic Format from which such earnings are derived, and will be sent regardless of whether a payment is due.

Licensor or its representative may, upon reasonable written notice, examine Tantor's records relating to Royalties during normal business hours under such conditions as Tantor may reasonably prescribe. Such examination may take place not more than once every twelve (12) months. If an error in the Licensor's favor is discovered as a result of any such examination, Tantor shall promptly pay for the amount of the error. Any such examination shall be at the Licensor's expense unless errors of accounting in Tantor's favor amounting to five percent (5%) or more of the calendar year being examined in such audit are found, in which event all reasonable and customary examination expenses shall be at Tantor's expense.

8. Copyright and Authorship Credit

Tantor shall, as an express condition of receiving the grant of rights specified in Paragraphs 1, publish a copyright notice on the Electronic Format of the Work(s) as follows:

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At the beginning of the Electronic Format of the Work: Copyright (C) 1961 by J.R. Salamanca. This electronic format is published by Tantor eBooks, a division of Tantor Media, Inc, and was produced in the year 2011.

9. Duty to Publish

Tantor shall publish the Electronic Format of the Work(s) no later than six (6) months after the Effective Date. Failure to so publish shall give the Licensor the right to terminate this Agreement (without prejudice to monies paid) upon sixty (60) days prior written notice of Tantor's failure to make timely publication and opportunity to cure. At its reasonable discretion, Tantor will make best efforts to publish and promote the Work(s) using appropriate e-book sales channels and options consistent with industry standards.

10. Representation and Warranty; Indemnity

Licensor represents and warrants that (a) it is free to enter this Agreement; (b) this Agreement does not violate the terms of any other agreement between a party and any third party: (c) it has all the rights necessary to enter into this Agreement and grant the rights herein, including all intellectual property rights and, as to out of print Work(s), print rights to those Work(s), and that such rights are owned or controlled by the Licensor without encumbrance; (c) that the Work(s) does not violate the right of privacy or any other right of any person; (d) that the Work(s) is not libelous or obscene (to the best of Licensor 's knowledge); and (e) that the Work(s) does not infringe upon the statutory or common law copyright or other intellectual property of any other party. Licensor agrees to indemnify, defend and hold Tantor harmless against any loss, expense or damage occasioned by any claim, action, proceeding or recovery arising out of a claim inconsistent with any of the foregoing representations and warranties. The representations, warranties and indemnities made herein shall survive the termination of this Agreement.

11. Default and Termination

<u>Termination</u>. Either party may terminate this Agreement if: (i) the other party fails to perform any of the material terms, conditions, agreements, or covenants in this Agreement and such failure is not cured within thirty (30) days following receipt of a written notice of such failure from the non-breaching party, or (ii) if the other party files a voluntary petition in bankruptcy or applies for appointment of a receiver for its business, or if a petition in bankruptcy is filed against the other party by any third party, which is not dismissed within sixty (60) days after filing.

12. Assignment

Any and all of the rights granted to Tantor under the terms of this Agreement shall be assignable upon the sale of all or substantially all of Tantor's assets. Except for the sale of all or substantially all of the assets of Tantor, any and all of the rights granted to Tantor under the terms of this Agreement shall be assignable provided that Licensor extends advance written approval for the assignment. Upon the written assumption of those obligations by the assignee, Tantor shall forward a copy of the written and fully executed assumption of obligations to the Licensor, and Tantor shall be discharged of all further obligations and have no further rights under this Agreement.

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13. Liability

In no event shall either party be liable under this Agreement (whether in an action in negligence, contract or tort or based on a warranty or otherwise) for loss, profits, revenue or any indirect, incidental, punitive, special or consequential damages incurred by either party.

In no event shall Tantor's total liability, howsoever arising, whether arising out of contract, negligence, strict liability in tort or breach of warranty or any other cause of action, exceed the royalties paid to Licensor by Tantor for the six months immediately preceding the event that gave rise to such liability under this agreement.

14. Interpretation and Choice of Law

This Agreement shall be governed by and construed under the laws of the State of Connecticut, applicable to agreements made and fully performed therein without regard to conflict of law principles.

15. Fees and Costs

If any action to enforce or interpret this Agreement is taken by the Licensor or Tantor against the other, then the substantially prevailing party in such action will be entitled to recover from the other all reasonable costs and expenses incurred in taking or defending such action, including reasonable fees of attorneys, the fees of experts and other technical advisors, inclusive of appeal.

16. Waiver

Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

17. Notices

Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

If to Licensor:

John W. White Literary Agency 60 Pound Ridge Rd.

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Cheshire, CT 06410

If to Tantor:

Tantor Media, Inc. Att: Ron Formica 2 Business Park Road Old Saybrook, CT 06475

Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

18. Independent Status.

The performance by Tantor of its duties and obligations under this Agreement shall be that of an independent contractor, and nothing herein shall create or imply an agency or employment relationship between Licensor and Tantor.

19. Modification or Amendment

No amendment, change, or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

20. Entire Understanding

This Agreement and any exhibit attached hereto constitutes the entire understanding and agreement of the parties as to the subject matter herein, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

21. Unenforceability of Provisions

If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

22. Survival

All provisions of this Agreement regarding indemnification, warranty, liability and such other provisions that by fair implication required performance beyond the term of this Agreement shall survive expiration or termination of the Agreement until fully performed or otherwise are inapplicable.

23. Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due

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to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, acts of terrorism, fire, epidemic, flood, earthquake, riot, war, sabotage, labor shortage or dispute, failure of suppliers to perform or failures in supply chains, and governmental action, provided that the delayed party: (i) gives the other party written notice of such cause promptly, and in any event within fifteen (15) days of discovery thereof; and (ii) uses its reasonable efforts to correct such failure or delay in its performance.

24. Arbitration

Any claim, dispute or controversy arising out of or in connection with this Agreement or any breach thereof shall be arbitrated by the parties before the American Arbitration Association under the rules obtaining of that Association. Such arbitration shall be held in the City of New Haven. Judgment may be entered on the award in any court having jurisdiction thereof. The arbitrator shall be one mutually agreeable to both parties in the claim, dispute or controversy.

25. Bankruptcy

In case of (a) bankruptcy, receivership or assignment for benefit of creditors of the Publisher, or (b) if a petition in bankruptcy is filed by the Publisher, all rights granted herein shall revert to the Author and thereupon this Agreement shall terminate but the Author shall have the right to buy back any remaining copies or sheets at a fair market value, to be determined by agreement.

26. Agency

The Author hereby authorizes the Author's agent, John White, 60 Pound Ridge Road, Cheshire, Connecticut 06410-3412 to collect and receive all sums of money payable to the Author under the terms of this agreement and declares that the receipt by said agent shall be a good and valid discharge in respect thereof, and the said agent is hereby empowered to act on behalf of the Author in all matters arising out of this agreement; said authorization shall continue in effect unless and until the Publisher shall be otherwise instructed in writing by the Author.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

Tantor Media, Inc.	Licensor: J. R. Salamanca
14	Offen White
Signature	Signature + C
	John White / Agent for JRS
Ron Formica	Printed Name
9 17 20 4 Date	6 September 2011

CONFIDENTIAL AG 0000118

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EXHIBIT A
The Work(s)

TITLE AUTHOR

1. Lilith J.R. Salamanca

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Attorneys for Defendants

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

Case No. 11 Civ. 6351 (HB)

v.

HATHITRUST, ET AL..

Defendants.

DECLARATION OF STANLEY KATZ IN SUPPORT OF **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Stanley N. Katz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

I am President Emeritus of the American Council of Learned Societies, the national humanities organization in the United States, and director of the Princeton University Center for Arts and Cultural Policy Studies. I graduated magna cum laude from Harvard University in 1955 with a major in English History and Literature. I was trained in British and

American history at Harvard (M.A 1959; Ph.D. 1961) and also attended Harvard Law School (1969-70) (although I am not a member of the bar).

- History, and the Editor of the Oliver Wendell Holmes Devise History of the United States Supreme Court. I have served as President of the Organization of American Historians and the American Society for Legal History and as Vice President of the Research Division of the American Historical Association. I am a member of the Board of Trustees of the Newberry Library. I serve as Chair of the American Council of Learned Societies/Social Science Research Council Working Group on Cuba. I am a member of the New Jersey Council for the Humanities, the American Antiquarian Society, the American Philosophical Society; a Fellow of the American Historians; and a Corresponding Member of the Massachusetts Historical Society I received the annual Fellows Award from Phi Beta Kappa in 2010 and the National Humanities Medal (awarded by President Obama) in 2011. My full curriculum vitae is attached to this declaration as Exhibit A.
- 3. I am an American historian and scholar specializing in legal and constitutional history and the history of philanthropy. Most recently, my research has focused on the relationship of civil society and constitutionalism to democracy and specifically on the relationship of the United States to the international human rights regime.
- 4. I submit this declaration in support of the defendants' motion for summary judgment. I make this declaration based upon my own personal knowledge.
- 5. As a scholar trained to use research materials in the mid-1900s, I learned how to use library card catalogs to extract the basic information (e.g., author, title, publication date)

about the books that may be relevant to my research. These card catalogs actually consisted of cards stored in drawers in the library, and I would physically go to various libraries to search the card catalogs of the books in the holdings of those libraries. Those card catalogs were of very little use as guides to subject matter topics, for which I usually turned to subject matter bibliographies. Unfortunately, subject matter bibliographies inevitably became quickly outdated. And for most topics, there were few or no subject matter bibliographic resources.

- 6. While many books were available in the libraries to read and study, the only reliable source of information about what was in the text of those books was an index to the book itself (if the book had an index). Bibliographic research research to identify potential relevant sources for further review was simply a rough first cut at identifying relevant sources. The next step was to retrieve the books (or journals), read the apparently relevant chapters (or articles), and hope that the footnotes would guide me to additional relevant sources.
- 7. For decades as a researcher, I always feared that I was neglecting significant bodies of material simply because I did not know certain sources might contain information relevant to my research. Although I feared that I was missing sources, there was no way to confirm or alleviate those fears.
- 8. The digital era changed the nature of scholarly research. A resource that became available (and still is available) was the Online Public Access Catalogs (OPAC), which contained electronic records of the card catalog information for library material on a global basis. No longer did I have to go to several libraries to search the card catalogs at each of those libraries; now I could search the OPAC and retrieve bibliographic information from the holdings of books in virtually all the libraries of the world while sitting in front of one computer. Another benefit of the OPAC was that I could conduct many searches, electronically, and

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retrieve the results virtually instantaneously. This is in comparison to using physical card catalogs for which searches were arduous and time consuming.

- 9. Full-text digital searching over vast quantities of text revolutionized humanities scholarship profoundly even more profoundly than the OPAC. Sophisticated digital searching over the text of large numbers of books has permitted me to search for specific words or names (or words or names in relation to each other) that simply was not possible using a library card catalog, the electronic OPAC, or other bibliographic resources.
- 10. I have come to rely on the full-text searching of millions of books offered by the HathiTrust, and it is now one of the most important sources for my historical scholarship. The HatiTrust Digital Library is primarily useful to me as a bibliographical resource, since I can tailor my searches of the items indexed by the HathiTrust quite precisely, and generate lists of search results, or "hits," to determine which might be worth closer examination. While some of the hits that I get in my research are to items that provide a full-text view (i.e., I can read the entire work on my computer screen), most are designated as "limited (search only)," and I am not provided the text of the work online by the HathiTrust.
- 11. The hits that do not provide a full-text view are still exceedingly helpful for my research. Those tell me how frequently words and phrases that I search occur in the book, so that I know how relevant the book will likely be for my research. Without having to get a copy of a book and without having to review the book I can determine which books I need to locate in a library or purchase myself and which are not worth further consideration. Not only that, but many of the "hits" I receive through searches of the HathiTrust are of books that I would not have discovered through a search of a library card catalog, the OPAC, or alternative bibliographic resources.

- 12. Let me provide an example based on one of my current research projects. I am researching for a book I am writing on the question of why the United States has had such a difficult time participating in the international human rights system. This is primarily a problem, as I conceive it, concerning the United States since the emergence of the Universal Declaration of Human Rights in 1948. It is a genuinely international subject since it involves comparing what the United States has (and has not) done with what other comparable nations have (or have not) done. The question is one of politics, economics, and intellectual history.
- 13. One aspect of this research question involves the role of the then newly-emergent human rights non-governmental organizations (NGOs). Searches using the OPAC did not assist me in fully identifying books relevant to my search; and there were few additional bibliographic resources, and those did not provide any additional help.
- 14. As I now do with most research questions, I searched in the HathiTrust, and I was able to identify many dozens of promising-looking references to material that I was not able to identify working with the OPAC and other bibliographic material at the Princeton research library.
- Origins and Development. The book was published in 2007 and I identified the book through the HathiTrust website even though the website did not provide the ability to view the full text of the book online. Using the HathiTrust website, however, I was able to locate a copy of the book at the Princeton library. The book contains many pages discussing the role of the United States in relationship to the norms of the Universal Declaration of Human Rights (UDHR), which is particularly relevant to my research because of the tension between the United States approval of

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elements of the UDHR and our country's failure to approve of other elements (especially

elements related to economic and social rights).

Another book I located through the HathiTrust was NGOs in International 16.

Politics. This book was published in 2006 and I also identified it through the HathiTrust website

even though it did not provide the ability to view the full text of the book online. Again, using

the HathiTrust website, I was able to locate a copy of the book at the Princeton library. This

book contains several pages of discussion of the role of the United States Agency for

International Development in relation to international NGOs, including the agency's programs

relating to human rights, which is also relevant to my research.

17. Despite significant efforts to locate relevant sources for my research, I had not

identified either Universal Human Rights: Origins and Development or NGOs in International

Politics through the OPAC or other resources that do not utilize full text searching.

I have not provided testimony as an expert in any cases in the last four years.

I am being paid in connection with this declaration and any deposition or trial

testimony at a rate of \$1,000 per full day of work.

I declare under penalty of perjury under the laws of the United States that the foregoing is

true and correct.

Date: June 26, 2012

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EXHIBIT A

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Stanley N. Katz curriculum vitae

www.princeton.edu/~snkatz

PERSONAL DATA

Born: Chicago, Illinois, April 23, 1934; Married, two children

Address: (o)428 Robertson Hall, Woodrow Wilson School, Princeton University, Princeton, NJ 08544-

1013

(ph) 609-258-5637 (fax) 609-258-1235

(h)152 Clover Lane, Princeton, New Jersey, 08540

(ph) (609) 921-7379

E-mail: snkatz@wws.princeton.edu
Web: http://www.princeton.edu/~snkatz
Web: http://princeton.edu/~artspol/

EDUCATION

A.B. Harvard University (Magna cum laude; Phi Beta Kappa). English History and Literature, 1955.

M.A. Harvard University, American History, 1959.

Ph.D. Harvard University, American History, 1961.

Harvard Law School, 1969-70.

EMPLOYMENT

Harvard University, 1957-65

Teaching Fellow, History Department, 1957-59.

Instructor, History Department, 1961-64.

Assistant Professor, History Department, 1964-65.

(Dean: Allston Burr Senior Tutor in Leverett House, 1963-65.)

University of Wisconsin, 1965-71

Assistant Professor, History Department, 1965-68.

Associate Professor, History Department, 1968-71.

University of Chicago, 1971-78

Professor of Legal History, 1971-78.

Professor of History, 1974-78.

Associate Dean, Law School, 1974-78.

Committee on Public Policy Studies, 1975-78; Chairman, 1977-78.

University of Pennsylvania Law School, Visiting Professor of Law, 1979-86.

Adjunct Professor of Law, Fall, 2003

American Council of Learned Societies, President, 1986-97.

Board of Directors, Council for International Exchange of Scholars (CIES), 1986-96.

Conference Board of Associated Research Councils, 1986-97, (Chair, 1986-93).

Sponsors Group, Committee on Scholarly Communication with China (CSCC), 1986-97.

Board of Directors, International Research & Exchanges Board (IREX), 1986-94, (Chair, 1986-91).

Princeton University, 1978-

Class of 1921 Bicentennial Professor of the History of American Law and Liberty, 1978-86.

Professor of Public and International Affairs, Woodrow Wilson School, 1982-86.

Master, John D. Rockefeller 3rd College, 1982-86.

Senior Fellow, Public and International Affairs, Woodrow Wilson School, 1986-97.

Co-Director, Center for Arts and Cultural Policy Research, 1994-98; Director, 1998 –

http://www.princeton.edu/~artspol/

Lecturer with the rank of Professor, Woodrow Wilson School, 1997-

Faculty Chair, Undergraduate Program, Woodrow Wilson School, 1998 -

Director, Woodrow Wilson Society of Fellows, 1997 -

Vice President (1998-99), President (1999-01), Board (1998-2006)Center for Jewish Life.

Acting Director, Program Law and Public Affairs (LAPA), 2004-5.

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Cardozo Law School, Yeshiva University, Lecturer in Law, 1998-2000.

FELLOWSHIPS

Fulbright, King's College, London, U.K., 1959-60.

Harvard Graduate School of Arts and Sciences, 1960-61.

Research Fellow in Legal History, American Bar Foundation, 1966-67.

Research Fellow, Charles Warren Center for Studies in American History, Harvard University, 1966-67.

Fellow in Law and American History, Harvard Law School, 1969-70.

Study Fellowship (Law), American Council of Learned Societies, 1969-70.

National Endowment for the Humanities Fellowship for Independent Study and Research, 1981-82.

Visiting Fellow, Institute for Advanced Study, Princeton, New Jersey, 1981-82, 1/92-6/92.

Fellow, National Constitution Center, Philadelphia, Fall, 2003

MAJOR, ENDOWED LECTURES OR KEYNOTE ADDRESSES

- "Property and Revolution: The Law of Inheritance," Cooley Lecture, University of Michigan Law School, November 1975.
- "Philanthropy and Cultural Diplomacy," Keynote Address, Fulbright Alumni Association, College Park, Maryland, September 25, 1982.
- "Constitutionalism and the American Founding," 1st Annual Jessie Swift Lecture in American Constitutionalism, Middlebury College, May 7, 1985.
- "Constitutionalism and the Humanities," Annual Lecture, New Jersey Committee for the Humanities, Princeton, New Jersey, June 18, 1986.
- "The Burden of Humanism: The University and Society," Innaugural Banquet, University of North Carolina, Chapel Hill, October 16, 1986.
- "The Revolutionary Origins of American Constitutionalism," Annual Lecture, Japanese American Studies Association, Kyoto, March 30, 1987; German American Studies Association, Bremen, June 9, 1987; numerous other similar talks on the Constitution during 1987.
- "The Institutional Mind: Independent Research Libraries, Learned Societies and the Humanities in the United States," 175th Anniversary of the American Antiquarian Society, Worcester, Massachusetts, October 22, 1987.
- "The Strange Birth and Unlikely History of Constitutional Equality," Presidential Address, Organization of American Historians, Reno, Nevada, March 25, 1988; also as "Constitutional Equality," Harold and Margaret Rorschach Lecture in Legal History, Rice University, Houston, Texas, April 6, 1990; also as "Does the Constitution Guarantee Equality," Kohlenberg-Towne Lecture Series, Northeast Missouri State University, Kirksville, Missouri, March 19, 1991.
- "Constitutional Equality in American History," Second Annual Alfred L. Luongo Lecture, Historical Society of the United States District Court for the Eastern District of Pennsylvania, Philadelphia, December 8, 1988.
- "Constitutionalism in East Central Europe: Some Negative Lessons from the American Experience," 4th Bratislava Symposium: Constitutionalism and Politics, Bratislava, Slovakia, November 11, 1993; Seventh Annual Lecture, German Historical Institute, Washington, D.C., November 15, 1993.
- "The Scholar, the Community, and the World," Keynote Address, 20th Anniversary Festival, Virginia Foundation for the Humanities, Richmond, Virginia, October 14, 1994.
- "Do Disciplines Matter? History and the Social Sciences," Keynote Address, 75th Annual Meeting, Southwestern Social Science Association, Dallas, Texas, March 23, 1995.
- "Depending on Strangers: At Home and Abroad," Maurice Guerin Lecture at the International Conference on Fund Raising, Boston, Massachusetts, March 6, 1994.
- "United We Stand: Moving Carefully and Collaboratively into the Future," Keynote Address, 7th Annual Joint Conference, Association for Computers and the Humanities and Association for Literary and Linguistic Computing, U. of California, Santa Barbara, Santa Barbara, California, July 12, 1995.
- "Accountability in the Arts and Sciences: Images and Reality," Annual Meeting, Council of Colleges of Arts and Sciences, Philadelphia, Pennsylvania, November 14, 1996.

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- "Can Liberal Education Cope?," keynote address for the Annual Meeting, Association of Graduate Programs in the Liberal Arts, Philadelphia, October 30, 1997.
- "Public and Private Issues: The Role of Research," keynote address for the inaugural conference, Israeli Center for Third-sector Research, Ben Gurion University of the Negev, Beer Sheva, Israel, 15 March, 1998.
- "Constitutionalism and Civil Society," the Jefferson Memorial Lecture, University of California, Berkeley, 25 April, 2000. Also delivered at: Yale Law School, Legal History Workshop, 2 October 2000; Chicago-Kent Law School, 25 October 2000.
- "What would it mean to be a 'just' university?" After dinner address for the conference on "Higher Education In and For a Just Society," 125th anniversary of Texas A&M University, College Station, Texas, 3 October 2001.
- "Constitutionalism and Human Rights: The Dilemma of the United States," Second Annual Walter F. Murphy Lecture in American Constitutionalism, Princeton University, 28 February 2002.
- "Everything that happens globally happens in some particular place," keynote address for Festschrift conference in honor of Lloyd and Susanne Rudolph, University of Chicago, 10 April 2003.
- "Why Technology Matters: the Humanities in the 21st Century," Wisbey Lecture, King's College, University of London, 15 October 2003.
- "America's Human Right Dilemma: Constitutions, Popular Sovereignty and Foreign Values," Annual Lecture, National Constitution Center, Philadelphia, Pennsylvania, 20 November 2003 (also For the Chiesman Foundation, Black Hills State University, Spearfish, S.D., 4 March 2004).
- "Gun Barrel Democracy? Democratic Constitutionalism Following Military Occupation: Reflections on the US Experience in Japan, Germany, Afghanistan, and Iraq," Bodek Lecture, University of Pennsylvania, 14 May 2004.
- "Libraries Are To Liberal Education as Lakes Are To Swimming," Keynote Address, Dedication of Donnelley and Lee Library, Lake Forest College, Chicago, 8 October 2004.
- "Who's Afraid of Senator Byrd? The Constitution and the Uses of American History," Princeton University Constitution Day Lecture, 17 September 2007.
- "General Education and Democracy: What Can John Dewey Tell Us?," Alan Nevins Lecture, Huntington Library, San Marino, California, 29 January 2009:

OTHER LECTURES AND PAPERS AT CONFERENCES

- "The Making and Breaking of Colonial Governors: Newcastle's New York," OAH, Cincinnati, April 1966.
- "Between Scylla and Charybdis: Anglo-American Politics in New York, 1710-1760," 20th Conference on Early American History, Rutgers University, October 1966.
- "Andrews Revisited: The English Colonial Bureaucracy, 1607-1776," AHA, New York, December 1968.
- "Controversies over Chancery Courts and Equity Law in the Middle Colonies," 29th Conference on Early American History, Newark, October 1970.
- "Teaching Legal History in Law Schools," AHA, New Orleans, 1972.
- "Constitutionalism and the American Revolution," National Archives Conference, Washington, D.C., November 1973.
- "Thomas Jefferson and the Right to Property in Revolutionary America," Bicentennial Lecture, University of Chicago Law School, February 1976.
- "The Legal Preconditions of the American Philanthropic Foundation," ASLH, November 1977.
- "The Future of Legal History," Conference on American Legal History, National Archives, Washington, D.C., September 1978.
- "Law and Philanthropy," History Department, University of Texas at El Paso, March 1979.
- "The Legitimization of the Philanthropic Foundation," Davis Center, Princeton University, January 1981.
- "Problems in Private Foundation Support of Academic Research: The U.S. Experience," University of Chicago Law School Conference on Philanthropy, April 1981.
- "Current Research in American Legal History: The Ideological Challenge," OAH, Detroit, April 1981.
- "The Nation, the State and the People; or, Lessons from the Anti-Federalists," Commencement Address, Stockton State College (N.J.), May 1981.

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- "The Problem of a Colonial Legal History," Conference on Anglo-American Colonial History, Oxford, August 1981.
- "History and the Future of Philanthropy," Independent Sector, Minneapolis, October 1981.
- "The Current State of American Legal History," Inaugural Conference of Australian Law and History Society, May 16, 1982 (included in the Lecture Tour of Australia, United States Information Agency), April, May 1982).
- "Legal Theory and Colonial Legal History," Yale Law School Legal Theory Workshop, November 1982.
- "Women and Fundraising in Historical Perspective," Mt. Holyoke College Conference on Volunteerism, March 19, 1983.
- "George Washington: The Great White Father and His Indian Children (or, White Eyes and Conotocarious)," Pennsylvania Historical Society, April 30, 1983.
- "The American Academic Community and International Educational Exchange," 13th Conference of European Fulbright Executive Directors, Salzburg, Austria, May 21, 1983.
- "The History of Philanthropy: Foundations," Organization of American Historians, Los Angeles, April 1984.
- "Changing Values and Modern American Philanthropy," Independent Sector Research Forum, New York City, April 1984.
- "History, Cultural Policy and International Exchange in the Performing Arts," Rockefeller Foundation Conference on Support of Contemporary Performing Arts in Europe and America, Bellagio, June 10-14, 1985.
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- "The Rise of a Modern and Democratic Learned Society," in Richard S. Kirkendall, ed., *The Organization of American Historians and the Writing and Teaching of American History*, Oxford University Press, New York, 2011, pp. 13-16.
- "Prospects for a Global Networked Cultural Heritage: Law Versus Technology?" Ramesh Subramanian and Eddan Katz, eds., *The Global Flow of Information: Legal, Social and Cultural Perspectives*, New York University Press, NY, 2011, pp.90-102.

EDITORIAL

Editor, Oliver Wendell Holmes Devise, *History of the United States Supreme Court* (co-editor with Paul Freund, 1978-89), (1990-).

Editorial Board, Common Knowledge (1991-)(Chair, Editorial Board, 2007-).

Editorial Board, Journal on Computing and Cultural Heritage (2008-)

Editorial Board, The Journal of Arts Management, Law and Society (2006-)

Associate Editor, The Journal of Interdisciplinary History (1970-).

Editorial Board, Nonprofit and Voluntary Sector Quarterly (NVSQ)(1998-)

Associate Editor, Reviews in American History (1973-97).

Editorial Board, American Journal of Legal History (1980-).

Editorial Board, Pennsylvania Magazine of History and Biography (1981-86).

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Editorial Board, Journal of the History of Ideas (1986-97).

Editorial Board, Voluntas (International Journal of Voluntary and Non Profit Organizations) (1990-96).

Editorial Board, William and Mary Quarterly (1997-), Chair (1998-99)

Editor, *Studies in Legal History* (1971-75), monographic series published by Harvard University Press in association with the American Society for Legal History. Nine volumes edited.

Advisory Committee, Journal of Legal Studies (1971-78).

Co-editor (with Morton J. Horwitz, *American Law: The Formative Years* (Arno Press, 1972), 28 vols., reprints of nineteenth century legal treatises.

Editorial Board, Continuity and Change (1985-90).

Editorial Advisory Board, Teachers College Record (1990-95).

Editorial Board, Rice University Press (2007-10)

CURRENT OFFICES & ACTIVITIES:

Joint Advisory Board, Georgetown University School of Foreign Service-Qatar (2005-)

Board of Trustees, United Nations Ass. Princeton-Mercer Chapter (2010-)

Board of Trustees, Philani Fund USA (2008-)

Princeton AlumniCorps (formerly Princeton Project 55) (2008-)

Board of Trustees, Jill Sigman Thinkdance (2007-)

Commissioner, National Historic Publications and Records Commission, National Archives and Records Administration (2005-), Executive Committee (2008-)

Board of Trustees, International Cultural Property Society (2004-) (Treas., 2005-07) (Pres., 2007-08), (Vice Pres., 2008-).

Board of Trustees, Policy Development (2002-)

American Philosophical Society, Library and Research Committees (2002).

Board of Directors, Copyright Clearance Center, (1997-2010), Director Emeritus (2010-)

Chair, American Council of Learned Societies/Social Science Research Council Working Group on Cuba, (1996-)

Member, New Jersey Council for the Humanities, (1996-) (Gubernatorial appointee)

Member, Council on Foreign Relations, (1994-).

Board of Directors, Eighteenth Century Short Title Catalogue for North America, Inc., (1992-).

Life Trustee, The Newberry Library, (1990-).

Advisory Committee, The Papers of Thomas Jefferson, Princeton University, (1988-).

Chairman, Board of Trustees, Papers of the Founding Fathers, Inc., (1984-).

American Historical Association: Vice President, Research Division, (1997-2000); Chairman, Littleton-Griswold Committee (with the American Society for Legal History), (1973-78); Member Research Division, (1976-79), (elected); Member Beveridge Prize Committee, (1981), Committee on Graduate Education in History (2001 -), Chair, Task Force on Intellectual Property (2001 -).

OTHER OFFICES & ACTIVITIES

Executive Committee, Society of American Historians (2006-); Chair, Francis Parkman Prize Committee, 2009.

Advisory Council, Center on Nonprofits and Philanthropy, Urban Institute (1997-).

Academic Freedom Committee, Human Rights Watch (1994-)

Board of Overseers, University of Pennsylvania Library (1998-2010)

Board of Trustees, National History Center (2002-9)

International Advisory Council, Consortium of Humanities Centers and Institutes (2001-06))

Research Task Force, Center for Arts and Culture, Washington, D.C. (1998-05)

Board of Directors, Social Science Research Council, Executive Committee (2001-06)

Board of Governors, Institute for the International Education of Students (1976-2002).

Board of Governors, Humanities Research Institute, University of California (1998-2004)

Board of Directors, National Initiative for a Networked Cultural Heritage (NINCH), (1999-2003), President (1999-2001).

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Board of Trustees, Institute for Caribbean and International Studies, St. George's University, Grenada, W.I.

Vice-President, Board of Directors, Friends of the Law Library of Congress, (1992-2003).

Board of Trustees, The National Faculty, (1995-2001).

Supreme Court of New Jersey, Disciplinary Oversight Committee, (1994-01); New Jersey Ethics Commission, (1991-94); Committee on Model Rules of Professional Conduct, (1982-83); Committee on the Sale of Law Practices, (1983-84, 1989).

Southern Methodist University: Board of Trustees, (1988-2000); Executive Board, Dedman College, (1988-94); Executive Board, Law School, (1994-), Executive Board, Library, (1999-..).

Organization of American Historians: International Committee, (1994-99); Ad Hoc Committee on Access to Lawyers' Files, (1993-); Executive Committee, (1976-79), (elected); Chairman, Executive Secretary Search Committee, (1981); President-elect (1986-87); President (1987-88).

Board of Directors, National Cultural Alliance, (1990-99, Chair, 1997-99).

Council, Institute of Early American History and Culture, Williamsburg, Virginia (1997- 99, 1990-93, 1974-76).

Board of Directors, Research Libraries Group, (1996-98, 1991-93).

Board of Trustees, Toynbee Prize Foundation, (1994-97), President (1994-97).

Advisory Committee, College of the Humanities, Ohio State University (1996-98)

Chair, Governing Board, Thesaurus Linguae Graecae, (1991-96).

Independent Sector: Board of Directors, (1989-95); Research Committee, (1983-96, Chair, 1989-93).

Trustee, Supreme Court of the United States Historical Society, (1982-96).

Board of Overseers for the Humanities, Tufts University, (1989-94).

Board of Advisors, Program on Philanthropy and the Law, New York University Law School, (1988-94).

Research Committee, Council on Foundations, (1989-93).

Council on Academic Affairs, The College Board, (1987-96).

Advisory Committee on Special Projects, Center for Advanced Study in the Behavioral Sciences, (1987-98).

Board of Trustees, Historical Society of Pennsylvania, (1987-91).

Board of Trustees, National Constitution Center, (1987-90).

Executive Committee, National Commission on Social Studies, (1987-89).

Advisory Council, The American Trust for the British Library, (1986-96).

Board of Trustees, The Historical Society of the United States District Court for the District of New Jersey, (1986-89).

Advisory Council, Rockefeller Archives, Pocantico Hills, New York, (1983-89).

Program Director, American Bar Foundation, Project in Legal History (Fellowship Competition), (1976-1987).

Council for International Exchange of Scholars (Senior Fulbright Program): American History selection panel, (1975-78); Chairman, (1981-85).

Committee on Philanthropic Organizations, Association of the Bar of the City of New York, (1982-1985).

American Council of Learned Societies: Delegate, American Society for Legal History (1980-84); American Studies Advisory Committee, (1980-83), President (1986-97).

National Endowment for the Humanities State Program: Chairman, Chicago American Issues Forum Committee, (1975-76), Member, New Jersey Committee for the Humanities (1978-84); Vice Chairman (1981-2)

Vice-chairman, American Bar Association Commission on Undergraduate Education in Law and the Humanities (1977-81).

Chairman, Law Center Consultative Committee, University of Massachusetts, (1974-75).

Vice Chair, Board of Directors, Council of American Overseas Research Centers (CAORC), (1991-97); Advisory Board (1988-90).

American Society for Legal History: Chairman, Publications Committee (1985-?); Board of Directors, (1975-80), (elected); Vice-President, (1975-78), (elected); President, (1978-80), (elected).

Board of Directors, The Hong Kong-America Center, (1993-98).

Advisory Board, Center for Electronic Texts in the Humanities (CETH), (1991-97).

Council, American Philosophical Society (2002-8)

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Board of Directors, Civic Education Project, (1997-2007)

Board of Directors, Center for Creative Communities (formerly

British American Arts Association), (1991-2007).

Steering Committee, Lilly Endowment-Princeton University Project on Church and State in the United States, (1983-).

Advisor, Scientific Committee, Fondacion H. Dudley Wright, Geneva, Switzerland (2000-6)

Board of Directors, Rice University Press (2007-9)

HONORS

LL.D. (Hon.) Stockton (N.J.) State College, 1981.

D.H.L. (Hon.) University of Puget Sound, 1994.

D.H.L. (Hon.) C.W. Post Campus, Long Island University, 1997.

D.H.L. (Hon.) Sacred Heart University (Fairfield, CT), 1997.

D.H.L. (Hon.) The Ohio State University, 1998

LL.D (Hon.) University of Hartford, 1998

D.H.L. (Hon.) Roosevelt University (Chicago, IL), 2003

D.L.A. (Hon.) Ursinus College (Collegeville, PA), 2003

D.H.L. (Hon.) Dickinson College (Carlisle, PA), 2003

Association of the Comparative History of Institutions and Law of the Socialist Republic of Romania (1978).

Permanent Committee on the Oliver Wendell Holmes Devise (appointed by President Gerald Ford, 1976-84).

American Antiquarian Society (1981), (elected).

Honorary Fellow, American Society for Legal History (1990).

Fellow, American Academy of Arts and Sciences (1991), (elected).

Fellow, Society of American Historians (1991), (elected).

Corresponding Member, Massachusetts Historical Society (1992) (elected).

Member, American Philosophical Society (1996) (elected).

The McCreight Award for Distinguished Service to the Humanities, by the Federation of State Humanities Councils (1988).

Award for Contributions to Research Libraries, Association of Research Libraries (1997)

Academico Correspondiente, Cuban Academy of Sciences (2005) (elected)

Troyer-Steele Anderson Award, American Historical Association (for exemplary contribution to the advancement of the Association's mission) (2006)

Roy Rosenzweig Distinguished Service Award, Organization of American Historians (for enriching our understanding and appreciation of American history) (2009)

Annual Fellows Award, Phi Beta Kappa (2010)

National Humanities Medal (awarded by Pres. Obama, 3/2/11)

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Attorneys for Defendants

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

Case No. 11 Civ. 6351 (HB)

v.

HATHITRUST, ET AL.,

Defendants.

DECLARATION OF MARGARET LEARY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

- I, Margaret Leary, pursuant to 28 U.S.C. § 1746, hereby declare as follows:
- 1. I submit this declaration in support of the defendant libraries' motion for summary judgment. Unless otherwise noted, I make this declaration based upon my own personal knowledge.

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- 2. From 1979 to 2011, I taught a law school course in advanced legal research at the University of Michigan Law School. This course taught students about the content of major sources of the law for the U.S., international organizations, and other nations; how to use those sources; and how to construct an efficient and effective strategy for conducting that research by using secondary (material about the law) as well as primary (text of the law) materials.
- 3. I have also carried out my own research, most notably into the life and times of Michigan Law graduate and donor of the Michigan Law quadrangle, William W. Cook (1858-1930). I have published a book based on this research, titled *Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle*. Other of my publications are listed at: http://www.law.umich.edu/library/guests/pubsfaculty/facultypages/Pages/leary_margaret.aspx.
- 4. I have a B.A. from Cornell University, a M.A. in library science from the University of Minnesota, and a J.D. from the William Mitchell College of Law.
- 5. I have worked in law libraries since 1970, and at the University of Michigan Law Library since 1973. From 1984 until 2011 I was the Director and Librarian of that library, which is one of the world's largest and most comprehensive: over 1 million volumes of law and law related materials, designed to support research in any topic, for any country, at any period of time.
- 6. As the Director and Librarian of the Michigan Law Library, my responsibilities included oversight of all aspects of the library's operation: 40 full time employees, a \$7 million annual budget, and 100,000 square feet of space. I oversaw collection development (purchase of, and contractual access to, all formats of material) and services, including reference and research service to law school faculty, students, and other users (assisting and guiding researchers with their research needs).

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- 7. Since retiring from the Michigan Law Library, for the last six months I have worked as a volunteer reference librarian, two days a week, at the Bentley Historical Library; and have taken courses in Michigan history, which require me to do research.
- 8. I am very familiar with the HathiTrust program from those several perspectives: as the builder of a collection; as the person responsible for ensuring the long-term availability of the information in the collection; as the provider of information within and beyond our collection to users; as a teacher of the best techniques and resources for doing effective and efficient research; and as a researcher seeking everything findable about William W. Cook, a man who played a critical role in the development of the University of Michigan Law School but is not widely known outside of the Michigan Law School community and who died more than eighty years ago. I have watched, and benefitted from, the HathiTrust program since its inception, and, as further described below, I have experienced how it has greatly expanded the capacity for new scholarship and learning.
- 9. As an experienced researcher, I have seen first hand how the HathiTrust program has expanded the use of print works through the ability to electronically search for terms present anywhere in the text of a work. The HathiTrust program has opened up books to me—and everyone--that I would never have thought of looking at in print—either because I didn't know about them, or didn't think they would have relevant information in them. The HathiTrust program also enables me to find the exact page on which a name, term, or set of words occurs, which no index can do comprehensively. This expands and extends my use of print, both from libraries and from bookstores.
- 10. For example, when researching my recent book on William Cook, I benefitted from the ability to search the text of an enormous number of books. By searching the various

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forms of Cook's name, I found it mentioned in dozens of books, including Ida Tarbell's *History* of the Standard Oil Company. The results did not give me the full text, so I went to the University of Michigan's main library and checked out the printed book.

- 11. My search had told me the exact pages where Cook's name appeared, which saved hours of time (the book is two volumes). From Tarbell, I learned that Cook had published a book entitiled *Trusts* which included the full text of the Standard Oil Trust Agreement, which had until then not been public. I also learned that the Ohio Attorney General named David Watson discovered the copy of the Standard Oil Trust Agreement in Cook's work and immediately determined that the Agreement violated at least six Ohio statutes. Watson brought suit. The action dragged out and ultimately failed, but it created negative public opinion about the behavior of a huge and important trust, and ultimately drove Standard Oil from Cleveland to New York City.
- 12. As a result of my search, I discovered that Cook, only five years out of law school, through his research and writing exerted a powerful influence on the development of American law. This example illustrates perfectly the power of a full text search; I simply could not have discovered this connection between Mr. Cook and the history of the Standard Oil Company through searches of catalog information the catalog information for Tarbell's work does not list Cook nor is he listed in the index or table of contents.
- 13. Tarbell's book is a classic for many reasons (written by a woman, excellent journalistic techniques, role in antitrust movement) but I would never have taken the trouble to read the whole book on the off chance that she would mention Cook. Without the HathiTrust, I would never have found how important *Trusts* was. In seven years of research, I did not find that information anywhere else.

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- 14. Another example from my Cook research is that HathiTrust books enabled me to search and find his name in directories of clubs I would not otherwise have known he belonged to, and seeing who other members were. The directories were not in University of Michigan libraries, and I would not have travelled to California, Wisconsin, or other states where I knew there were print copies because the chance of finding useful information was so small. In the HathiTrust, I can do a search in five minutes and have a definitive answer to the question "Was Cook a member?"
- 15. During the course of my research on Cook, I purchased at least two books because of references to Cook, or companies and people important in his life, that I found via HathiTrust or Google search-only searches: Hollinger, *Science, Jews and Secular Culture*, Princeton University Press, 1996; and Usselman, *Regulating Railroad Innovation*, Cambridge University Press, 2002. Of course, had I not discovered these works through my research, I would never have purchased them.
- 16. As the Director and Librarian of the Michigan Law Library, I also have first hand experience assisting other researchers in accessing works relevant to their research. Before libraries used digitizing as a means to preserve our collections, we used microform (small reproductions of works that a researcher could view through magnification).
- 17. I was very involved in an organization then called the Law Library Microform Consortium, or LLMC. LLMC is a cooperative of academic law libraries that collectively microfilmed as much material as possible.
- 18. We learned an important lesson from this project: users make choices about the amount of time and effort to put into getting at a particular item. The effort of using microform stopped some people some of the time. They didn't like using a special machine; they didn't like

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reading the sometimes blurry or blotchy film; they didn't like the kind of printouts; they didn't like having to wait for the library to deliver the film to them; they didn't like not being able to "check out" the item. I had many experiences with law school faculty and other users deciding not to consult an item, such as an old newspaper, book, Congressional hearing or state session law, when the only form available was microform.

19. In my view, libraries should not put such obstacles in front of users and any technology that makes it easier for users to discover books vastly improves the quality of scholarship.

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

Date: June 26, 2012

