
12-4547-cv

United States Court of Appeals
for the
Second Circuit

AUTHORS GUILD, INC., AUSTRALIAN SOCIETY OF AUTHORS
LIMITED, UNION DES ECRIVAINES ET DES ECRIVAINS QUEBECOIS,
ANGELO LOUKAKIS, ROXANA ROBINSON, ANDRE ROY, JAMES
SHAPIRO, DANIELE SIMPSON, T.J. STILES, FAY WELDON,
AUTHORS LEAGUE FUND, INC., AUTHORS' LICENSING AND
COLLECTING SOCIETY, SVERIGES FORFATTARFORBUND, NORSK
FAGLITTERAER FORFATTERO OG OVERSETTERFORENING,
WRITERS' UNION OF CANADA, PAT CUMMINGS, ERIK GRUNDSTROM,
HELGE RONNING, JACK R. SALAMANCA,

Plaintiffs-Appellants,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT DEFERRED APPENDIX
Volume 4 of 5 (Pages A-838 to A-1118)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF HELGE RØNNING
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Helge Rønning ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or

download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;

- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without*

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Helge Rønning, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 8, 2012.


Helge Rønning

A-847

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EXHIBIT K

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF ROXANA ROBINSON
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Roxana Robinson ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001:

A PERFECT STRANGER
SWEETWATER

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of the work(s) in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or

download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";

- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's

display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
March 28, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Roxana Robinson, have read the foregoing responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 28, 2012.



Roxana Robinson

A-856

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EXHIBIT L

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF ANDRÉ ROY
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff André Roy (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that it is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

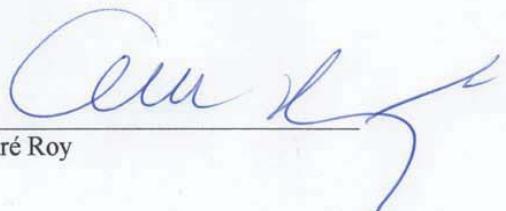
By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, André Roy, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 10th, 2012.



André Roy

A-865

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EXHIBIT M

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF J.R. SALAMANCA
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff J.R. Salamanca ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

concerning royalties generated from distribution of the work(s) in electronic format, but notes that statements for works only recently released for sale may not yet be available.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or

download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;

- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without*

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that it is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

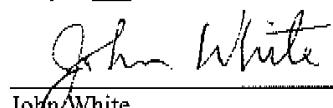
By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, John White, literary agent for J.R. Salamanca, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.


John White

A-874

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EXHIBIT N

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF JAMES SHAPIRO
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff James Shapiro ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, indicate whether that work has been distributed, pursuant to your authorization, in digital, electronic or other machine-readable format at any time since 2001 and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff identifies the following as work(s) on Schedule A that have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001:

OBERAMMERGAU

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of the work(s) in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. §

107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants’ aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted work(s) for use purely in connection with non-consumptive research;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121

specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants’ Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

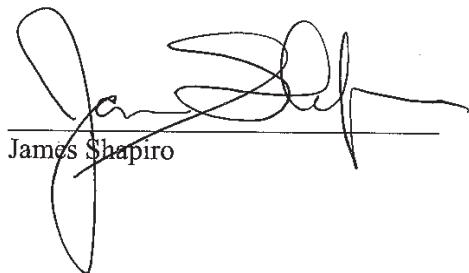
By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, James Shapiro, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



James Shapiro

A handwritten signature in black ink, appearing to read "James Shapiro", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'J' at the beginning.

A-883

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EXHIBIT O

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF DANIELE SIMPSON
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Daniele Simpson (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Daniele Simpson, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 16th, 2012.

Daniele Simpson
Daniele Simpson

A-892

Case 1:11-cv-06351-HB Document 111-1 Filed 06/29/12 Page 138 of 245

EXHIBIT P

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF T.J. STILES
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff T.J. Stiles ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, T.J. Stiles, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.

T.J. Stiles



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EXHIBIT Q

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF FAY WELDON
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Fay Weldon ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Second Set of Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

AUTO DA FAY
BIG WOMEN
MANTRAPPED
NOTHING TO WEAR AND NOWHERE TO HIDE
PUFFBALL
REMEMBER ME
RHODE ISLAND BLUES
SHE MAY NOT LEAVE
SPLITTING
THE BULGARI CONNECTION
WATCHING ME, WATCHING YOU
WORST FEARS

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of these works in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the

HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody or third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent

Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Fay Weldon, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April ___, 2012.



A handwritten signature in blue ink, appearing to read "Fay Weldon", is written over a horizontal line. Below the line, the name "Fay Weldon" is printed in a smaller, sans-serif font.

A-910

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EXHIBIT R

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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF UNEQ TO
DEFENDANTS' SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

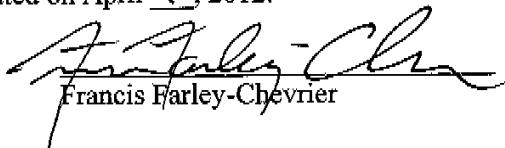
By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
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New York, New York 10022
Tel.: (212) 980-0120
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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Francis Farley-Chevrier, Directeur Général for Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers), have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 9, 2012.



Francis Farley-Chevrier

A-918

Case 1:11-cv-06351-HB Document 111-1 Filed 06/29/12 Page 164 of 245

EXHIBIT S

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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF SFF TO
DEFENDANTS' SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Sveriges Författarförbund (The Swedish Writers' Union) ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

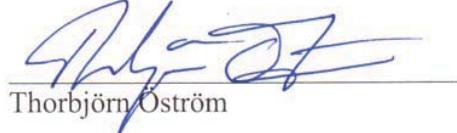
By: /s/ Jeremy S. Goldman

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Fax: (212) 593-9175
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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Thorbjörn Öström, General Counsel for Plaintiff Sveriges Författarförbund (The Swedish Writers' Union), have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Thorbjörn Öström

A-926

Case 1:11-cv-06351-HB Document 111-1 Filed 06/29/12 Page 172 of 245

EXHIBIT T

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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF PLAINTIFF NFFO TO
DEFENDANTS' SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Norsk faglitterær forfatter- og oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Jan Terje Helmløkken, General Counsel for Plaintiff Norsk Faglitterær Forfatter- Og Oversetterforening, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Jan Terje Helmløkken
Jan Terje Helmløkken

A-934

Case 1:11-cv-06351-HB Document 111-1 Filed 06/29/12 Page 180 of 245

EXHIBIT U

Page 1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 THE AUTHORS GUILD, INC., ET AL.,

6

7 Plaintiff,
8 Index no. 11 Civ. 6351 (HB)

9 VS.

10

11 HATHitrust, et al.,

12

13 Defendants.

14

15 -----X

16

17 **C O N F I D E N T I A L**

18

19 DEPOSITION

20

21 OF

22

23 PAT CUMMINGS

24

25 Tuesday, May 22, 2012

26

27 1114 Avenue of the Americas

28

29 New York, New York

30

31

32 Reported by:

33

34 AYLETTE GONZALEZ, CLR

35

36 JOB NO. 49735

37

38

39

Page 2

1

2 DATE: May 22, 2012

3 TIME: 9:57 a.m.

4

5

6 Deposition of PAT CUMMINGS, held at the
7 offices of KILPATRICK TOWNSEND & STOCKTON, LLP,
8 1114 Avenue of the Americas, New York, New
9 York, 10036, pursuant to NOTICE, before
10 AYLETTE GONZALEZ, a Certified LiveNote
11 Reporter and Notary Public of the State of
12 New York.

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Page 3

1

2 A P P E A R A N C E S:

3

4 KILPATRICK TOWNSEND & STOCKTON

5 Counsel for Defendant

6 1114 Avenue of the Americas

7 New York, New York 10036

8 BY: JOSEPH PETERSEN, ESQ.

9

10

11

12 FRANKFURT KURNIT KLEIN & SELZ

13 Counsel for Plaintiff

14 488 Madison Avenue

15 New York, New York 10022

16 BY: JEREMY GOLDMAN, ESQ.

17

18

19

20 ALSO PRESENT:

21 JAN CONSTANTINE, The Authors Guild, Inc.

22

23

24

25

Page 4

1 CONFIDENTIAL-PAT CUMMINGS
2 P A T C U M M I N G S, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. PETERSEN:

8 Q. Good morning, Ms. Cummings. My
9 name is Joe Petersen. I'm counsel for the
10 libraries in the HathiTrust matter.

11 Could you please state your name
12 and address for the record.

13 A. Pat Cummings. 28 Tiffany Place,
14 Brooklyn, New York 11231.

15 Q. And have you ever been deposed
16 before?

17 A. No.

18 Q. Let me give you a quick rundown on
19 the rules. I'll be asking a series of
20 questions. My goal isn't to trick you at all.
21 If you don't understand the question, please
22 let me know, and I'll rephrase the question.
23 Is that clear?

24 A. Yes.

25 Q. And just -- the Reporter is taking

Page 19

1 CONFIDENTIAL-PAT CUMMINGS

2 libraries are currently doing. At this point
3 in time, do you have any understanding of the
4 use made by the libraries with respect to the
5 digitized works in the HathiTrust Corpus?

6 MR. GOLDMAN: Object to the form;
7 lacks foundation.

8 A. I don't know what uses they're
9 making of it.

10 Q. Do you have any knowledge as to
11 whether or not those -- your works are
12 available to someone who accesses the
13 HathiTrust Corpus? Are those works available
14 in full text?

15 MR. GOLDMAN: Object to the form.

16 A. I don't know.

17 Q. Have you ever used the HathiTrust
18 website?

19 A. No.

20 Q. Have you ever seen the HathiTrust
21 website?

22 A. No.

23 Q. Turning back in time to when
24 Mr. Aiken approached you concerning this
25 lawsuit, was there any discussion concerning

Page 56

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. You say an extreme cherry-picked
3 item. What do you mean by that?

4 A. I mean that if you have a problem
5 with somebody taking your work, to say that
6 you're depriving blind people seemed to come
7 out of -- not left field, but seemed to be an
8 extreme situation that was not the intent of
9 the suit. And to the best of my memory, our
10 discussion was about how to present the
11 Guild's position publicly so that we were
12 representing ourselves in the manner that we
13 felt, you know, our issues to be, and not to
14 be defined.

15 Q. Would you agree with me that it's
16 beneficial to individuals with disabilities to
17 have access to the works that have been
18 digitized as part of the HathiTrust project?

19 A. No.

20 MR. GOLDMAN: Objection to the
21 form.

22 A. No.

23 Q. So, you do not believe the print
24 disabled should have access to those works?

25 MR. GOLDMAN: Objection to the

Page 57

1 CONFIDENTIAL-PAT CUMMINGS

2 form.

3 A. No.

4 Q. I'm going to mark, as PC-5, a
5 document entitled, "Objections And Responses
6 of Plaintiff Pat Cummings To Defendants' First
7 Set Of Interrogatories And Request For The
8 Production of Documents."

9 (Exhibit PC-5, document entitled
10 "Objections And Responses Of Plaintiff
11 Pat Cummings to Defendants' First Set
12 Of Interrogatories And Requests For
13 The Production of Documents," marked
14 for identification, as of this date.)

15 MR. GOLDMAN: Is there a question
16 pending?

17 MR. PETERSEN: I'm waiting for
18 her, Ms. Cummings, to read the
19 document.

20 Q. Do you recognize Exhibit 5?

21 A. Yes.

22 Q. Have you seen it before today?

23 A. Yes.

24 Q. What is it?

25 A. Okay; it is the Objections And

Page 125

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. So, how could it be that it could
3 have any impact on your sales if the libraries
4 are not making the digital copy available of
5 your work? How could that have any bearing
6 upon sales of your works?

7 A. I wouldn't know. That's the
8 answer.

9 MR. PETERSEN: I don't think I
10 have anything further. Thank you very
11 much for your time. I do appreciate
12 it.

13 (Whereupon, at 12:34 p.m., the
14 Examination of this Witness was
15 concluded.)

16

17

18 PAT CUMMINGS

19

20 Subscribed and sworn to before me
21 This _____ day of _____, 2012.

22

23 NOTARY PUBLIC

24

25

Page 126

1 CONFIDENTIAL-PAT CUMMINGS

2 -----I N D E X-----

3 WITNESS EXAMINATION BY PAGE

4 PAT CUMMINGS MR. PETERSEN 4

5

6 DIRECTIONS: [None]

7 MOTIONS: [None]

8 REQUESTS: [None]

9

10 -----EXHIBITS-----

11 DEFENDANT'S EXHIBIT FOR I.D.

12 Exhibit PC-1,

13 Three pages of the website of Pat

14 Cummings.....25

15 Exhibit PC-2,

16 Document bearing Bates label

17 AG0003864 through '866.....43

18 Exhibit PC-3,

19 Document bearing Bates label

20 AG0003867 through '868.....48

21 Exhibit PC-4,

22 Document bearing Bates label

23 AG0003870 through '872.....49

24

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2 -----EXHIBITS-----
3 DEFENDANT'S EXHIBIT FOR I.D.
4 Exhibit PC-5,
5 Document entitled "Objections And
6 Responses Of Plaintiff Pat Cummings
7 to Defendants' First Set Of
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9 Production of Documents.....57
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13 Document entitled "Objections and
14 Responses of Plaintiff Pat Cummings
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16 Interrogatories And Requests For The
17 Production of Documents.....74
18 Exhibit PC-8,
19 Document bearing Bates label
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1 CONFIDENTIAL-PAT CUMMINGS
2 -----EXHIBITS-----
3 DEFENDANT'S EXHIBIT FOR I.D.
4 Exhibit PC-10,
5 Document bearing Bates label
6 AG0002365 through '351.....89
7 Exhibit PC-11,
8 Document bearing Bates label
9 AG0000027 through '042.....95
10 Exhibit PC-12,
11 Document bearing Bates label
12 AG0002388 through '2408.....97
13 Exhibit PC-13,
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20 Document bearing Bates label
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24 AG0000043 through '044.....114
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2 -----EXHIBITS-----

3 DEFENDANT'S EXHIBIT FOR I.D.

4 Exhibit PC-17,

5 Document bearing Bates label

6 AG0002387 through '366.....116

7 Exhibit PC-18,

8 Document bearing Bates label

9 AG0002426 through '409.....118

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1 CONFIDENTIAL-PAT CUMMINGS

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

: SS.:

5 COUNTY OF RICHMOND)

6

7 I, AYLETTE GONZALEZ, a Notary Public

8 for and within the State of New York, do

9 hereby certify:

10 That the witness, PAT CUMMINGS,
11 whose examination is hereinbefore set forth
12 was duly sworn and that such examination is a
13 true record of the testimony given by that
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or by marriage and that I am in no
18 way interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 4th day of June, 2012.

21

22

AYLETTE GONZALEZ

23 (Notary Public No. 01G06228612

Expiration date: 9/27/2014)

24

25

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1 CONFIDENTIAL-PAT CUMMINGS
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 Case Name: The Authors Guild Inc v. HathiTrust
4 Dep. Date: May 22, 2012
5 Deponent: PAT CUMMINGS

	Pg.	Ln.	Now Reads	Should Read	Reason
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21 PAT CUMMINGS

22 SUBSCRIBED AND SWORN BEFORE ME,

23 This ____ day of _____, 2012.

24 _____ Notary Public

25 My Commission Expires: _____

A-949

Case 1:11-cv-06351-HB Document 111-1 Filed 06/29/12 Page 195 of 245

EXHIBIT V

Page 2

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5 May 29, 2012

6 11:30 a.m.

7

8

9 VIDEO TELECONFERENCE deposition

10 of HELGE RØNNING, held at the offices of
11 Kilpatrick, Townsend & Stockton LLP,
12 1114 Avenue of the Americas,
13 New York, New York, pursuant to
14 Notice, before Francis X. Frederick, a
15 Certified Shorthand Reporter, Registered
16 Merit Reporter and Notary Public of the
17 States of New York and New Jersey.

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Page 3

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2 A P P E A R A N C E S:

3

4 FRANKFURT KURNIT KLEIN & SELZ

5 Attorneys for Plaintiffs

6 488 Madison Avenue

7 New York, New York 10022

8 BY: JEREMY GOLDMAN, ESQ.

9

10 KILPATRICK TOWNSEND & STOCKTON

11 Attorneys for Defendants

12 1114 Avenue of the Americas

13 New York, New York 10036

14 BY: JOSEPH PETERSEN, ESQ.

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1 H. RØNNING
2 H E L G E R O N N I N G, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. PETERSEN:

8 Q. Good afternoon, Professor Rønning.

9 Should I refer to you as Professor Rønning or
10 Dr. Rønning or Mr. Rønning? How would you
11 like me to refer to you?

12 A. Professor is fine with me.

13 Q. That's great. That certainly
14 suits me as well.

15 Good afternoon, Professor Rønning.

16 My name is Joe Petersen. And I'm counsel for
17 the Libraries in the HathiTrust case. Have
18 you ever sat for a deposition before?

19 A. No.

20 Q. Okay. So given that, and given
21 the fact that we're doing this on video, I'll
22 just briefly give you some of the ground rules
23 for the deposition. I'm sure as you
24 understand, I'm going to be asking you
25 questions here this afternoon. And when I do

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1 H. RØNNING

2 rights to my works.

3 Q. So you never concerned yourself at
4 all with the type of use made by the libraries
5 with respect to the digitization project.

6 MR. ROSENTHAL: Objection.

7 Q. Professor, as you sit here today
8 do you have any understanding of the types of
9 uses made by my clients with respect to the in
10 copyright -- the works that are presumed to be
11 in copyright that are included in the
12 HathiTrust digital library?

13 MR. ROSENTHAL: Objection.

14 A. No. And let me answer -- let me
15 answer.

16 You are, according to Norwegian
17 copyright law, not allowed to do digitization
18 without explicit permission of the author or a
19 representative of the author because that goes
20 against the basis of all continental copyright
21 acts, namely the moral right to your work.

22 Q. So you're viewing this through the
23 lens of Norwegian copyright law; is that
24 correct, Professor?

25 MR. ROSENTHAL: Objection.

1 H. RØNNING
2 a student in the US wanted -- that was blind
3 wanted to read one of your articles, do you
4 have any knowledge as to how that student
5 could obtain a copy that he or she could
6 actually understand?

7 MR. ROSENTHAL: Objection.

8 A. No, I do not know. I mean, I know
9 what's the situation in Norway. And I know
10 that that material for the people with
11 impaired sight would typically be handled by
12 the Norwegian Foundation for the Blind and
13 they would do that under the Norwegian
14 Copyright Act and those who are owed copyright
15 to be paid remuneration. Typically, if a
16 blind student wants a book to be as an audio
17 book he or she can ask for it and then it can
18 be recorded for him and the copyright owner
19 will be remunerated and she will get it under
20 the Norwegian Foundation.

21 Q. But you have no understanding of
22 how a US student would obtain -- would -- a US
23 student with a print disability would obtain
24 access to your works.

25 A. No. Why should I?

1 H. RØNNING

2 questions. Thank you very much,

3 Professor. You're done.

4 THE WITNESS: All right. This has

5 been very interesting.

6 (Time Noted: 2:27 p.m.)

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HELGE RØNNING

22 Subscribed and sworn to before me
23 this 29th day of May, 2012.

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2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6 I, FRANCIS X. FREDERICK, a
7 Notary Public within and for the State
8 of New York, do hereby certify:

9 That HELGE RØNNING, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me and that
12 such deposition is a true record of
13 the testimony given by the witness.

14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that
17 I am in no way interested in the
18 outcome of this matter.

19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 8th day of
21 June, 2012.

22

23

24

25

FRANCIS X. FREDERICK

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1

2 ----- I N D E X -----

3 WITNESS	EXAMINATION BY	PAGE
4 HELGE RØNNING	MR. PETERSEN	4

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9 ----- INFORMATION REQUESTS -----

10 DIRECTIONS: 100

11 RULINGS: NONE

12 TO BE FURNISHED: NONE

13 REQUESTS: NONE

14 MOTIONS: NONE

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2 ----- EXHIBITS -----

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4 Exhibit 1

5 Resumé of Helge Rønning..... 7

6 Exhibit 2

7 article entitled

8 Intellectual property

9 rights and the political

10 economy of culture..... 72

11 Exhibit 3

12 article entitled

13 Systems of control and regulation:

14 Copyright issues, digital divides

15 and citizens' rights..... 74

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17 document

18 headed Exhibit A..... 83

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20 Standard Contract for

21 Non-Fiction Literature

22 bearing production

23 numbers AG 0000144

24 through AG 0000157..... 88

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2 ----- EXHIBITS -----

3 HR FOR ID.

4 Exhibit 6

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6 of Plaintiff Helge Rønning

7 to Defendants' First Set of

8 Interrogatories and Requests

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10 Exhibit 7

11 Objections and Responses of

12 Plaintiff Helge Rønning to

13 Defendants' Second Set of

14 Interrogatories and Requests

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1

2 NAME OF CASE: AUTHORS GUILD v. HATHITRUST

3 DATE OF DEPOSITION: MAY 29, 2012

4 NAME OF WITNESS: HELGE RØNNING

5 Reason codes:

- 6 1. To clarify the record.
- 6 2. To conform to the facts.
- 6 3. To correct transcription errors.

7 Page _____ Line _____ Reason _____
From _____ to _____

8 Page _____ Line _____ Reason _____
From _____ to _____

9 Page _____ Line _____ Reason _____
From _____ to _____

10 Page _____ Line _____ Reason _____
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21 _____

22 _____

23 _____

24 _____

25 HELGE RØNNING

A-962

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EXHIBIT W

Peter Leonard (Univ. Chicago)

Timothy R. Tangherlini (UCLA)

Trawling in the Sea of the Great Unread:

Sub-Corpus Topic Modeling and Humanities Research

Abstract

Given a small, well-understood corpus that is of interest to a Humanities scholar, we propose *sub-corpus topic modeling* (STM) as a tool for discovering meaningful passages in a larger collection of less well understood texts. STM allows Humanities scholars to discover unknown passages from the vast sea of works that Moretti calls the “great unread,” and to significantly increase the researcher’s ability to discuss aspects of influence and the development of intellectual movements across a broader swath of the literary landscape. In this article, we test three typical Humanities research problems: in the first, a researcher wants to find text passages that exhibit latent semantic similarities to a collection of influential non literary texts from a single author (here Darwin); in the second, a researcher wants to discover literary passages related to a well understood corpus of literary texts (here emblematic texts from the Modern Breakthrough); and in the third, a researcher hopes to understand the influence that a particular domain (here folklore) has had on the realm of literature over a series of decades. We explore these research challenges with three experiments, the first focused on the echoes of Darwin’s work in the broader Danish literary realm; the second focused on unknown authors from the “Modern Breakthrough,” a shift in Danish (and Nordic) literature away from Romanticism and toward Naturalism starting in the 1870s, and concomitant with the translation of Darwin’s works into Danish; and the

third focused on the emergence of folklore and a turn toward rural motifs in Danish literature from Romanticism through the progressive literature of the early twentieth century.

Keywords: Topic Modeling, Literature, The Modern Breakthrough, Folklore, Denmark

Introduction

Over the past five years, literary scholars have acquired access to increasingly large collections of digitized texts. Consequently, they struggle with a new inflection of the age-old problem that for any given research question there exist far too many works in the target corpus to be able to read all of them carefully. While simple barriers such as physical access restricted research in the past, these barriers have begun to disappear in the digital age and people now have broad access to previously difficult to access works. To account for this change in access to materials, researchers must conduct searches that not only have high precision as was the case with the limited searches based on canonical views of literary history—standard practice in Humanities research for many centuries—but also have high recall. If one has access to all of the fiction published in Denmark from 1860-1920, for example, and one is engaged in a study focused on this literature, one can no longer suggest that reading the best-known works (and some from around the edges) provides adequate coverage of the literary landscape. Similarly, if one is interested in specific literary themes or topics, the desire to discover those themes or topics across the entire corpus is too enticing to ignore.

Text-mining techniques that allow for the rapid identification of “passages of interest” contribute significantly to a scholar’s ability to narrow down a broader corpus into a research collection and to understand the relationships between the works in this collection, thereby holding out the promise that one can develop a more encompassing

understanding of a particular field. Accordingly, one of the goals of our work is to develop techniques that allow for the rapid identification of a large collection of passages from mostly unknown works that intersect with well-known passages from well-known works. These techniques in turn can contribute to the development of new perspectives not only on the known corners of the literary realm (e.g. “the canon”) but also on parts of the literary corpus largely ignored by previous scholarship. By developing these techniques, problems posed by the recent emergence of “big data” collections of literature such as Google Books, HathiTrust, and the Internet Archive, no longer stand as barriers to research but instead as considerable research assets. The challenge resides in developing fast, intuitive and easy-to-use techniques that address the problems of “big data” collections while taking advantage of the expert knowledge that has developed over the course of many decades in the study of literature.

With the emergence of “big data” collections, there are too many accessible texts to read each one closely; even if one could read them closely, it is unlikely that one could read them consistently; and if one could read them consistently, it is inconceivable that one would be able to remember even a small percentage of them. Developing a model of “meaning” by applying unsupervised machine learning techniques across the entire corpus might be a solution to this problem. Yet, while this is an intriguing idea and one not addressed in this paper, such an approach would have limited applicability beyond providing a first level approximation of the general contours of topics in a particular literature at a particular time.

[1] Except for encyclopedic projects, most contemporary literary scholarship does not focus on making broad generalizations about a national literature, but rather emphasizes narrower developments in the literary landscape coupled to a thorough contextual knowledge of the impact and spread of those developments. Not surprisingly, analysis of this type is largely

dependent on a scholar's "domain expertise".

Literary domain expertise is formed from the study of an imperfect and largely arbitrary canon.[2] In "The Slaughterhouse of Literature," Franco Moretti notes that "[t]he majority of books disappear forever—and 'majority' actually misses the point: if we set today's canon of nineteenth-century British novels at two hundred titles (which is a very high figure), they would still be only about 0.5 percent of all published novels" (Moretti 2000, 207). Despite this arbitrariness underlying canon formation, an inherent *passive* connection exists between the canon and the hundreds of thousands of literary works digitized in a project such as Google Books. Thus the canonical texts upon which domain expertise is largely founded form a part, no matter how statistically insignificant, of the entire corpus. An excellent example of this can be found in the context of Nordic literature, the literature that comprises our "domain expertise." One of the goals of our work is to transform this *passive* relationship between the canonical texts on the one hand and all of the other books in the Google Books corpus on the other hand into an *active* relationship. This transformation represents an important step toward developing techniques for the discovery of "passages of interest" in a large unlabeled corpus given a series of well-understood texts.

We conceive of this approach as a targeted fishing expedition: a small sub-corpus of literary works serves as a trawl line and is passed through the "Sea of the Great Unread"; whatever gets "caught" will likely be of interest to someone interested in the sub-corpus. By considering all of the books in the domain but limiting the search to topics of interest based on the sub-corpus (or "corpus of interest"), this approach greatly increases the recall of otherwise overly "precise" searches that have characterized canonical research in the Humanities.[3] In our work presented below, we fashion the hooks on our trawl line by implementing Latent Dirichlet Allocation (Blei, Ng, Jordan 2007) on a small, well-

understood sub-corpus and use the derived topic models to “catch” texts in the larger, poorly understood corpus.[4] We label this approach *sub-corpus topic modeling* (STM) [figure 1].

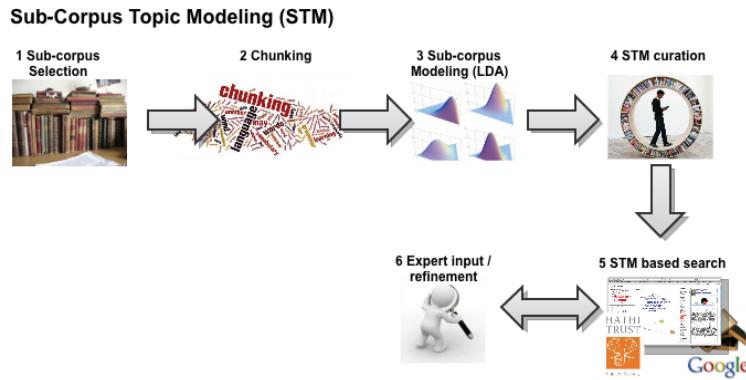


fig. 1: Flowchart showing the STM process

Limitations of Keyword Search

“Whole text” search based on probabilistic topic modeling has distinct advantages over simple keyword search. Certainly, the temptation exists for many literary scholars to believe that their domain expertise provides them with sufficient knowledge to perform productive keyword searches. For example, if “the countryside” is an important concept in nineteenth century British novels, a domain expert should be able to develop a limited set of keywords—or perhaps key phrases—related to the countryside, such as “manor”, “farm”, and “field”, and retrieve a large number of new texts. Implementing a simple thesaurus or WordNet approach could further augment this strategy. This approach certainly aligns with current search strategies in the Humanities, yet it often fails to provide the higher degree of recall that the current research environment demands. Similarly, it fails to discover passages that do not include those particular keywords (or their synonyms). Apart from being tedious (particularly in the case of highly inflected languages such as Icelandic), this strategy, for all intents and purposes, increases recall simply by iterating through a series of high-precision

searches. It also produces results that are hard to duplicate.

Cameron Blevins's work on the application of topic modeling to *Martha Ballard's Diary* provides a good counter example to keyword search (Blevins 2010). Spirituality emerges as an important theme in Ballard's diary, a late-eighteenth/early-nineteenth century text written over the course of three decades by a midwife in Maine. Yet a search for the keyword "God" misses numerous passages related to spirituality, as Ballard uses paraphrases such as "his great name to him who is kind to the Evle and unthankfull, whose tender mercies are over all his work" (Blevins 2010). Even a researcher with an expert grasp of how Americans in the late eighteenth century expressed their thoughts about religion and God would risk missing passages that did not conform to these expectations. In a series of electronic articles on the diary, Blevins demonstrates that a more productive approach is to let the corpus organize itself into coherent topics (Blevins 2010). The historian can then label the resulting topics with meaningful descriptions. Here, the computer algorithm is given the task of what it does best: counting words and calculating probabilities of term co-occurrence. The scholar is given the task of what he or she does best: applying domain expertise and experience for labeling and curating the topics.

This division of labor has significant implications for the extraction of meaning from large corpora. As opposed to keyword search which requires that the researcher know what to look for *a priori*, the topic modeling approach asks the algorithm to reveal latent semantic patterns in the data, and couples these latent patterns with expert-applied labels. The researcher can subsequently "curate" these labeled topics, weeding out uninteresting ones and focusing on those that appear promising for the research problem at hand. Since topic modeling algorithms can never "understand" the words they process and similarly cannot propose firm conclusions about the books they have "read," scholars must serve in those

crucial capacities.

In what follows, we present preliminary findings from three experiments that make use of STM as a means for sophisticated search in a large, unlabeled corpus and explore the extent to which this approach provides results that would be hard to achieve with keyword search.[5] The STM dashboard [see figure 2 as an example] provides the researcher with useful information including (a) visualizations that show topics as a word cloud and an n-gram cloud and that also allow the researcher to label the topics, (b) a bar-graph showing the number of text passages (chunks) per year, (c) a ranked list of text chunks, (d) a pie-chart showing the degree of saturation for any given selected text chunk, and (e) a drill-down method for not only reading the identified passage but also linking to the full work in Google Books. At the bottom of the screen, a simple network visualization of labeled topics (f) allows a researcher to move between topics with links based on shared passages in the sub-corpus. In this context, it is important to understand that LDA conceives of texts as a mixture of topics. In future implementations of the STM dashboard, a researcher will be able to upload a sub-corpus and select the number of topics to generate for that sub-corpus, as well as curate the generated model by providing labels for topics or deleting them (topic model curation).[6]

First Experiment: Natural Science, Naturalism and the Modern Breakthrough

The translation of Charles Darwin's publications in the early 1870s into Danish was a seminal event in Nordic literary history. Though an English-speaking elite could read *On the Origin of the Species* in 1859 and *The Descent of Man* in 1871, Peter Kjærgaard, Niels Gregersen and Hans Hjermitslev note that the translation of the original texts, "was an important step in the education of the public. Without the book[s] in Danish the public was easily misled by the voices of immature adherents... Being able to read the original work[s], they could now

witness for themselves" (Kjærgaard, Gregersen and Hjermitslev 2008, 150). At the time, progressive Danish intellectuals were in desperate need of transformative ideas from abroad in literature as well as in science. Conservatism and parochialism threatened to be triumphant, led in part by the Romantic leanings of Denmark's foremost scientist Hans Christian Ørsted who, in his non-scientific writings, set a tone of disinterest in Positivism.

Frustrated by the slow pace of change and the threat of backsliding, the radical literary critic Georg Brandes eagerly appropriated Darwin's ideas on natural selection as a weapon in his fight against Theocentrism, a notion that was quickly developing a stranglehold on intellectual and artistic trends. Although initially on the edges of the literary and academic establishment, Brandes, his brother Edvard (a leading journalist), and a close circle of artists and intellectuals echoed Brandes's passionate argument that "[w]riters should present nature, the world and the people in it as they were and, through that, work in the service of progressive ideas and social reform" (Kjærgaard, Gregerslev and Hjermitslev 2008, 149). Consequently, as Kjærgaard, Gregersen and Hjermitslev note, "Darwin was celebrated in Brandes's circle as founder of an entirely new—and to them correct—view of nature" (2008, 149).

At the beginning of the 1870s, Jens Peter Jacobsen, a young Danish botanist, began publishing articles explaining and promoting Darwinism in the journal, *Nyt dansk Maanedsskrift* [New Danish Monthly], a magazine that was closely allied with the Brandes circle. Jacobsen had previously received the gold medal from the University of Copenhagen given to the best thesis for his fieldwork on fresh-water algae but by the 1880s had largely abandoned his scientific endeavors to pursue literature. Suffering from tuberculosis, Jacobsen left Copenhagen and moved back to his parents' house in northern Jutland and began writing poetry and fiction. He is now recognized not for his botanical work, but rather

for his literary oeuvre and is considered to be one of Denmark's most important authors.

This position was solidified by his inclusion, despite his young age, in Brandes's *Det moderne Gjennembruds Mænd* [Men of the Modern Breakthrough] (1883), a defining work in Nordic literary studies. In Jacobsen, Brandes found an advocate of Darwin equally comfortable with the written page and the Petri dish, a characteristic entirely consistent with the goals of the Modern Breakthrough.

After honing his thoughts on Darwin by publishing summaries, interpretations, and commentaries, Jacobsen undertook a translation of *On the Origin of the Species*, published as one volume in 1872, and a translation of the first two volumes of *The Descent of Man*, published in 1874 and 1875 respectively. These were well received and widely read (or at least, widely purchased). Although the myth of Jacobsen as the first significant promoter of Darwinism in Denmark is likely apocryphal, his interpretive work and unabridged translations solidified his role as an important spoke in the scientific and literary networks of the time. Partly because of Jacobsen and Brandes's roles in promoting Darwin's work in Denmark, Darwin received as much interest in fields outside of the Natural Sciences as within (Kjærgaard and Gregersen 2006). Jacobsen himself wrote of his desire to "exchange the ancient poetry of Mystery with the new poetry of Law, [...] swap arbitrary, supernatural and personal Governance for a clear Order of Nature" (Jacobsen 1871a, 419).[7]

Given these developments, and the role of Darwin's writings in anchoring the push toward Naturalism, a challenge question immediately presents itself: Can we find traces of this shift to a natural-scientific understanding of society presaged by the translation of Darwin's works in the 1870s by Jacobsen in the larger corpus of Danish language works in Google Books? Beyond the works of Jacobsen, are there other literary works lurking in the Sea of the Great Unread that can help us explore the penetration of Darwin's ideas—granted

filtered through Jacobsen’s translational lens—into the broader literary world? As outlined above, our strategy is to let Jacobsen’s translations of Darwin organize themselves into “topic models” and then use these as the basis of our fishing expedition. Instead of presuming that we know which keywords best represent this Naturalist turn, we allow the algorithm to present groupings of “text chunks”—in this case paragraphs—that we label and curate.^[8] This labeled and curated sub-corpus topic model becomes the basis of the subsequent searches in the broader corpus of Danish literary texts. Presumably, if Danish literature is influenced by Jacobsen’s translations of Darwin, then we should discover many of these works ranked highly in the resulting search results.

Concatenating the Danish translations of *On the Origin of Species* and *The Descent of Man* and modeling the topics in these works at the level of one hundred topics generates some interesting results. One topic, that we label “social instinct,” is constituted by words and phrases such as *instinkter* [instincts], *folelser* [feelings], *sympathy* [sympathy], *moralske følelse* [moral feeling] and *selskabelige instinkter* [social instincts]:



fig 2: The topic, “Social Instincts”, and the STM dashboard.

Two of the top-rated passages of Jacobsen's translations of Darwin for this topic include:[9]

Social animals are partly impelled by a wish to aid the members of the same

community in a general manner, but more commonly to perform certain definite actions. Man is impelled by the same general wish to aid his fellows, but has few or no special instincts (Darwin 1871, 392).

I am aware that some persons maintain that actions performed impulsively... do not come under the dominion of the moral sense, and cannot be called moral... But it appears scarcely possible to draw any clear line of distinction of this kind; though the distinction may be real. As far as exalted motives are concerned, many instances have been recorded of barbarians, destitute of any feeling of general benevolence towards mankind, and not guided by any religious motive, who have deliberately as prisoners sacrificed their lives, rather than betray their comrades; and surely their conduct ought to be considered as moral (Darwin 1874, 96).

As hoped, the algorithm discovers a number of interesting texts that support the contention that Darwin's topics were influential outside of the natural sciences including several intriguing examples from the intellectual press such as the monthly *Det nye Aarbundrede* (The New Century).

In a reformist piece on the subject of "Det gældende Straffesystem" [The Current Penal System], a largely forgotten yet at the time influential Police Inspector, August Goll (1866-1936), laments the unfairness of Danish criminal law as "...truly a tragic conflict, in which Society as the strongest crushes the weakest, without the slightest moral right to do so—for in the zone of morality no dictate can apply" (Goll 1906, 409). A similar passage appears in *Kriminal-Antropologiske Studier over Danske Forbrydere* (Criminal-Anthropological Studies of Danish Criminals), in which the obscure physician and progressive prison reformer, Christian Geill (1860-1938), opines that "For the sociological school [of thought],

criminality is only one of the many symptoms of social illnesses; it is this sickness itself which must be attacked through treatment" (Geill 1906, 7). Although Goll and Geill are essentially unknown in Danish intellectual circles today, their work was instrumental in ushering in prison reforms at the start of the twentieth century, and their work on the rights and the humane treatment of prisoners—moving away from a position that criminals were born that way—still informs Danish theories of the prison today.

Although these first two passages are from a non-fiction work and an opinion article—revealing that questions related to Darwin's conception of "social instinct" had broad appeal across many fields—similar passages also appear in literature. For example, in Jakob Knudsen's (1858-1917) novel *Inger*, a man asks the parish minister whether he considers his affair with Inger to be dishonorable (*æreløst*). The minister responds:[10]

Yes, Ditlev, I must. And that is dishonorable you will notice more strongly and clearly each day it continues unfortunately. Because it is society alone that decides what is honor and what is shame. You have offended society's morals and laws, such as they are nowadays, and that is what counts (and must count) with respect to honor and shame—no matter how good a conscience you may have had in your own ignorance (Knudsen 1906, 253).

Popular (yet scandalous) at the time of its publication, *Inger*, which tells of a love triangle between a woman, her husband and her live-in lover has, in later years, been consigned to the Sea of the Great Unread. Despite the disappearance of all of these works from the "domain expertise" of current scholars, STM "redisCOVERS" them. In each of these passages—all chosen from a single year, 1906—Darwin's thoughts on the tension between human being and citizen, between the individual and society, is captured well.

A second topic, labeled "struggle for survival," invokes words and phrases such as

fight one another, defense against enemies, fight against, weapon, fight, defense, rivals, strength and occupation. The most saturated passage for this topic in the Darwinian texts is a description of polygamous birds “furnished with special weapons for fighting with their rivals, namely spurs, which can be used with fearful effect” (Darwin 1874, 311). Darwin nuances this language of struggle in *On the Origin of the Species* by noting (in another highly-ranked passage):

I should premise that I use the term Struggle for Existence in a large and metaphorical sense, including dependence of one being on another, and including (which is more important) not only the life of the individual, but success in leaving progeny. Two canine animals in a time of dearth, may be truly said to struggle with each other which shall get food and live. But a plant on the edge of a desert is said to struggle for life against the drought, though more properly it should be said to be dependent on the moisture (Darwin 1859, 50).

One of the most highly-ranked passages from literature published in 1906 is a paragraph from historian Hans Thorvald Olrik’s biography of the twelfth-century archbishop Absalon (Olrik 1909). Describing the development of a rebellion in Southern Sweden, Olrik writes:

In short, it was the earlier society, prehistoric society’s fight against the innovations and transformations of the Valdemar era and this rupture included the political, the religious and the social. Yet these counter-currents against the ruling powers were so uneven at first they could not immediately coalesce into a solid plan and clear desire. The Scanian Uprising was very hesitant at first, the common people barely knew what they wanted themselves, and threw themselves in a seemingly random fashion into the struggle first against the state, then against the Church and finally against the

upper class. But during the course of these events, the streams find each other, and finally the uprising becomes a foaming river, tearing into everything along the way, so the strongest forces in the country would have to come together in order to stem the danger (Olrik 1909, 46).

Olrik's metaphor is based on nature, comparing a conflict in human interests to one of geologic and hydrological forces. Here, Darwinian concepts of the "struggle for survival" have been incorporated in early twentieth century historiography, a development that Jacobsen and Brandes would likely have applauded. At the very least, this topic might be a useful investigatory tool to more closely examine metaphors of naturalized conflict in both history and fiction writing in early twentieth century Denmark.

Second Experiment: Missing Authors of the Modern Breakthrough

The naturalist turn in literary circles was a significant break—perhaps the most significant break—in Danish literary history. Yet, for many years, the break was traced almost exclusively in the work of the small number of authors that Brandes identified as the men of the Modern Breakthrough (1883). As such, Danish literary history, and the impact of the work of Darwin on the literary landscape, was largely constrained to a handful of canonical authors. It was not until 1983, with Pil Dahlerup's *Det moderne gennembruds kvinder* [Women of the Modern Breakthrough], that women were included in the canon of the Modern Breakthrough, and perhaps only begrudgingly so. Dahlerup's book was more important in that it challenged the general canonical premise of Nordic literary history: if we missed all of these women authors and their quite interesting and engaging works, what else were we missing?

In this second experiment, we approach this problem of the "Missing Authors of the Modern Breakthrough." To address it, we modeled representative work from Jacobsen's

fiction and that of two other “Men of the Modern Breakthrough”, Sophus Schandorf and Holger Drachman. This trawl line, tuned to the Modern Breakthrough as defined by Brandes and expressed in the works of these three canonical authors, should catch passages from other authors recognized as Modern Breakthrough authors; ideally, if one accepts Dahlerup’s underlying premise that the seventy women whom she identified as having their literary debut during the heyday of the Modern Breakthrough contributed to the contours of the Breakthrough, STM should also place passages from their work among the results with high topic saturation. A successful result would also include the identification of relatively unknown authors or texts (and passages) among these highly-ranked search results.

The Modern Breakthrough, modeled at fifty topics, provides some interesting results but, as with the other experiments, also brings to the fore the somewhat unpredictable nature of the Google Books corpus—a fairly large number of indices, statistical compendia, and catalogs tend to overload the topic models, returning these in very high ranked positions. At fifty topics, this problem is somewhat easier to ignore, while at lower levels, the initial rank list of “saturated” passages can at times be overwhelmed by these “junk fish.” A refinement to our tool would allow the researcher to rapidly clean the target collection of uninteresting results and rerun the algorithm in an iterative fashion. That said, the results of modeling the Modern Breakthrough offers some interesting results.

One topic, focusing on a woman’s thoughts, uncovered several interesting passages from a work by Magdalene Thoresen (1819-1903), a relatively obscure female writer mentioned in Dahlerup’s work. Thoresen began her career as an author in the period between the Golden Age of Danish Romanticism and the Modern Breakthrough, with a short story, “En Aften i Bergen” (1858). As she developed as an author, the relationship between the sexes became one of her main themes, in line with the gender debate that was a

main focus of the Modern Breakthrough. Not surprisingly, the topic also captures passages from several male Modern Breakthrough authors as well. Passages from Thoresen's work, *Elvedrag og andre fortællinger* (1893), are saturated with another topic as well, labeled "her self" and constituted by words such as *hende* [her], *hendes* [hers], *hendes fader* [her father], *hendes øjne* [her eyes]. The topic interestingly also captures passages from Bjørnstjerne Bjørnson, Norway's leading Romantic nationalist author, Evald Tang Kristensen's collections of legends (see below), and a tragedy by the Nobel prize-winning Modern Breakthrough author Karl Gjellerup. A topic that quite by chance appears directly below this in our topic curation browser—a topic related to "intelligence"—reveals numerous passages from Darwin (!) and Gjellerup:



fig. 3: The topic “her self” and “intelligence” as seen in the topic curation interface.

Thoresen is not, however, the only woman writer that STM identifies.

Perhaps one of the least well-known, but fascinating female authorships, of the late nineteenth century is that of Alfhilda Mechlenburg (1831-1908) (Dahlerup 1983, 148-151). The daughter of an Army Captain, Alfhilda spent much of her youth in Sønderjylland along

the German border, but moved in her late teens to Norway. After the tragic death of her husband and her child, she returned to Denmark where she began a writing career, a career that her two younger sisters had already engaged. Mechlenburg was hardly an adherent of the Modern Breakthrough ideals, but was rather initially caught up in a Romantic idealism that, as with Bauditz's neo-Biedermeier oeuvre, was extremely popular. In Mechlenburg's case, she was able to capture a very large portion of the largely urban, literate female reading public even though she published under the male pseudonym Ivar Ring. By 1882, Mechlenburg had managed to become one of the authors funded by the state budget, which freed her up to write even more including her collection of short stories, *I Vaar* (1895). In a somewhat hard to interpret topic that deals with men, little girls, god, black robes and shouting, passages from this collection appear along with Wied's *Ungdomshistorier* (1895), while another topic related to longing, death and inheritance places passages from her work not only alongside this work by Wied, but also Edvard Brandes's three act play, *Muhammed* (1895).

The list of late nineteenth century woman writers from whose works passages are recognized as being allied with better known male writers from the Modern Breakthrough is surprisingly large, and reveals the extent to which STM can be used to identify both authors of interest but also passages of interest. Anna Erslev (1862-1919), another of the female authors discussed by Dahlerup (1983, 400-420), appears most dramatically in a topic related to delight and disagreement—an interesting juxtaposition that in some ways captures the tensions that the Modern Breakthrough wanted to bring into art. Erslev's lyrical "folk historical" play about the ancient Danish king Valdemar was a bit of a departure from her focus on children's literature (a pedagogical endeavor that associates her with Carl Ewald and his translation of the Grimms' fairy tales, see below), yet aligned her with progressive

ideas about education that were catching on in Denmark. Perhaps more interesting is that STM's passage identification places her work close to that of Amalie Skram, long considered to be the leading, progressive feminist voice in late nineteenth century Scandinavian literature.

It is not only the relatively unknown female authors whose works are caught by the Modern Breakthrough trawl line. Rehearsing all of the intriguing and relatively unknown passages that (a) exhibit a degree of latent similarity with the main works of the main Modern Breakthrough authors and (b) exhibit that same similarity with known but less canonical works would be an exhausting exercise. Nevertheless it is worth noting that many of the caught passages come from authors whose work was later disregarded as not being central to the Modern Breakthrough or was otherwise ignored as it complicated the picture of the period. Vilhelm Østergaard's novel, *Danmarks Vovehals* (1894), a historical novel about Peder Skram, a nearly legendary sixteenth century Danish military adventurer, is clearly one such work. Interestingly, Østergaard played an important role as a consultant at Gyldendal, editing the "Gyldendal library" of Danish literature (175 volumes) and this broad literary exposure to the leading authors of the nineteenth century emerges in his picaresque engagement with different styles, his debut collection of short stories echoing the far more famous H. C. Andersen, his later works picking up on themes from Schandorf, while his theatrical work was largely comprised of dramatizations of several of Sophus Bauditz's novels. Østergaard's novel about Skram stands as a weak echo of J.P. Jacobsen's *Marie Grubbe* and, like the rest of his authorship, while popular in its time, never broke through into the canon.

The Modern Breakthrough is far too central a phenomenon in Nordic literary history to be able to explore its complexities here. Nevertheless, STM offers a novel method for

finding evidence to help explore these complexities. Indeed, the discovery of interesting intersections and juxtapositions of not only authorships but also individual passages is a key advantage to this method over more standard search methods. Adding more authors to the mix, particularly given STM's uncanny ability to snag unknown or forgotten ones, is a key element in the struggle for increased recall in Humanities research. While STM will not supplant analysis and hard work in the archives, it does offer the opportunity to develop a more sophisticated map of the intersections of authors, known and unknown, during this period of considerable artistic upheaval in Denmark and the Nordic countries.

Third Experiment: Folklore, Regional Literature and the ‘Folk Breakthrough’

Most casual observers of Danish literature are aware of the central place that Hans Christian Andersen (1805-1875) occupies in Nordic literary history, a reputation solidified by the international success of his “Fairy Tales.” Yet H.C. Andersen was hardly the only Danish author to engage folkloric themes in his literary oeuvre, and the impact of folklore on the literary landscape extended far beyond the limited realm of Andersen’s authorship. Folklore collection became an important endeavor in the early nineteenth century in the aftermath of the disastrous Danish alliance with Napoleon and the subsequent national bankruptcy in 1814. As with many other European countries, folklore collection was closely tied to national Romantic movements, and this is perhaps best exemplified in the writings of Svend Grundtvig (1824-1883), the son of Denmark’s most famous national Romantic theologian. Grundtvig’s entreaties to Danish schoolteachers and local historians to collect the “national treasure” of ballads as a reflection of the unique poetic creativity of the Danish folk motivated a young schoolteacher, Evald Tang Kristensen, to begin his collecting in 1864 (Grundtvig 1843). Over the course of the next six decades, Tang Kristensen crisscrossed the Danish countryside, amassing a folklore collection of more than 24,000 manuscript pages.

As Tang Kristensen became increasingly well-known among his fellow schoolteachers and local historians, his collection became both a model for other collections of largely local storytelling and an inspiration for the burgeoning interest among the small yet active rural intelligentsia in the study of dialects and everyday life in the countryside. This group spearheaded a distinctive and important development in Danish literary history that has been coined the “Folk Breakthrough”, a clear response to the pendulum swing toward Symbolism that followed in the aftermath of the Modern Breakthrough, yet one that resisted the pessimism of the Modern Breakthrough and the decadence of the fin-de-siècle Danish novel. The Folk Breakthrough was characterized by its emphasis on region over nation, the rural over the urban; authors of this movement have often been characterized as members of the turn toward “*Hjemstavns litteratur*” [Regional literature], a genre that became increasingly popular in the early decades of the twentieth century.

Unlike the Modern Breakthrough that looked to Brandes as a unifying, theoretical voice, the Folk Breakthrough had no main intellectual anchor figure. Jeppe Aakjær, who learned about folklore and Jutlandic dialects directly from Tang Kristensen, was perhaps one of the most articulate and best recognized of these emerging authors (Tangherlini 1999). He traced many of his thematic influences not only to Tang Kristensen and the Jutlandic peasantry, but also to Steen Steensen Blicher. Somewhat confusingly, Blicher is generally considered to be among Denmark’s foremost Romantic poets while, at the same time, one of Denmark’s earliest Naturalists (Aakjær 1903-1904; Brix 1916). This shifting interpretation of Blicher’s position in Danish literary history is not only representative of the unsteady ground that marks the late nineteenth century in Danish literature but also of the inadequacy of models that insist on a single assignation for an authorship. STM helps reveal that not all engagements with folklore, the countryside and everyday rural life were nostalgic examples

of Biedermeier literature (a rural idyllic representation of country life resting on a bed of Romanticism), unapologetic Romantic peons to the Nation, or realistic engagements with the natural. Indeed, in later years, Johannes V. Jensen (1873-1950) with his influential *Himmerlandshistorier* (1898-1910) was held up as the leading figure of the *Hjemstavnslitteratur*, thereby again revealing the profoundly fractured nature of the Folk Breakthrough.

Rural motifs are remarkably common in Danish literature from the nineteenth and early to mid twentieth centuries. While passages from major works, such as Herman Bang's *Ved Vejen* and J.P. Jacobsen's *Marie Grubbe*, are easy enough to discover, largely because they form part of the canon, discovering lesser known works, or discovering the intersection of folkloric topics with the broader corpus of Danish literature, is considerably more difficult. Despite this difficulty, discovering a broad range of passages depicting everyday rural life may allow us to better understand the complex and at times contradictory reliance on the rural in Danish fiction. Importantly, the goal is not to discover retellings of fairy tales or legends.[11] Rather, the underlying idea is that by modeling a comprehensive collection of folklore, the general "feel" of rural life embedded in the folklore can be used to discover literary works that attempt to capture that same "feel." An ideal series of results would capture not only other collections of folklore but also literary works that engage the rural, from the conservative and Romantic Biedermeier literature of the mid-1800s, to the Naturalist engagement with the rural in the Modern Breakthrough, to the emergence of rural regional literature from the Folk Breakthrough.

To devise our folklore trawl line, we modeled ~34,000 legends from Tang Kristensen's collections (Tang Kristensen 1892-1901; 1928-1939), deriving 100 topics from the collection. Not surprisingly, when we set out on the Sea of the Great Unread with this line, we caught passages from several other collections of folklore, including printed versions

of Tang Kristensen's folklore collections, other volumes of collected folklore, and literary reworkings of fairy tales. More importantly, we discovered a very large number of passages from literary works, known and unknown, that were closely related to these folkloric topics.

An interesting find that illustrates the intersection between the folkloric and the literary is a passage from Herman Bang's *Haablose Slægter* (1880). For a topic we labeled "death and churchyards," the following passage from Bang appears:

Yesterday, when I saw him, I came to think—God knows how—about a starving dog, no, not starving, but a miserable, tired, emaciated dog that lies still, eyes heavy and dies on his master's grave. And I don't know, but now I find this picture striking: thought, the controlling, the dominant forces in him have died, and now he spiritually starves to death on his dead master's grave (Bang 1880, 319).

While considerably more poetic and certainly more overtly pessimistic than most legends about cemeteries, Bang captures well the uncanny, perhaps supernatural, connection in folk belief between dogs and their masters after death. Another topic that we labeled "Shooting and Witches," generated by words such as *skyde* [shoot], *jagt* [hunt], *bøssen* [rifle], *hare* [hare], captures passages from works as disparate as a chorographic work on Vendsyssel (a northern Jutlandic region) and passages from Blicher's collected short stories (Blicher 1907). Other passages that appeared on the line included ones from works by Holger Drachman, J.P. Jacobsen, the Norwegian Bjørnstjerne Bjørnson, and several other well-known authors. Similarly, a topic on horses and wagons—a rural topic if ever there was one, confirmed by its capture of passages from Jeppe Aakjær's *Vadmels folk* (1919)—discovered several passages by an interesting, yet somewhat obscure, *hjemstavns litteratur* author, Jakob Nielsen (1830-1901). Finally, another typical rural topic which we labeled "the minister," defined by words such as

præst [minister], *præstegården* [parsonage], *kjole* [robes], *krave* [collar] and *genganger* [revenant], not only discovers passages from Aakjær's biographical work on Blicher (1904), but also passages from one of the most important (and therefore most spectacularly forgotten) neo-Biedermeier short-story writers, Sophus Bauditz (1850-1915). Bauditz's fiction sold tens of thousands of copies at a time when most Danish literature only sold in the low thousands, and his audience was comprised largely of the emerging urban middle classes. Bauditz, in the discovered passage from this novel, masterfully captures the urban middle class nostalgia for an idyllic rural past that had never actually existed. In contrast to the reactionary Bauditz, the topic also captured passages from Carl Ewald's starkly realistic historical novel, *Den største i landet* (1905). Ewald, whose ideological orientation was diametrically opposed to that of Bauditz, was no stranger to folklore and the rural, having translated Grimm's fairy tales and rewritten Danish fairy tales and legends, in the belief that these stories could teach children Darwin's ideas about nature and evolutionary forces.

In a series of explorations focused on a twenty-year period that effectively covers the main period of the Folk Breakthrough (1890-1910), the trawl discovers a remarkable series of passages and works from largely unknown authors. So, for example, the topic, "Wild Hunt," identifies a passage from Gustav Wied's *Barnlige Sjæle* (1893) in which Wied writes: "I samme øjeblik, han vendte sig om, gik der en Gysen igemiem mig, en Gysen af Uhygge og Medfølelse!" [At the same moment that he turned around, a shiver went up my spine, a shiver of horror and compassion], capturing the eerie response that witnesses report in legend's about encountering the wild hunt. Wied is often considered to be a marginal figure in the Modern Breakthrough, his authorship marked both by social critique and an emphasis on rural motifs; it is thus fitting that even his relatively unknown works are caught on the trawl line. The topic of reading the Danish black book, *Cyprianus*, provides a series of equally

interesting results, retrieving not only passages from Alfred Lehman's historical work, *Overtro og Trolddom fra de ældste Tider til vore Dage* (1896), but also from Bang's *Udvalgte Fortællinger* (1899), Aakjær's short story "Hædersgaven" (1915), and Magdalene Thoresen's (1819-1903) lesser known short story, "Studenten" (1863). Perhaps most interesting is the discovery of a passage from the long forgotten work *Af Kains Slægt: En nutids fortælling* (1899) by Axel Thomsen (1875-1951), one of the most obscure writers of the Folk Breakthrough. The novel was originally positively refereed for a press by the famous Modern Breakthrough author Henrik Pontoppidan, but was essentially forgotten after its publication. Thomsen is interesting precisely because he is no longer known, absent from most standard literary histories and biographical encyclopedias, despite publishing sixteen works, most between 1919 and 1927, many of which include folkloric themes and descriptions of rural life.[12]

Modeling the folklore corpus is an excellent method for discovering literary passages that deliberately attempt to capture aspects of peasant life even if the authors come from wildly divergent ideological positions—this type of recall is difficult to reproduce in traditional searches as those searches inherit the biases of the researcher. The relative lack of bias in the topic modeling approach, conversely, produces intriguing results that include passages from authors who reflect a broad range on the ideological spectrum. So, for example, passages from *Inger*, the novel by Jacob Knudsen mentioned earlier, appear in a topic related to serving maids, while a topic related to shooting identifies a passage from Otto Rung's early novel, *Sidste Kamp*. Although Rung is more known for his detective fiction set largely in Copenhagen—and thus not a likely author to look to for descriptions of Danish rural life—the largely ignored *Sidste Kamp* does indeed include such descriptions. Similarly, a topic labeled "serpents," discovers an unusual work on the animal world of the fairy tale by yet another long forgotten schoolteacher authors of the Folk Breakthrough,

Ingvar Bondesen (1844-1911) [figure 4]:

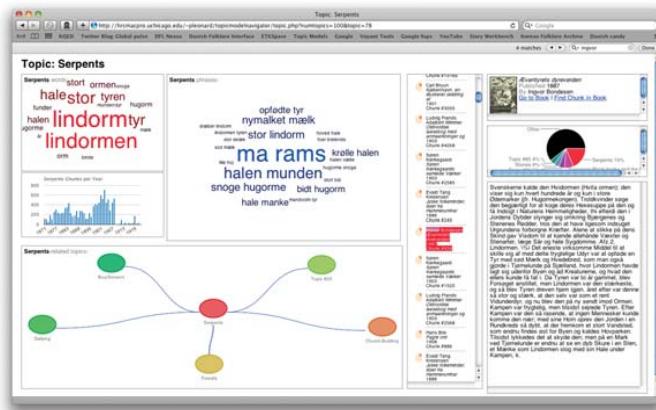


fig. 4: The topic “serpents” and an identified passage in the forgotten work by Bondesen.

Unexpected—and thus welcome—results are the norm rather than the exception in STM.[13]

Conclusion

Literary history has a tendency to draw lines in the sand, distinguishing the characteristics of one movement from another. As a result, literary movements are often conceptualized in the context of sharp breaks, and authorships are often parceled out as belonging to one movement or another. In our preliminary work described above, the inadequacy of these distinctions becomes increasingly apparent. Although the polarizations of “movements” might apply thematically or even stylistically to those “defining members” of a school or a movement, the vast majority of artistic expression falls somewhere in between. Similarly, clearly demarcated lines of distinction—Author X is a Romantic, Author Y is a Naturalist, and so on—do not hold up to the scrutiny of hundreds or thousands of examples. Rather, what becomes apparent from reading (or at least modeling) the Sea of the Great Unread is that literary movements and counter movements are characterized by a

great deal of borrowing, overlap and intersection.

STM provides interesting insight—and the evidence to support that insight—into the complexities of even relatively small literatures. In the past, thematic research questions were often driven by a reading of the canon—for instance, how does Jacobsen characterize the fight for survival? Similarly, historical research questions often built outwards from a center of presumed communities of influence—how did the regional literature movement of the last years of the nineteenth century and the early twentieth century recapitulate the Naturalism of the Modern Breakthrough while incorporating aspects of nostalgia while breaking with the Symbolists? STM allows for both of these approaches, while casting a much wider net. Now, given a sub-corpus, be it the works of Darwin (hypothesized to have significant influence on the Modern Breakthrough writers), the works of Jacobsen, Schandorf and Drachman (hypothesized to be representative of the Modern Breakthrough), or a large collection of Danish folklore (hypothesized to be inspirational for the Folk Breakthrough), the researcher can discover passages that can help support or broaden their understanding of these movements. Reversing the approach helps to illuminate another important aspect of STM. By curating the topics modeled on the sub corpus, the researcher becomes aware of topics that might now otherwise have informed the research. If the algorithm had never suggested a topic, would one ever derive a series keywords that link together material as disparate as criminology journals, university speeches and a novel written by a priest? This type of recall—and the intellectual value added by this recall—can only help broaden our understanding of the complexity of literary history.

Ultimately the researcher is responsible for fashioning raw bits of textual evidence into a convincing argument that can stand on its own merits. In the past, Humanities research has largely relied on arbitrary, albeit directed, methods of discovery: reading the

scholarly literature on the subject, combing through secondary sources, asking colleagues for advice, relying on past experience and serendipity. Individual authors often escaped inclusion in the canon (however defined), and as the years passed, the chances of their prose emerging from darkened library shelves grew slimmer. With the emergence of larger and increasingly comprehensive collections of machine-actionable texts, researchers can now access many more works than before. At the same time, the large number of texts speaks of the need for flexible finding aids. STM allows scholars to take advantage of their hard won domain expertise and the long history of scholarship that exists in most fields, while wedging this existing knowledge to methods for rapidly discovering potentially unknown or inadvertently overlooked passages. As we illustrate in the preliminary experiments above, the results are complicated and subject to interpretation and thus require the input of domain experts. The experiments do reveal the ability of STM to increase recall for any given corpus without sacrificing precision (indeed, the sub-corpus selection is based on the precise searches of years past). Yet unlike keyword searches, these searches are easily reproduced. Consequently, Humanities corpus discovery moves away from being a game of “gotcha” or one based on access to one that takes advantage of domain expertise and the increased accessibility of resources in a digital age.

In his 1871 essay “Menneskeslægtens Oprindelse” (The Origin of the Family of Man), J. P. Jacobsen claimed,

If one accepts the teachings of evolution... then Man will no longer regard himself as an exception from the laws of nature, but will begin notice these rules in his own actions and thoughts, and strive to place his own life in congruence with the laws of nature (Jacobsen 1871b).[14]

Jacobsen’s proposal that the laws of nature necessarily organize human behavior and society

given Man's position as an inextricable part of nature had a significant impact on the Nordic literary realm. But how far across the literary and intellectual realm did this influence reach, and how far up into the twentieth century did these ideas echo? Are there authors—such as the women identified by Dahlerup—who inflected these ideas in their authorship but for various reasons were ignored or deliberately left out of the broader canon? Similarly, in the aftermath of the Modern Breakthrough, as different literary movements took root, and the access to the literary world became democratized, is it possible to discover commonalities across the corpus related to a particular field such as folklore and normal people's descriptions of their everyday life? These questions are hardly unique to Nordic literature, but rather address substantive issues confronting Humanities scholars as access to very large corpora of digital texts becomes commonplace. STM can now be added to the fishing tackle of Humanities scholars as they head out onto the Sea of the Great Unread.

Notes

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[1] Google's n-gram browser provides a simple version of this type of modeling—while it is fun to play with, it has very limited usefulness in the study of literature (Michel et al, 2011).

[2] “Largely arbitrary” as matters of reception, sales, publication, circulation, critical reviews and so on contribute significantly to the recognition of a literary work as exceptional. Those works that have “staying power”—that are able to engage critics for a considerable period of time—are those that enter the canon. At the same time, despite the impression of immutability, the canon often changes radically over time so that unknown works can suddenly become known (and canonical), while well known (and canonical) works can suddenly fall out of favor and disappear from the canon altogether. Methods for predicting works that are likely to enter the canon would be an intriguing addition to the tools available for Humanities scholars working with these large and dynamic digital corpora.

[3] Extending this admittedly forced fishing metaphor, one can equate earlier, canonical approaches to search as fly-fishing, where the fisherman deliberately selects lures that will only entice fish that he already knows are in the river. Conversely, nonselective search can be likened to tossing a stick of dynamite into a pond—all things that were in the pond float to the surface, to be later sorted through. Our approach intends to lie somewhere in between.

[4] As we are not applied mathematicians, we allow others to explain the statistical methods that undergird this approach (Ng, Blei and Jordan 2003).

[5] The STM trawl lines uses as hooks a measurement of topic saturation. The *topic saturation measurement* algorithm calculates the degree of “saturation” (or match) between a sub-corpus topic and a text chunk in the unlabeled corpus and returns a researcher-defined set of the highest ranked passages (for these experiments, this limit was set at 200).

[6] Currently, topic model curation is done via a different interface.

[7] The Danish reads, “Vi ombytte Underets gamle Poesi med Lovbestemthedens nye Poesi, vi byte en vilkårlig, overnaturlig personlig Styrelse med en klar Naturordning.”

[8] Using paragraphs as text chunks may not be optimal. Yet, it does recognize that, for most writers, paragraphs tend to focus on a single topic.

[9] These are Darwin's original English, the Danish translation rendered by JP Jacobsen in 1875 read: "Selskabelige Dyr blive tildels drevne af et Ønske om at hjælpe Medlemmerne af samme Selskab i al Alminde lighed, men hyppigere til at udføre visse bestemte Handlinger. Mennesket ledes af det samme almindelige Ønske om at hjælpe sine Medmennesker, men har få eller ingen særegne Instinkter." Jacobsen's 1874 translation of the second quote reads, "Jeg veed vel at Nogle hævde, at Handlinger, der udføres ifølge en øjeblikkelig Drift, således som i det ovenfor nævnte Tilfælde, ikke have Noget med den moralske Følelse at gjøre og ikke kunne kaldes moralske... Men det synes neppe muligt at drage nogen skarp Grændselinie her, omendskjøndt der jo i Virkeligheden nok er nogen Forskjel. Hvad disse ophøjede Motiver angårer, så har man mange Exempler på, at Vilde, der mangle enhver Følelse af almen Menneskekjærlighed og som ikke ledes af nogen religiøs Bevæggrund, at de, når de ere blevne tagne tilfange, med Overlæg have offret deres Liv hellere end at forråde deres Kammerater; og denne deres Opførsel må ganske vist ansees for moralsk."

[10] The Danish reads, "Ja, Ditlev, det er jeg nødt til. Og at det er æreløst, det vil I desværre få stærkere og tydeligere at mærke med hver Dag, der går. Thi det er Samfundet, der alene bestemmer, hvad der er Ære, og hvad der er Skam. I har krænket Samfundets Moral og Love, sådan som de nu er; og det er det afgjørende, og må være det, med Hensyn til Ære og Skam, — i hvor god en Samvittighed I end måskee i jeres Uvidenhed kan have haft."

[11] In other work, we show how a multi-modal network model can be used to discover improperly classified documents in a large folklore collection (Abello, Broadwell, Tangherlini 2012).

[12] He is included in Th. Lind's *Gyldendals forfatterleksikon* (1914) and the membership rolls of the *Dansk forfatterforening* [Association of Danish Authors] (1919), and in *Dansk skønlitterært forfatterleksikon 1900-1950* (Dahl and Engelstoft 1959-1964).

[13] Granted, there are some refinements that can be made to our net. Currently, the “Sea of the Great Unread” includes works from many disciplines, and is not solely a collection of unread fiction. Unfortunately, the metadata included with many “big data” collections is insufficient to make a reasonable sort on fiction and non-fiction. Consequently, in our current work, we have left the major collection unfiltered—this results in the “capture” of many works that need to be thrown back.

[14] The Danish reads: “Antager man Afstamningslæren, saa vil Mennesket... ikke længere betragte sig som en Undtagelse fra Naturlovene, men vil endog begynde at se efter det lovmaessige i sine egne Handlinger og Tanker og stræbe efter at faa sit eget Liv i Overensstemmese med Naturlovene” (Jacobsen 1871b, 121).

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Appendix: Technical Considerations

Danish orthography was in flux from the 1870s through the spelling reform of 1948.

In the closing decades of the nineteenth century, there is a gradual shift from using the double-a to the a-ring (for example from *haar* to *hår*). Doubled soft vowels are reduced to single vowels (*veed* to *ved*, *riig* to *rig*), and the letter *j* is dropped following *k* and *g* before *e*, *ø*, and *æ* (*kjær* to *kær*). Though these spelling changes often affect only unimportant words (prepositions such as *paa/på*, “upon”), we have normalized these variations in order to extract as much usable information from the texts as possible. We also eliminated some texts that were improperly recognized by Google’s OCR apparatus—many books published in Denmark during this period were set in *Fraktur* (or Blackletter) type, mirroring German practice. Although some of these texts were parsed correctly with a *Fraktur*-specific OCR module, others clearly were processed by software expecting Latin letters with predictably poor results. Additional preprocessing included removing hyphens at the end of lines that divided words, and “chunking” the literary texts into rough paragraphs using a regular expression. Though imperfect, these steps were necessary to provide consistent, granular units of text.

The “STM dashboard” presented in some of the screenshots in this paper is a prototype. It visualizes output from the Mallet machine-learning toolkit (McCallum 2002). For the first and third experiments, we somewhat arbitrarily set the number of topics at one hundred; for the second experiment, we set the number of topics at fifty. Future versions of this tool will allow the researcher to generate topics at numerous levels of granularity, with a concomitant increase in the recall of searches based on those various topics.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHitrust, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

**THE LIBRARIES' STATEMENT OF MATERIAL FACTS
IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT
ON FAIR USE AND LACK OF INFRINGEMENT
UNDER SECTION 106 OF THE COPYRIGHT ACT**

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, the Defendants in the above captioned action (the “Libraries”) respectfully submit, in connection with their motion for summary judgment on fair use and lack of infringement under Section 106 of the Copyright Act, the following statement of material facts as to which there is no genuine issue to be tried.

The Core Functions of Academic Libraries

1. Academic libraries buy works for academic and scholarly pursuits. (June 28, 2012 Declaration of John Wilkin (“Wilkin Decl.”) ¶ 11.)
2. Academic libraries curate, maintain, and preserve works in their collections. (*Id.*)
3. Academic libraries help scholars and students identify works pertinent to their pursuits. (*Id.*)
4. Academic libraries make works within their collections available and accessible consistent with applicable law. (*Id.*)
5. The Libraries are non-profit educational institutions. (*Id.* ¶¶ 8, 55, Ex. B.)

Acquisition of Works by the Libraries

6. Academic libraries acquire works to satisfy anticipated future demand by their patrons. (*Id.* ¶¶ 13, 17–19, 21.)
7. When there is increased demand for a particular work, academic libraries will try to purchase additional copies of that work. (*Id.* ¶ 13.)
8. Each year the Libraries spend tens millions of dollars acquiring new works. (*Id.* ¶ 14.)

9. Most works go out of print after the initial print run and once that print run is sold out, it can be difficult if not impossible for libraries to obtain additional copies of the work. (*Id.* ¶¶ 20–21.)

Deterioration of Works in the Libraries' Collections

10. Books, in their physical form, are inherently subject to damage, deterioration and loss. (*Id.* ¶ 22.)

11. Books published between 1850 and 1990 are particularly at risk of damage, deterioration and loss because books published during this time period were generally published on paper with high acid content. (*Id.*)

12. Paper with high acid content degrades far more quickly than paper with low acid content because the fibers that comprise paper degrade when acid meets the moisture in the air. (*Id.* ¶ 23.)

13. As of 2004, the University of Michigan library (the “UM Library”) estimated that about half of its collection—approximately 3.5 million books—was printed on paper with high acid content, *i.e.* on paper that is particularly vulnerable to deterioration and, ultimately, loss. (*Id.* ¶ 25.)

14. The process of searching the vast collections of academic libraries such as the UM Library can take so long that by the time the library identifies the most imperiled books from the millions potentially at risk, it is too late and the books is lost. (*Id.* ¶ 26.)

15. Gradual disintegration is not the only threat to books in the academic libraries. Loss from theft, vandalism, fire, and floods presents an ever-looming threat. (*Id.* ¶¶ 30–31.)

16. Just last week the library at the University of Wisconsin Superior (“UW Superior”) suffered a catastrophic loss of a portion of its collection as a result of flooding. (June 28, 2012 Declaration of Faith Hensrud (“Hensrud Decl.”) ¶¶ 6–20.)

17. The flooding of the UW Superior library destroyed approximately 25-30% of the books in the library’s collection, and approximately 70% of the periodicals. (*Id.* ¶ 17.)

In The Past It Has Been Difficult and Sometimes Impossible for Academic Libraries to Help Scholars Identify Works of Potential Interest

18. Academic libraries aid scholars in the identification of relevant works. (Wilkin Decl. ¶ 33.)

19. The immense collections housed by academic libraries would be significantly diminished without reliable and efficient search methods and related technology. (*Id.*)

20. Until relatively recently, most searches of a library’s collection relied on a physical card catalog. (*Id.* ¶ 34; June 26, 2012 Declaration of Dr. Stanley N. Katz (“Katz Decl.”) ¶ 5.)

21. Each card contained limited information concerning a particular work, including its title, author, publication date and publisher and limited information concerning the work’s subject matter. (Wilkin Decl. ¶ 34; Katz Decl. ¶ 5.)

22. Online catalogs emerged in the 1970’s but searches of such databases were still limited to the work’s basic bibliographic data, namely, author, title, subject. (Wilkin Decl. ¶¶ 35–36; *see also* Katz Decl. ¶ 8.)

23. A work that contained information of great importance to a researcher would not be discoverable by that researcher unless the work’s title, subject headings, or other limited bibliographic data happened to contain certain key words or other evidently pertinent information. (Wilkin Decl. ¶¶ 36–37.)

Digitization of Works With the Libraries' Collections

24. In the late 1980's academic libraries such as the UM Library began converting works at risk of damage, deterioration and loss to digital format. (*Id.* ¶ 39.)

25. Academic libraries began digitizing at risk works in order to ensure that they would be available for future scholarly pursuits even in the event that the work in physical form was lost and the libraries could not find a replacement copy at a fair price. (*Id.* ¶ 41.)

26. Academic libraries such as the UM Library found that given the enormous size of their collections they could not digitize and, thereby, preserve deteriorating works quickly enough. (*Id.* ¶ 42.)

27. During this time period academic libraries lost irreplaceable volumes which, as a result, have vanished from the academic and cultural landscape. (*Id.*)

Google's Involvement in the Libraries' Digitization Efforts

28. Prior to Google Inc.'s ("Google") involvement in the UM Library's digitization efforts, at its then rate of scanning, it would have taken the UM Library more than 1,000 years to digitize the UM Library's then over 7 million volumes. (*Id.* ¶ 44.)

29. In 2002, the UM Library began speaking with Google about its interest in digitizing the UM Library's entire library collections in less than a decade. (*Id.* ¶ 45.)

30. In late 2004, the University of Michigan entered into an agreement with Google under which Google would convert hardcopy books from the UM Library collections to a digital format and provide digital copies of those books to the University of Michigan. (*Id.* ¶ 46, Ex. A.)

31. In return for giving Google access to books in the UM Library collection, Google was required to give the UM Library a digital copy of the works digitized by Google. (*Id.* ¶ 47.)

32. The University of Michigan bargained for this right because it was important to it that it had the right to control its own uses and satisfy its primary missions of providing specialized services to the blind or other persons with disabilities. (*Id.*)

33. If the Libraries digitized only select portions of their collections they would not have achieved their goals of providing a comprehensive search tool; nor would they have accomplished their goals of providing equal access to students with print disabilities or preserving all imperiled works. (*Id.* ¶¶ 48–51.)

34. While the University of Michigan’s library was the first academic library to work with Google in connection with what would become the “Google Book Project,” Google ultimately partnered with each of the Libraries as well as such universities as Harvard University, Stanford University, Oxford University, Columbia University, Princeton University, the University of Virginia, and the University of Texas at Austin, among others. (*Id.* ¶ 52.)

35. The benefits to society—in preserving books, making them accessible to people with print disabilities, and enabling people to find them—increased significantly with each institution that digitized books from its collections. (*Id.*)

The Formation of HathiTrust

36. In 2008, the University of Michigan formed HathiTrust, named for the Hindi word for elephant, “hathi,” evoking the qualities of memory, wisdom, and strength symbolized by elephants. (*Id.* ¶ 53.)

37. HathiTrust was formed because the Libraries concluded that by working together and pooling resources they could better serve their common goals of collecting, organizing, securing, preserving and, consistent with applicable law, sharing the record of human knowledge. (*Id.* ¶ 54.)

38. Pursuant to the HathiTrust mission, participating members combined their digitized collections in order to provide more secure, long-term storage for the works, more comprehensive research and discovery tools, improved access to works in the public domain and improved access to works for students and faculty with print disabilities. (*Id.* ¶ 55.)

39. The University of Michigan and HathiTrust's purposes are non-profit, educational purposes. (*Id.* ¶¶ 8, 55, Ex. B.)

40. The Libraries' digitization efforts do not diminish their acquisitions of in-copyright material (digital or otherwise). (*Id.* ¶¶ 16, 69.)

The Composition of the HathiTrust Digital Library ("HDL")

41. The combined corpus of the HDL now totals more than 10 million works. (*Id.* ¶ 57.)

42. At least 30% of the corpus consists of material that is clearly within the public domain. (*Id.* ¶ 62.)

43. Works published between 1923 and 1963 entered the public domain unless they were renewed, and according to a 1960 Copyright Office study only 7% of books were renewed. (See Staff of S. Comm. on the Judiciary (Barbara Ringer), 86th Cong., Renewal of Copyright 31, at 220 (Comm. Print 1960).)

44. The vast majority of works in the HDL corpus are now out of print (and, in fact, for older works within the collection, have been out of print for decades). (Wilkin Decl. ¶ 66; *see also* Mem. of Law in Supp. of Pls.' Mot. For Prelim. Settlement Approval at 27, *The Authors Guild, Inc. v. Google Inc.*, No. 05-cv-8136 (S.D.N.Y. Oct. 28, 2008) (The Authors Guild confirms that “[a]pproximately 75% of the Books in United States libraries are out-of-print and have ceased earning any income at all for their Rightsholders”).)

45. Less than 9% of the HDL corpus consists of prose fiction, poetry and drama.

(Wilkin Decl. ¶ 67.)

46. Approximately 90% of the HDL corpus consists of factual works such as books and journals in many disciplines of the arts, humanities, social sciences and sciences. (*Id.*)

47. The security employed with respect to the HDL meets, and in many ways exceeds, the specifications developed by the parties in the Google Books proposed settlement. (*Id.* ¶ 93.)

The Limited Uses of the Works within the HDL

48. The Libraries permit only three categories of uses of works within the HDL that are presumed to be in-copyright: (1) full text search; (2) preservation; and (3) access for people with certified print disabilities. (*Id.* ¶ 68.)

49. Through the Internet, users of the HathiTrust website may search for a particular term across all works within the HDL. (*Id.*)

50. For those works that are not in the public domain or for which the copyright holder has not expressly authorized use, the search results indicate only the page numbers on which a particular term is found within a particular book or periodical, and the number of times that term appears on each page. (*Id.*)

51. Unlike Google's service, the search results do not show portions of text in "snippet" format. (*Id.*)

52. When searching in-copyright material, at no time does the user have digital access to any of the actual written content within such works (unless he/she is afforded access as a certified print disabled user). (*Id.*)

53. The HDL is not a substitute, in any respect, for the Libraries' acquisitions of in-copyright material and does not diminish the Libraries' purchases of in-copyright works. (*Id.* ¶¶ 16, 69).

54. The HDL represents protection against the prospect of damage, deterioration and loss in circumstances where the Libraries cannot obtain a replacement copy at a fair price. (*Id.* ¶ 68.)

55. For decades, the Libraries have converted works in their collection to alternative formats for the blind and other persons who have disabilities that prevent them from accessing printed materials. (*Id.*)

56. Digitization has significantly improved the quality of access for print-disabled readers. (*Id.*)

57. Through digitization, an authorized patron with a print disability can have immediate access to a work in a format that can be made accessible through a variety of technologies, including software that translates the text into spoken words. (*Id.* ¶ 105.)

58. The HDL was designed specifically to enable libraries to make their collections accessible in digital format to print-disabled readers. (*Id.*)

59. The HDL has a positive effect on purchasing of in-copyright works because scholars, students, and other patrons are more likely to discover, purchase and use works that they can locate through digital search. (*Id.* ¶ 70–74; June 29, 2012 Declaration of Dr. Joel Waldfogel (“Waldfogel Decl.”) ¶¶ 7, 48–50; June 26, 2012 Declaration of Margaret Leary (“Leary Decl.”) ¶ 15.)

The Immense Public Benefits of the HDL

60. The HDL offers immense public benefit. (Wilkin Decl. ¶¶ 75–77, 83–86, 100–102, 106); (Katz Decl. ¶¶ 9–17); (Leary Decl. ¶¶ 9–14.)

61. One of the primary goals of HathiTrust has always been to enable people who have print disabilities to access the wealth of information within library collections. (Wilkin Decl. ¶ 100.)

62. For centuries, libraries have been inaccessible to people who have a broad range of disabilities because library collections have not been available in accessible formats. (*Id.* ¶ 101.)

63. The HDL was constructed with the objective of making the world's first accessible research library. (*Id.* ¶ 100.)

64. To obtain access to digital versions of in-copyright works in the HDL, a student, faculty member, or staff member at the University of Michigan with a print disability must obtain certification from a qualified expert who in turn informs the UM Library that the individual has a certified print disability for which digital access is a reasonable accommodation. (*Id.* ¶ 105.) The University of Michigan explains the digital library to the patron, describes appropriate uses of the service (including warnings about copyright infringement), and enables the patron to get secure digital access to the HDL corpus. (*Id.*)

65. With digital access, a print-disabled patron can perceive the works within the HDL using adaptive technologies such as software that translates the text into spoken words. (*Id.*)

66. The HDL makes it possible for students with certified print disabilities to achieve their full academic and scholarly potential. (*Id.* ¶ 106.)

67. Full-text searching such as the search functionality offered through the HDL constitutes the most significant advance in library search technology since the 1960s. (Wilkin Decl. ¶ 75; *see also* Katz Decl. ¶ 9.)

68. Rather than combing through electronic cataloging records and attempting to discern which works in the collection may be of interest, scholars can access the HDL website and search the actual text of over 10 million books and journals. (Wilkin Decl. ¶ 76; *see also* Katz Decl. ¶¶ 9–10.)

69. The HDL has made it possible for university students, faculty, and staff, as well as the general public, to search the combined digital collections contributed by the HathiTrust members. (Wilkin Decl. ¶ 77.)

70. The search results display bibliographic information—including title, author, publisher, and publication date—for books containing the search term, as well as the page numbers on which the term is found and the number of times the term appears on each page, giving some clues as to how useful the book might be. (*Id.*; Katz Decl. ¶¶ 10–11; Leary Decl. ¶¶ 9–11.)

71. Without the ability to search the entire full text of in-copyright materials, the content within these resources—as distinct from basic bibliographic information describing that text—is invisible, or nearly so, to the majority of researchers. (Wilkin Decl. ¶ 82; Katz Decl. ¶¶ 11–17; Leary Decl. ¶¶ 9–13.)

72. The HDL empowers scholars to perform types of research on a scale that simply could not be performed before the HathiTrust libraries digitized their collections. (Wilkin Decl. ¶ 84; *see also* June 26, 2012 Declaration of Dr. Neil Smalheiser (“Smalheiser Decl.”) ¶¶ 27–29.)

73. For example, a digital research method called “text mining”—which has the goal of finding patterns and connections from large databases of textual material—is already proving itself a powerful and important tool for scholarly research. (Smalheiser Decl. ¶¶ 3–6.)

74. The HDL offers the promise to yield breakthrough research discoveries—including lifesaving scientific discoveries—that simply would not be possible if the HDL corpus and HathiTrust services ceased to exist. (Wilkin Decl. ¶ 77; Smalheiser Decl. ¶¶ 25–29.)

75. The HDL helps to ensure the preservation of the published record of human knowledge through the creation of reliable and accessible electronic representations of the works within the corpus. (Wilkin Decl. ¶ 86.)

The Orphan Works Project

76. Orphan works are works which are presumed to be in-copyright and for which a rights holder cannot be identified. (*Id.* ¶ 108.)

77. The University of Michigan developed a project that it called the “Orphan Works Project” (the “OWP”). (*Id.* ¶ 109.)

78. The OWP contemplated two distinct phases. (*Id.* ¶ 110.)

79. In the first phase of the OWP the goal was to identify potential orphan works through a diligent, reasonable process that eliminates works that are claimed by a putative rights holder or that are otherwise found not to be orphans. (*Id.*)

80. Under the second phase of the project, the University of Michigan considered making limited uses of works identified as orphans through the first phase of the project. (*Id.*)

81. The uses that the University of Michigan contemplated making of works identified as orphans were limited to allowing access to orphan works for the purpose of online

review, with the number of users permitted to view a given work limited at any one time to the number of copies held by the UM Library. (*Id.* ¶ 111.)

82. Readers would have been reminded, through watermarking and other explicit notices, that the books are subject to copyright. (*Id.*)

83. After completing its initial process to identify potential orphan works, the University of Michigan concluded that there were flaws in its pilot process and that it needed to remedy those flaws before moving ahead with the OWP. (*Id.* ¶¶ 112–114.)

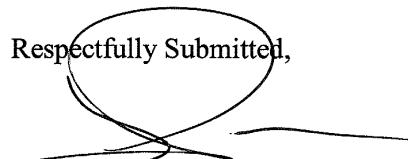
84. The University of Michigan suspended the OWP process and never proceeded to the second step of the project (i.e., it never proceeded to enable limited uses of putative orphan works) although it continues to study ways to improve the orphan identification process. (*Id.* ¶ 114.)

85. Not a single patron has been given access to a work through the OWP and at present, the University of Michigan does not know whether or how the OWP will continue. (*Id.* ¶ 116.)

86. Not a single in-copyright work has been distributed, displayed, or performed to the public as an orphan work. (*Id.*)

DATED: June 29, 2012
New York, New York

Respectfully Submitted,



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Attorneys for Defendants

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EXHIBIT 1

Page 1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 THE AUTHORS GUILD, INC., ET AL.,

6

7 Plaintiff,
8 Index no. 11 Civ. 6351 (HB)
9 VS.

10

11 HATHitrust, et al.,

12

13 Defendants.

14

15 -----X

16

17 **C O N F I D E N T I A L**

18

19 DEPOSITION
20 OF
21 PAT CUMMINGS
22 Tuesday, May 22, 2012
23 1114 Avenue of the Americas
24 New York, New York

25

26 Reported by:

27 AYLETTE GONZALEZ, CLR
28 JOB NO. 49735

29

30

31

32

33

Page 54	Page 55
<p>1 CONFIDENTIAL-PAT CUMMINGS 2 from public and academic libraries."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What was the nature of that 6 discussion?</p> <p>7 A. I think we were advised of some 8 press about, you know, librarians reacting to 9 the Authors Guild lawsuit.</p> <p>10 Q. And what specifically did you 11 discuss concerning that press?</p> <p>12 A. I don't recall the specifics. I 13 recall thinking that -- being surprised that 14 librarians wouldn't understand the Guild's 15 position or that they were trying to spin it. 16 That's how I felt at the time.</p> <p>17 Q. The next statement says, "The 18 common misconceptions about how many 'orphan 19 works' there really are."</p> <p>20 Do you have any understanding as to 21 what that's referring to?</p> <p>22 A. My understanding was at the time, 23 and is now, that what was being called "orphan 24 works" weren't necessary orphan works. And 25 that if they were so easy to identify, and</p>	<p>1 CONFIDENTIAL-PAT CUMMINGS 2 those authors were currently working and had 3 agents and publishing, how could it -- it 4 didn't seem that it was that difficult to find 5 some of these, theoretically, orphan works.</p> <p>6 Q. And the next statement says what 7 the Guild's public relations and social media 8 strategy should be, among other subjects. Do 9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What was the nature of that 12 discussion concerning the Guild's public 13 relations and social media strategies?</p> <p>14 A. To the best of my memory, we talked 15 about there was some discussion about how the 16 spin of the lawsuit by the HathiTrust was that 17 we were against blind people or something and 18 trying to prevent them from having braille 19 copies. It was something that it was 20 necessary to explain the Guild's position. 21 And I think that's what our discussion was 22 about. We felt the need to really explain the 23 position because that seemed to have been an 24 extreme cherry-picked item that was not at all 25 the intention of the suit.</p>
<p>1 CONFIDENTIAL-PAT CUMMINGS 2 Q. You say an extreme cherry-picked 3 item. What do you mean by that?</p> <p>4 A. I mean that if you have a problem 5 with somebody taking your work, to say that 6 you're depriving blind people seemed to come 7 out of -- not left field, but seemed to be an 8 extreme situation that was not the intent of 9 the suit. And to the best of my memory, our 10 discussion was about how to present the 11 Guild's position publicly so that we were 12 representing ourselves in the manner that we 13 felt, you know, our issues to be, and not to 14 be defined.</p> <p>15 Q. Would you agree with me that it's 16 beneficial to individuals with disabilities to 17 have access to the works that have been 18 digitized as part of the HathiTrust project?</p> <p>19 A. No.</p> <p>20 MR. GOLDMAN: Objection to the 21 form.</p> <p>22 A. No.</p> <p>23 Q. So, you do not believe the print 24 disabled should have access to those works?</p> <p>25 MR. GOLDMAN: Objection to the</p>	<p>1 CONFIDENTIAL-PAT CUMMINGS 2 form.</p> <p>3 A. No.</p> <p>4 Q. I'm going to mark, as PC-5, a 5 document entitled, "Objections And Responses 6 of Plaintiff Pat Cummings To Defendants' First 7 Set Of Interrogatories And Request For The 8 Production of Documents."</p> <p>9 (Exhibit PC-5, document entitled 10 "Objections And Responses Of Plaintiff 11 Pat Cummings to Defendants' First Set 12 Of Interrogatories And Requests For 13 The Production of Documents," marked 14 for identification, as of this date.)</p> <p>15 MR. GOLDMAN: Is there a question 16 pending?</p> <p>17 MR. PETERSEN: I'm waiting for 18 her, Ms. Cummings, to read the 19 document.</p> <p>20 Q. Do you recognize Exhibit 5?</p> <p>21 A. Yes.</p> <p>22 Q. Have you seen it before today?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p> <p>25 A. Okay; it is the Objections And</p>

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EXHIBIT 2

Page 78	Page 79
1 H. RØNNING	1 H. RØNNING
2 issues, digital divides and citizens' rights.	2 A. I think that the balance then
3 Digital divides because it's being	3 became too much in relation of industrial
4 discussed within the context on both sides.	4 owners of copyright rather than the authors.
5 Citizens' rights because citizens' rights are	5 Q. And when you say industrial owners
6 a few times. And those rights, you have	6 of copyright, to whom are you referring?
7 citizens' rights but they're also those rights	7 A. Well, in this connection, to the
8 you as a citizen, as an author, have in	8 Walt Disney Corporation. And, this, of
9 relation to your works. 2006.	9 course, has to do with the relationship
10 Q. And in that same paragraph you	10 between Walt Disney and a creative -- there's
11 write: "The use of the legal system for	11 a very famous Donald Duck creator and author
12 industry rent seeking is often so obvious as	12 and draftsman.
13 to be embarrassing."	13 Q. Professor, if a student with a
14 What did you mean by that?	14 print disability wanted to have the benefit of
15 A. Yes. I mean that -- this is a	15 one of your articles, do you know how that
16 reference to the so-called Mickey Mouse Act of	16 student could obtain access to your works?
17 the American copyright decisions.	17 A. Yes.
18 Q. And when you say Mickey Mouse Act,	18 Q. And how would he or she?
19 are you talking about the copyright extension?	19 A. She would, under Norwegian
20 A. Yes. Which has been hotly debated	20 Copyright Act, have access to it and if there
21 and where I disagree with what was decided.	21 was remuneration for that use it would be paid
22 That does not mean that I disagree with	22 typically to Kopinor which will then
23 copyright as such.	23 administer it to me.
24 Q. And you say you disagree with what	24 Q. Okay. But I'm just talking
25 was decided.	25 mechanically, what would a student -- say, if
Page 80	Page 81
1 H. RØNNING	1 H. RØNNING
2 a student in the US wanted -- that was blind	2 Q. Professor, turning to your
3 wanted to read one of your articles, do you	3 decision to be included as a named plaintiff
4 have any knowledge as to how that student	4 in the HathiTrust lawsuit, what is the nature
5 could obtain a copy that he or she could	5 of your understanding -- what is the
6 actually understand?	6 understanding of your -- I'm sorry. Strike
7 MR. ROSENTHAL: Objection.	7 that.
8 A. No, I do not know. I mean, I know	8 What is your understanding of the
9 what's the situation in Norway. And I know	9 nature of this lawsuit?
10 that that material for the people with	10 MR. ROSENTHAL: Objection. You're
11 impaired sight would typically be handled by	11 asking for a legal conclusion?
12 the Norwegian Foundation for the Blind and	12 Q. No. Just what claims do you
13 they would do that under the Norwegian	13 understand to be made in connection with the
14 Copyright Act and those who are owed copyright	14 HathiTrust lawsuit.
15 to be paid remuneration. Typically, if a	15 A. What do you mean by claims?
16 blind student wants a book to be as an audio	16 Q. What sort of -- what activities
17 book he or she can ask for it and then it can	17 are you complaining about in this lawsuit?
18 be recorded for him and the copyright owner	18 A. I'm complaining about, first of
19 will be remunerated and she will get it under	19 all, that by digitizing my work they have
20 the Norwegian Foundation.	20 violated my moral rights to my work. And
21 Q. But you have no understanding of	21 these books were published in Norway, not in
22 how a US student would obtain -- would -- a US	22 United States where moral rights apply.
23 student with a print disability would obtain	23 There's a very interesting court case which
24 access to your works.	24 was decided in Copenhagen about 20 years ago
25 A. No. Why should I?	25 regarding the American filmmaker, Pollack, who

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EXHIBIT 3

Page 1

13 DEPOSITION OF TIMOTHY J. STILES
14 San Francisco, California
15 Thursday, May 31, 2012

23 BY: HEIDI BELTON, CSR, RPR, CRR, CCRR, CLR
24 CSR LICENSE NO. 12885
25 JOB NO. 50217

Page 162		Page 163	
1	licensing is the Talking Books edition. 15:40:55	1	A. In fact I can identify very specifically the 15:42:39
2	Q. If you could turn back to the responses to the	2	loss of the revenue to be derived from the sale of one
3	first set of interrogatories which should be Stiles-5,	3	digital edition of the book. Which as mentioned is
4	if I noted this to myself properly.	4	commercially available, has been for approximately two
5	If you could please turn to page 8 to 15:41:29	5	years, and which could easily have been legally acquired 15:42:55
6	interrogatory number 6. Do you see that?	6	for archival or other purposes. And yet the HathiTrust
7	A. Yes.	7	instead has without my permission digitized my book when
8	Q. And it asks that for each work you claim was	8	it could very easily and very inexpensively have
9	infringed in this lawsuit you identify any harm that has	9	purchased a legal copy. So in a sense, speaking
10	occurred or is expected to occur to any market or 15:41:43	10	colloquially, one copy of my book has been stolen. 15:43:15
11	potential market for that work by virtue of the	11	Q. Are there any documents that could be used to
12	defendant's alleged conduct. Do you see that?	12	help quantify?
13	A. Yes.	13	A. I would like to refer the counsel to exhibit
14	Q. Turn to page 9, the end of this response. It	14	Stiles 9. Here it indicates that the Kindle edition of
15	says, "Plaintiff has to date not been able to quantify 15:42:12	15	Jesse James: Last Rebel of the Civil War is available 15:43:43
16	any specific revenues lost as a result of defendant's	16	for sale with one click at \$13.99.
17	infringing conduct and plaintiff is not aware of any	17	Q. Okay.
18	documents in plaintiff's possession, custody, or control	18	A. And then if you wish to understand my personal
19	that could be employed to quantify any specific damages	19	revenue that would be derived from that, you may consult
20	incurred as a result of defendants' infringing conduct." 15:42:26	20	my royalty statement. And from there you can calculate 15:43:59
21	Do you see that?	21	my actual take from one individual copy of this book.
22	A. Yes.	22	Q. If I could refer you to the Stiles-6 exhibit,
23	Q. Is this still the case?	23	which is the second set of interrogatories -- the
24	A. No.	24	responses to the second set of interrogatories and
25	Q. Okay. 15:42:34	25	request for production. I believe the page I'm 15:44:32
Page 164		Page 165	
1	referring you to is page 9. 15:44:42	1	would be derived from the sale of one copy of my book. 15:46:30
2	A. Page 9?	2	Q. Okay. And if you'd turn to page 8 of the same
3	Q. Mm-hmm. I'm sorry. Could you please go to	3	document. There is a bulleted list of potential harms
4	page 7.	4	that are enumerated. And I believe there's eight bullet
5	A. Of course. 15:45:20	5	points that are identified as, I guess, the effect of 15:46:58
6	Q. To interrogatory number 5. Which asks that	6	the potential market for or value of the copyrighted
7	for each work you claim was infringed in this lawsuit	7	work. Do you see that at the top of page 8?
8	you identify any harm you have suffered or will suffer	8	A. Yes.
9	from the inclusion of your work in the HathiTrust.	9	Q. Did you draft the language in this response
10	A. I see it. 15:45:38	10	yourself? 15:47:17
11	Q. And I'm going to try to find your answer.	11	A. That is a very interesting question. I'm very
12	After the break in the response, it states	12	sorry to say that no, I have not made legal history by
13	that, "Plaintiff has not identified any specific	13	drafting a response in a formal document to be filed
14	quantifiable past harm or any documents relating to any	14	with the court as a plaintiff who has no training or
15	such past harm." And I'm guessing based on the response 15:45:55	15	standing as an attorney. In fact, I provided 15:47:40
16	that you just gave me that that is not still the case;	16	information that allowed my attorney to draft a response
17	is that correct?	17	that's in keeping with the expected format. So I'm
18	A. That is correct.	18	sorry that we can't make history here today but in fact
19	Q. And for the reasons you just discussed?	19	I've done it the way everyone does.
20	A. That is correct, that the public university 15:46:07	20	Q. That's fine. But you verified these 15:47:57
21	libraries under cover of sovereign immunity have in dark	21	interrogatories as we discussed earlier?
22	of night stolen a copy of my book and have now told me	22	A. Yes, absolutely.
23	that I should like it. So certainly the direct harm can	23	Q. And you said you believe that they're still
24	be quantified at the retail cost of one digital book.	24	correct except for the things that you've already
25	And the harm then to me would be the royalties that 15:46:27	25	identified to us so far? 15:48:10

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EXHIBIT 4

Page 1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -
5 THE AUTHORS GUILD, INC.,
6 et al.,
7 Plaintiffs, Index No.

11 Civ. 6351 (HB)

8 -against-

9 HATHitrust, et al.,
10 Defendant.
11 - - - - -
12

13 DEPOSITION OF JOHN W. WHITE
14 New York, New York
15 Friday, June 8, 2012
16
17
18
19
20
21
22 Reported by:
23 JEFFREY BENZ, CRR, RMR
24 JOB NO. 50523
25

<p>1 White</p> <p>2 Paolo Alto, California. The institute was</p> <p>3 founded in 1972 by Apollo 14 Astronaut Edgar</p> <p>4 Mitchell, who was the second man on the moon,</p> <p>5 and hired me to handle communications and</p> <p>6 educational matters for the institute.</p> <p>7 I left there in 1974 to become a</p> <p>8 full-time freelance writer and continued in that</p> <p>9 capacity until 1979, at which time I became</p> <p>10 president of a small adult education</p> <p>11 institution, non--- non-degreed.</p> <p>12 And in -- in -- let's see, in 1981, I</p> <p>13 joined the electric utility company in</p> <p>14 Connecticut, which is called Northeast</p> <p>15 Utilities. I served there in the public</p> <p>16 relations department as an executive speech</p> <p>17 writer and editor of the company quarterly</p> <p>18 shareholder report and the employee newspaper.</p> <p>19 I retired from there in 1995, and then became</p> <p>20 full-time literary agent.</p> <p>21 Pause, please. I need some water.</p> <p>22 Q. Sure.</p> <p>23 A. Thank you.</p> <p>24 Q. Thank you, Mr. White. That was very</p> <p>25 concise and succinct and comprehensive.</p>	<p>1 White</p> <p>2 A. It sounded long-winded to me.</p> <p>3 Q. I've heard a lot of those.</p> <p>4 MR. GOLDMAN: This could have lasted a</p> <p>5 lot longer.</p> <p>6 MR. POTTER: Yeah.</p> <p>7 Q. I appreciate that. Just a couple</p> <p>8 follow-up questions on those. Regarding this</p> <p>9 Institute for Noetic Sciences, what are noetic</p> <p>10 sciences?</p> <p>11 A. Noetic means the study of</p> <p>12 consciousness, and it is derived from the Greek</p> <p>13 word "nous," meaning higher mind as used by</p> <p>14 Plato in his writings.</p> <p>15 So it's -- put it in a different way,</p> <p>16 Apollo 14 Astronaut Edgar Mitchell wanted to</p> <p>17 study the human mind in the same way that the</p> <p>18 Apollo program launched him to the moon, with</p> <p>19 scientific rigor and comprehensiveness, and then</p> <p>20 apply those findings to the problems of human</p> <p>21 society and civilization.</p> <p>22 Q. Is that institute -- does it still</p> <p>23 exist?</p> <p>24 A. Yes, it's now relocated in -- north of</p> <p>25 San Francisco, in Petaluma, California.</p>
<p>Page 24</p>	<p>Page 25</p>

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EXHIBIT 71

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHitrust, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

**RESPONSES TO PLAINTIFFS'
FIRST SET OF
INTERROGATORIES
TO DEFENDANT HATHTRUST**

Because, as stated below, HathiTrust is not a separate entity capable of being sued or responding to discovery requests, Defendant Mary Sue Coleman (“Defendant”), in her official capacity as President of The University of Michigan (“UM”) and who has the authority to control the HathiTrust Service and the shared repository of digital collections of institutions participating in the HathiTrust Service (the “HathiTrust Digital Library” or “HDL”), states the following objections and responses to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) and based upon information provided to her by employees of UM with personal knowledge of the relevant facts.

A. GENERAL OBJECTIONS AND LIMITATIONS

1. Defendant objects to the Interrogatories in their entirety and to each Interrogatory on the ground that HathiTrust is the name of a service provided by UM under agreements with member institutions (the “HathiTrust Service”) and is not a separate entity capable of being sued or responding to discovery requests.

2. Defendant’s discovery and investigation of the facts of this proceeding are continuing. These Interrogatory responses are based on information gathered as of the date of these responses. Defendant reserves the right to amend or supplement her responses when and if additional information is obtained, as required by the FRCP or the Local Rules.

3. Defendant objects to each of Plaintiffs’ definitions and instructions to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

4. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP.

5. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is protected from disclosure by (a) agreements with other parties, including, but not limited to, confidentiality agreements, (b) court order, or (c) statute, regulation, administrative order or case law.

6. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is commercially sensitive proprietary and/or confidential information and trade secrets (“Confidential Information”). Defendant will provide non-privileged, responsive Confidential Information only pursuant to the Protective Order in place in this litigation.

7. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought was prepared in anticipation of litigation, constitutes attorney work product, discloses mental impressions, conclusions, opinions, or legal theories of Defendant’s attorneys, contains privileged attorney-client communications (including but not limited to those subject to the common interest or joint defense privilege) or is otherwise protected from disclosure under applicable privileges, law, or rules, or because such information is not properly discoverable under the FRCP or the Local Rules. Any disclosure of such protected or privileged information in any response is inadvertent and shall not constitute a waiver of such privilege, protection or immunity.

8. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is (a) not in Defendant’s or UM’s possession, custody,

or control, (b) in the possession, custody, or control of Plaintiffs, (c) publicly available, or (d) as equally available and/or readily accessible to Plaintiffs as it is to Defendant. These interrogatory responses are based on a reasonably diligent search for and review of information in those areas within Defendant's or UM's direct knowledge, custody, or control where information of the type requested would be expected to be found, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Interrogatories.

9. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they are vague, ambiguous, and/or contain terms that are undefined or otherwise unclear.

10. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is irrelevant to the subject matter of this action and to the extent that the Interrogatories are not reasonably calculated to lead to the discovery of admissible evidence.

11. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that they prematurely call for the disclosure of information that Defendant may obtain through discovery.

12. Defendant objects to the Interrogatories in their entirety and to each Interrogatory insofar as they assume disputed facts or legal conclusions. To the extent any interrogatory assumes disputed facts or legal conclusions, Defendant denies such disputed facts or legal conclusions. Any response or objection by Defendant with respect to any such Interrogatory is without prejudice to this objection and Defendant's right to dispute facts and legal conclusions assumed by the Interrogatories.

13. No objection or limitation, or lack thereof, made in these responses and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

14. Defendant's responses to the Interrogatories are made without prejudice to the assertion of additional objections and responses by her at a later date or to Defendant's right to supplement, modify, or amend her responses as appropriate, and to rely upon and produce evidence during trial or at any other proceeding that may be held in this action.

15. Defendant reserves the right to object on any ground at any time to a demand for further response, and reserves the right to revise, supplement, correct, or add to these responses. Defendant expressly reserves any and all rights and privileges under the FRCP, the Local Rules, and any other law or rule, and the failure to assert such rights and privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

16. Defendant incorporates by reference these General Objections into each of the Responses and Specific Objections set forth below, as if fully set forth in each of them.

B. SPECIFIC OBJECTIONS AND LIMITATIONS

DEFINITIONS

1. Defendant objects to Plaintiffs' definition of "University" as overly broad and unduly burdensome in that it includes "each of its subsidiaries, divisions and affiliates, principals, officers, directors, members, employees, agents and attorneys," which refers to thousands of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action.

2. Defendant objects to Plaintiffs' definition of "digital copy" and to each Interrogatory including that term as vague and ambiguous in Plaintiffs' define a "digital copy" of

a Work as “a copy of all or substantially all of the Master Print Copy” without defining “Master Print Copy.” As relied upon for the definition of “digital copy” as used in the Interrogatories, Defendant understands “Master Print Copy” to refer to a print copy of a Work purchased or otherwise acquired through lawful means by UM.

3. Defendant objects to Plaintiffs’ definition of “HathiTrust Digital Copies” and to each Interrogatory including that term as vague and ambiguous in that Plaintiffs’ definition of “HathiTrust Digital Copies” incorporates and relies upon Plaintiffs’ definition of “digital copy,” which is itself vague and ambiguous as described above in Paragraph B.2. Defendant further states that four “HathiTrust Digital Copies” are maintained to store and preserve the digitized works in the HDL: (1) the “Initial HathiTrust Digital Copy” received from Google and incorporated into the HDL at UM, (2) the “Mirror Site HathiTrust Digital Copy,” (3) the “First Backup Tape HathiTrust Digital Copy,” and (4) the “Second Backup Tape HathiTrust Digital Copy.”

4. Defendant objects to Plaintiffs’ definition of “Third Party Digital Copies” and to each Interrogatory including that term as vague and ambiguous in that Plaintiffs’ definition of “Third Party Digital Copies” incorporates and relies upon Plaintiffs’ definition of “digital copy,” which is itself vague and ambiguous as described in Paragraph B.2.

INSTRUCTIONS

5. Defendant objects to Paragraph 1 of Plaintiffs’ “Instructions” on the ground that it impermissibly seeks to impose burdens and requirements beyond those set forth in the FRCP 26 and 33 by requiring responses to the Interrogatories based upon the knowledge of, and information available to, parties other than the party upon which the Interrogatories are served. Defendant further objects to this definition because it could potentially refer to thousands of

individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action, and in this regard is overly broad, unduly burdensome, seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES TO INTERROGATORIES

1. Identify the total number of digital copies of works held by HathiTrust and the estimated number of those works that are protected by copyright under the United States Copyright Act.

RESPONSE: Defendant objects to Interrogatory No. 1 on the ground that it is vague and ambiguous in that it requests information that may change on a periodic basis without specifying the time or time period for which the information is sought. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that as of January 17, 2012, there are over 10,000,000 digitized volumes in the HathiTrust Digital Library ("HDL"), the shared repository of digital collections of institutions participating in the HathiTrust Service. UM's library does not currently have an estimate of the number of works in the HDL that are protected by copyright under the United States Copyright Act, as UM's efforts to determine the copyright status of works in the HDL are ongoing.

2. For each Work listed on Schedule A, provide the following information with regard to the HathiTrust Digital Copies and Third Party Digital Copies of the Work:

- (a) the title and author of the Work;
- (b) the date the digital copy was created;
- (c) the identity of the source of the digital copy;
- (d) a description of the equipment and method used to create the digital copy;
- (e) a description of the means by which the digital copy was transferred from its source;

- (f) the type of media (e.g., DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;
- (g) the identity of any computer system connected to media on which the digital copy is stored;
- (h) the identity of any computer network to which a device storing the digital copy is connected;
- (i) the Physical Location of the digital copy;
- (j) the Virtual Location of the digital copy;
- (k) the identities of the individual(s) who authorized, directed, supervised, facilitated and/or participated in the creation of the digital copy, including each such individual's name and current address, as well as his or her employer (at the time of the digitization), job title and role in the creation of the digital copy;
- (l) the identities of the individual(s) who currently have authorized access to the Physical Location and/or Virtual Location of the digital copy, including each such individual's name and current address, as well as his or her current employer, title and job description.

RESPONSE: Defendant objects to Interrogatory No. 2 to the extent that it seeks information in the possession, custody, or control of third parties and not in Defendant's or UM's possession, custody, or control. Defendant further objects to Interrogatory No. 2 on the ground that subparts (c) and (e) are vague and ambiguous in that "source" and "transferred from its source" are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant also objects to Interrogatory No. 2 on the ground that subparts (g), (h), (i), and (j) seek Confidential Information regarding the identity of computer systems and computer networks and regarding the "Physical Location" and "Virtual Location" of digitized works, and the disclosure of such Confidential Information would compromise the security of the HDL. Defendant further objects to Interrogatory No. 2 on the ground that subpart (k) is vague and ambiguous in that "authorized," "directed," "supervised," "facilitated" and "participated" are not defined and the meaning of such terms is not clear in the context of the Interrogatory.

Defendant also objects to Interrogatory No. 2 as overly broad and unduly burdensome to the extent that subpart (k) seeks the current address of individuals who were employed by the University at the time of the digitization but who are no longer employed by the University or involved in the HathiTrust service. Defendant further objects to Interrogatory No. 2 on the ground that subpart (l) seeks private and confidential information protected from disclosure by agreements with other parties, and by federal statutes and regulations.

Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that no Third Party Digital Copies of the Works exist and that four HathiTrust Digital Copies are created and maintained to store and preserve the digitized works in the HDL: (1) the “Initial HathiTrust Digital Copy” incorporated into the HDL, Michigan, (2) the “Mirror Site HathiTrust Digital Copy,” (3) the “First Backup Tape HathiTrust Digital Copy,” and (4) the “Second Backup Tape HathiTrust Digital Copy.” With respect to these HathiTrust Digital Copies, Defendant provides responses to subparts (a), (b), and (j) in the attached **Exhibit A**. Because Defendant’s responses to subparts (c)-(i), (k), and (l) are the same for each Work listed in Schedule A to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust (“Schedule A”) and for Plaintiffs’ convenience, Defendant provides responses to these subparts below.

In response to subparts (c)-(i), Defendant provides the information in the chart below, which applies to the HathiTrust Digital Copies for each of the Works listed on Schedule A.

	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(c) the identity of the source of the digital copy;	Google Return Interface	The Initial HathiTrust Digital Copy	The Initial HathiTrust Digital Copy	The First Backup Tape HathiTrust Digital Copy
(d) a description of the equipment and method used to create the digital copy	Google Return Interface.	Isilon SyncIQ	Tivoli Storage Manager backup	Internal Tivoli Storage Manager replication

copy;				
(e) a description of the means by which the digital copy was transferred from its source;	Google Return Interface.	Isilon SyncIQ	Tivoli Storage Manager backup protocol	Tivoli Storage Manager backup protocol
(f) the type of media (e.g., DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;	Isilon Network Attached Storage	Isilon Network Attached Storage	Encrypted tape	Encrypted tape
(g) the identity of any computer system connected to media on which the digital copy is stored;	Two HathiTrust production web servers, four HathiTrust ingest servers, and four HathiTrust development web servers	Two HathiTrust production web servers and two HathiTrust data set prep / repository validation servers	Four UM Information Technology Services Tivoli Storage Manager servers located at the Michigan Academic Computing Center	Four UM Information Technology Services Tivoli Storage Manager servers located at the Arbor Lakes Data Facility
(h) the identity of any computer network to which a device storing the digital copy is connected;	The HathiTrust private computer network and the UM campus computer network	The HathiTrust private computer network and the Indiana University – Purdue University Indianapolis campus computer network	The UM campus computer network	The UM campus computer network
(i) the Physical Location of the digital copy;	Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan	Informatics & Communications Technology Complex, Room IT 024, 535 West Michigan Street, Indianapolis, Indiana	Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan	Arbor Lakes Data Facility, Room 9100, Arbor Lakes Building 1, 4251 Plymouth Rd., Ann Arbor, Michigan

In response to subpart (k), Defendant provides the information in the chart below, which applies to the HathiTrust Digital Copies for each of the Works listed on Schedule A. All individuals identified as employees of UM may be contacted through Defendants' counsel.

Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
By entering the December 14, 2004 Cooperative Agreement with Google, the Regents of the University of Michigan/University	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner,	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner,	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner,

Library, Ann Arbor Campus authorized the creation of the Initial HathiTrust Digital Copy. Per the terms of the Cooperative Agreement, Google provided the Library with the ability to obtain the Initial HathiTrust Digital Copy. The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time, were primarily responsible for obtaining the Initial HathiTrust Digital Copy from Google Return Interface.	Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time, were primarily responsible for the creation of the Mirror Site HathiTrust Digital Copy using Isilon SyncIQ.	Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time, were primarily responsible for the creation of the First Backup Tape HathiTrust Digital Copy using Tivoli Storage Backup manager.	Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time, were primarily responsible for the creation of the Second Backup Tape HathiTrust Digital Copy using Tivoli Storage Manager replication.
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In response to subpart (l), Defendant provides the information in the chart below, which applies to the HathiTrust Digital Copies for each of the Works listed on Schedule A as of February 1, 2012. All individuals identified as employees of UM, the University of Wisconsin, or Indiana University may be contacted through Defendants' counsel.

Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Physical Location of the Initial HathiTrust Digital Copy.	Hafid Adnane, Chad Harris, and Andrew Poland, System Administrators, Indiana University, and Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Physical Location of the	Mike Garrison, Cameron Hanover, Phil Jessel, David Nowell, and Steve Simmons, who are Tivoli Storage Manager Administrators,	Mike Garrison, Cameron Hanover, Phil Jessel, David Nowell, and Steve Simmons, who are Tivoli Storage Manager Administrators,

	Mirror Site HathiTrust Digital Copy.	University of Michigan Information Technology Services, are authorized for certain access to the Physical Location of the First Backup Tape HathiTrust Digital Copy.	University of Michigan Information Technology Services, are authorized for certain access to the Physical Location of the Second Backup Tape HathiTrust Digital Copy.
John Wilkin, Associate University Librarian, University of Michigan Library; Zack Lane, Copyright Researcher, Columbia University, 535 West 114th Street, New York, New York 10027; Janet Black, Kathy Marlett, Jo McClamroch, and Sherri Michaels, Copyright Researchers, Indiana University; Judith Ahronheim, David Fulmer, Dennis McWhinnie, Gregory Nichols, and Christine Wilcox, Copyright Researchers, University of Michigan; Carla Dewey Urban, Copyright Researcher, University of Minnesota, 3675 Arboretum Drive, Chaska, Minnesota, 55318; Sue Zuriff, Copyright Researchers, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55455; Lisa Nachreiner, Karen Rattunde, Rita Roemer, and Al Seeger, Copyright Researchers, University of Wisconsin; Bobby Glushko, Copyright Specialist, University of Michigan Library; Melissa Levine, Lead Copyright Officer, University of Michigan Library; Benjamin Tobey, Lisa Jackson Hardman, Melvin Whitehead, Neena Adams, Bryan Birchmeier, Katie Kujala, and Monica Tsuneishi, Orphan Works Investigators, University of Michigan Library; Martin Brennan, Sharon Farb, Diane Gurman, Leslie McMichael, and Angela Riggio, Orphan Works Investigators, University of California Los Angeles, Charles E. Young Research Library	John Wilkin, Associate University Librarian, University of Michigan Library; Zack Lane, Copyright Researcher, Columbia University, 535 West 114th Street, New York, New York 10027; Janet Black, Kathy Marlett, Jo McClamroch, and Sherri Michaels, Copyright Researchers, Indiana University; Judith Ahronheim, David Fulmer, Dennis McWhinnie, Gregory Nichols, and Christine Wilcox, Copyright Researchers, University of Michigan; Carla Dewey Urban, Copyright Researcher, University of Minnesota, 3675 Arboretum Drive, Chaska, Minnesota, 55318; Sue Zuriff, Copyright Researchers, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55455; Lisa Nachreiner, Karen Rattunde, Rita Roemer, and Al Seeger, Copyright Researchers, University of Wisconsin; Bobby Glushko, Copyright Specialist, University of Michigan Library; Melissa Levine, Lead Copyright Officer, University of Michigan Library; Benjamin Tobey, Lisa Jackson Hardman, Melvin Whitehead, Neena Adams, Bryan Birchmeier, Katie Kujala, and Monica Tsuneishi, Orphan Works Investigators, University of Michigan Library; Martin Brennan, Sharon Farb, Diane Gurman, Leslie McMichael, and Angela Riggio, Orphan Works Investigators, University of California Los Angeles, Charles E. Young Research Library	Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Virtual Location of the First Backup Tape HathiTrust Digital Copy.	Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Virtual Location of the Second Backup Tape HathiTrust Digital Copy.

Building, Los Angeles, California 90095-1575; Lara Unger and Lawrence Wentzel, Digitization Specialists, University of Michigan Library; Jackie Bronicki, Image Quality Researcher, University of Michigan Library; Emily Campbell, Martin Knott, Connie McGuire, Liz Mustard, Chris Powell, and Ellen Wilson, Librarians, University of Michigan Library; Shane Beers, Digital Preservation Specialist, University of Michigan Library; Tom West-Burton, Roger Espinosa, Phillip Farber, Nasir Grewal, Brian Hall, Tim Prettyman, Pranay Sethi, Peter Ulitz, and John Weise, Programmers, University of Michigan Library; Kat Hagedorn, Project Manager, University of Michigan Library; Julia Lovett and Jeremy York, Special Projects Librarians, University of Michigan Library; Angelina Zaytsev, Project Assistant, University of Michigan Library; Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, System Administrators and Programmers, University of Michigan Library; Suzanne Chapman, User Interface Specialist, University of Michigan Library; and 32 University of Michigan students and/or employees who receive authorization through the University of Michigan's Office of Services for Students with Disabilities as part of the reasonable accommodations provided to them under federal law are authorized for certain access to the Virtual Location of the Initial HathiTrust Digital Copy.	Building, Los Angeles, California 90095-1575; Lara Unger and Lawrence Wentzel, Digitization Specialists, University of Michigan Library; Jackie Bronicki, Image Quality Researcher, University of Michigan Library; Emily Campbell, Martin Knott, Connie McGuire, Liz Mustard, Chris Powell, and Ellen Wilson, Librarians, University of Michigan Library; Shane Beers, Digital Preservation Specialist, University of Michigan Library; Tom West-Burton, Roger Espinosa, Phillip Farber, Nasir Grewal, Brian Hall, Tim Prettyman, Pranay Sethi, Peter Ulitz, and John Weise, Programmers, University of Michigan Library; Kat Hagedorn, Project Manager, University of Michigan Library; Julia Lovett and Jeremy York, Special Projects Librarians, University of Michigan Library; Angelina Zaytsev, Project Assistant, University of Michigan Library; Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, System Administrators and Programmers, University of Michigan Library; Suzanne Chapman, User Interface Specialist, University of Michigan Library, and 32 University of Michigan students and/or employees who receive authorization through the University of Michigan's Office of Services for Students with Disabilities as part of the reasonable accommodations provided to them under federal law are authorized for certain access to the Virtual Location of the Second HathiTrust Digital Copy.	
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DATED: February 8, 2012

Respectfully Submitted,



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Facsimile: (404) 815-6555
Email: jbeck@kilpatricktownsend.com

Attorneys for Defendants

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work; <i>Bok-Norge : en litteratursosiologisk oversikt</i> by Trond Andreassen	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(b) the date the digital copy was created;	October 25, 2007	December 1, 2008	November 13, 2008	November 13, 2008
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree	/sdr6/obj/mdp/pairtree	/sdr6/obj/mdp/pairtree	/sdr6/obj/mdp/pairtree
root/39/01/50/50/52/28/	49/39015050522849/39	49/39015050522849/39	015050522849.zip	015050522849.zip
015050522849.zip	015050522849.zip	015050522849.zip		
C.L.O.U.D.S. by Pat Cummings				
(b) the date the digital copy was created;	October 9, 2009	October 9, 2009	October 10, 2009	October 10, 2009
(i) the Virtual Location of the digital copy;	/sdr18/obj/mdp/pairtree	/sdr18/obj/mdp/pairtree	/sdr18/obj/mdp/pairtree	/sdr18/obj/mdp/pairtree
root/39/01/50/14/28/0	3/85/39015014280385/	39015014280385.zip	3/85/39015014280385/	39015014280385.zip
39015014280385.zip	39015014280385.zip	39015014280385.zip	39015014280385.zip	39015014280385.zip
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Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
<i>Clean Your Room, Harvey Moon!</i> By Pat Cummings				
(b) the date the digital copy was created;	January 6, 2011	January 6, 2011	January 6, 2011	January 6, 2011
(i) the Virtual Location of the digital copy;	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/07/_32/49015001470732/49015001470732.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/07/_32/49015001470732/49015001470732.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/07/_32/49015001470732/49015001470732.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/07/_32/49015001470732/49015001470732.zip
<i>Jimmy Lee Did It</i> by Pat Cummings				
(b) the date the digital copy was created;	January 19, 2011	January 19, 2011	January 20, 2011	January 20, 2011
(i) the Virtual Location of the digital copy;	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/12/_50/49015001471250/49015001471250.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/12/_50/49015001471250/49015001471250.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/12/_50/49015001471250/49015001471250.zip	/sdr7/obj/mdp/pairtree_root/49/01/50/01/47/12/_50/49015001471250/49015001471250.zip
<i>Talking With Artists: Volume 1</i> by Pat Cummings				
(b) the date the digital copy was created;	September 7, 2009	September 7, 2009	September 8, 2009	September 8, 2009
(i) the Virtual Location of the digital copy;	/sdr16/obj/mdp/pairtree_root/39/01/50/29/57/_8/61/39015029570861/39015029570861.zip	/sdr16/obj/mdp/pairtree_root/39/01/50/29/57/_8/61/39015029570861/39015029570861.zip	/sdr16/obj/mdp/pairtree_root/39/01/50/29/57/_8/61/39015029570861/39015029570861.zip	/sdr16/obj/mdp/pairtree_root/39/01/50/29/57/_8/61/39015029570861/39015029570861.zip

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust
Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
<i>Talking With Artists: Volume 2</i> by Pat Cummings				
(b) the date the digital copy was created;	September 30, 2009	September 30, 2009	October 4, 2009	October 4, 2009
(i) the Virtual Location of the digital copy;	/sdr17/obj/mdp/pairtree root/39/01/50/37/76/92/65/39015037769265.zip	/sdr17/obj/mdp/pairtree root/39/01/50/37/76/92/65/39015037769265.zip	/sdr17/obj/mdp/pairtree root/39/01/50/37/76/92/65/39015037769265.zip	/sdr17/obj/wu/pairtree root/89/01/46/79/54/289014679542/89014679542/89014679542.zip
<i>Talking With Adventurers</i> by Pat Cummings				
(b) the date the digital copy was created;	November 26, 2009	November 26, 2009	November 28, 2009	November 28, 2009
(i) the Virtual Location of the digital copy;	/sdr19/obj/uc1/pairtree root/31/82/20/33/43/68/41/31822033436841.zip	/sdr19/obj/uc1/pairtree root/31/82/20/33/43/68/41/31822033436841.zip	/sdr19/obj/uc1/pairtree root/31/82/20/33/43/68/41/31822033436841.zip	/sdr19/obj/wu/pairtree root/89/01/46/79/54/289014679542/89014679542/89014679542.zip
<i>Oss malvakter emellan</i> by Erik Grundstrom				
(b) the date the digital copy was created;	February 6, 2010	February 6, 2010	February 7, 2010	February 7, 2010
(i) the Virtual Location of the digital copy;	/sdr21/obj/wu/pairtree root/89/01/46/79/54/289014679542/89014679542.zip	/sdr21/obj/wu/pairtree root/89/01/46/79/54/289014679542.zip	/sdr21/obj/wu/pairtree root/89/01/46/79/54/289014679542.zip	/sdr21/obj/wu/pairtree root/89/01/46/79/54/289014679542.zip

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

A-1044

(a) the title and author of the Work;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;
Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy
<i>Vernacular Dreams</i> by Angelo Loukakis	April 8, 2009	/sdr9/obj/mdp/pairtree root/39/01/50/30/75/66/65/39015030756665/39015030756665.zip	April 8, 2009	/sdr9/obj/mdp/pairtree root/39/01/50/30/75/66/65/39015030756665/39015030756665.zip	April 9, 2009	/sdr9/obj/mdp/pairtree root/39/01/50/30/75/66/65/39015030756665/39015030756665.zip
<i>Good troupers all: the story of Joseph Jefferson</i> by Gladys Malvern						
<i>Summer light</i> by Roxana Robinson						

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(ii) the date the digital copy was created;	(iii) the Virtual Location of the digital copy;	(iv) the date the digital copy was created;
Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy	Initial HathiTrust Digital Copy
<i>Georgia O'Keeffe: a life</i> by Roxana Robinson	January 26, 2008	/sdr8/obj/mdp/pairtree_root/39/01/50/15/44/99/14/39015015449914/39015015449914.zip	December 10, 2008	/sdr8/obj/mdp/pairtree_root/39/01/50/15/44/99/14/39015015449914/39015015449914.zip	November 26, 2008
<i>A glimpse of scarlet and other stories</i> by Roxana Robinson	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(ii) the date the digital copy was created;	(iii) the Virtual Location of the digital copy;	(iv) the date the digital copy was created;

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr21/obj/mdp/pairtree root/39/01/50/21/56/27/42/39015021562742/39015021562742.zip	/sdr21/obj/mdp/pairtree root/39/01/50/21/56/27/42/39015021562742/39015021562742.zip	/sdr21/obj/mdp/pairtree root/39/01/50/21/56/27/42/39015021562742/39015021562742.zip	
<i>Asking for love and other stories</i> by Roxana Robinson				
(b) the date the digital copy was created;	May 31, 2008	December 10, 2008	October 26, 2008	October 26, 2008
(i) the Virtual Location of the digital copy;	/sdr5/obj/mdp/pairtree root/39/01/50/37/47/07/24/39015037470724/39015037470724.zip	/sdr5/obj/mdp/pairtree root/39/01/50/37/47/07/24/39015037470724/39015037470724.zip	/sdr5/obj/mdp/pairtree root/39/01/50/37/47/07/24/39015037470724/39015037470724.zip	
<i>Sweetwater : a novel</i> by Roxana Robinson				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 20, 2008	November 20, 2008
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree root/39/01/50/56/79/32/87/39015056793287/39015056793287.zip	/sdr6/obj/mdp/pairtree root/39/01/50/56/79/32/87/39015056793287/39015056793287.zip	/sdr6/obj/mdp/pairtree root/39/01/50/56/79/32/87/39015056793287/39015056793287.zip	
<i>A perfect stranger: and other stories</i> by Roxana Robinson				

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(ii) the date the digital copy was created;	(iii) the Virtual Location of the digital copy;	(iv) the date the digital copy was created;	(v) the Virtual Location of the digital copy;	(vi) the date the digital copy was created;
Initial HathiTrust Digital Copy	September 23, 2008	/sdr9/obj/mdp/pairtree_root/39/01/50/60/83/84/90/39015060838490/39015060838490.zip	/sdr9/obj/mdp/pairtree_root/39/01/50/60/83/84/90/39015060838490/39015060838490.zip	/sdr9/obj/wu/pairtree_root/89/09/20/04/95/189092004951/89092004951.zip	/sdr21/obj/wu/pairtree_root/89/09/20/04/95/189092004951/89092004951.zip	/sdr21/obj/wu/pairtree_root/89/09/20/04/95/189092004951/89092004951.zip	/sdr21/obj/wu/pairtree_root/89/09/20/04/95/189092004951/89092004951.zip
Mirror Site HathiTrust Digital Copy	December 10, 2008						
<i>Den umulige friheden : Henrik Ibsen og moderniteten</i> by Helge Ronning							
<i>Dødsdom over et folk? : imperialismen og Biefrakonflikten</i> by Helge Ronning							

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust
Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
<i>Marguerite Duras à Montréal</i> by André Roy				
(b) the date the digital copy was created;	October 20, 2008	December 10, 2008	October 29, 2008	October 29, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/390150/10/73/5 1/19/39015010735119/ 39015010735119.zip	/sdr10/obj/mdp/pairtree root/390150/10/73/5 1/19/39015010735119/ 39015010735119.zip	/sdr10/obj/mdp/pairtree root/390150/10/73/5 1/19/39015010735119/ 39015010735119.zip	/sdr10/obj/mdp/pairtree root/390150/10/73/5 1/19/39015010735119/ 39015010735119.zip
<i>Marguerite Duras à Montréal</i> by André Roy				
(b) the date the digital copy was created;	August 22, 2010	August 22, 2010	August 22, 2010	August 22, 2010
(i) the Virtual Location of the digital copy;	/sdr20/obj/ucl/pairtree root/3210/60/08/36/5 0/97/32106008365097/ 32106008365097.zip	/sdr20/obj/ucl/pairtree root/3210/60/08/36/5 0/97/32106008365097/ 32106008365097.zip	/sdr20/obj/ucl/pairtree root/3210/60/08/36/5 0/97/32106008365097/ 32106008365097.zip	/sdr20/obj/ucl/pairtree root/3210/60/08/36/5 0/97/32106008365097/ 32106008365097.zip
<i>Southern light : a novel</i> by J.R. Salamanca				
(b) the date the digital copy was created;	April 9, 2009	April 9, 2009	April 9, 2009	April 9, 2009
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/390150/48/88/1 6/46/39015048881646/ 39015048881646.zip	/sdr10/obj/mdp/pairtree root/390150/48/88/1 6/46/39015048881646/ 39015048881646.zip	/sdr10/obj/mdp/pairtree root/390150/48/88/1 6/46/39015048881646/ 39015048881646.zip	/sdr10/obj/mdp/pairtree root/390150/48/88/1 6/46/39015048881646/ 39015048881646.zip

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
<i>Embarkation by J.R. Salamanca</i>				
(b) the date the digital copy was created;	March 25, 2009	March 25, 2009	March 26, 2009	March 26, 2009
(i) the Virtual Location of the digital copy;	/sdr7/obj/mdp/pairtree root/39/01/50/02/75/43/ 42/39015002754342/39 015002754342.zip			
<i>The lost country: a novel</i> /by J.R. Salamanca				
(b) the date the digital copy was created;	April 3, 2009	April 3, 2009	April 3, 2009	April 3, 2009
(i) the Virtual Location of the digital copy;	/sdr2/obj/mdp/pairtree root/39/01/50/02/75/45/ 32/39015002754532/39 015002754532.zip			
<i>A sea change</i> by J.R. Salamanca				
(b) the date the digital copy was created;	August 14, 2008	December 10, 2008	October 14, 2008	October 14, 2008
(i) the Virtual Location of the digital copy;	/sdr2/obj/mdp/pairtree root/39/01/50/02/75/43/ 59/39015002754359/39 015002754359.zip			

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
<i>That summer's trance : a novel</i> by J.R. Salamanca				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	October 31, 2008	October 31, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/42/95/43/08/39015042954308.zip	/sdr10/obj/mdp/pairtree root/39/01/50/42/95/43/08/39015042954308.zip	/sdr10/obj/mdp/pairtree root/39/01/50/42/95/43/08/39015042954308.zip	/sdr10/obj/mdp/pairtree root/39/01/50/42/95/43/08/39015042954308.zip
<i>Lilith</i> by J.R. Salamanca				
(b) the date the digital copy was created;	May 22, 2008	December 10, 2008	December 5, 2008	December 5, 2008
(i) the Virtual Location of the digital copy;	/sdr7/obj/mdp/pairtree root/39/01/50/02/75/43/67/39015002754367.zip	/sdr7/obj/mdp/pairtree root/39/01/50/02/75/43/67/39015002754367.zip	/sdr7/obj/mdp/pairtree root/39/01/50/02/75/43/67/39015002754367.zip	/sdr7/obj/mdp/pairtree root/39/01/50/02/75/43/67/39015002754367.zip
<i>Lilith</i> by J.R. Salamanca				
(b) the date the digital copy was created;	November 4, 2010	November 4, 2010	November 5, 2010	November 5, 2010
(i) the Virtual Location of the digital copy;	/sdr15/obj/uc1/pairtree root/b4/08/47/83/b4084783.zip	/sdr15/obj/uc1/pairtree root/b4/08/47/83/b4084783.zip	/sdr15/obj/uc1/pairtree root/b4/08/47/83/b4084783.zip	/sdr15/obj/uc1/pairtree root/b4/08/47/83/b4084783.zip
<i>Embarkation</i> by J.R. Salamanca				

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	(ii) the date the digital copy was created;	(iii) the Virtual Location of the digital copy;	(iv) the date the digital copy was created;	(v) the date the digital copy was created;
Initial HathiTrust Digital Copy	March 8, 2011	/sdr8/obj/uc1/pairtree root/b4/35/87/48/b4358748.zip	/sdr8/obj/uc1/pairtree root/b4/35/87/48/b4358748.zip	/sdr15/obj/uc1/pairtree root/b4/35/87/49/b4358749.zip	/sdr8/obj/uc1/pairtree root/b4/35/87/50/b4358750.zip	/sdr8/obj/uc1/pairtree root/b4/35/87/50/b4358750.zip
Mirror Site HathiTrust Digital Copy	March 8, 2011					
<i>The lost country: a novel</i> by J.R. Salamanca						
<i>A sea change</i> by J.R. Salamanca						
<i>Southern light : a novel</i> by J.R. Salamanca						

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2**A-1052**

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr15/obj/uc1/pairtree_root/b4/35/87/51/b4358751.zip	/sdr15/obj/uc1/pairtree_root/b4/35/87/51/b4358751.zip	/sdr15/obj/uc1/pairtree_root/b4/35/87/51/b4358751.zip	/sdr15/obj/uc1/pairtree_root/b4/35/87/51/b4358751.zip
<i>Oberammergau</i> by James Shapiro				
(b) the date the digital copy was created;	October 24, 2008	December 10, 2008	October 31, 2008	October 31, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/42/55/3/1/34/39015042553/34/39015042553134.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/42/55/3/1/34/39015042553134/39015042553134.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/42/55/3/1/34/39015042553134/39015042553134.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/42/55/3/1/34/39015042553134/39015042553134.zip
<i>Je cours plus vite que la lycore : poèmes</i> by Danièle Simpson				
(b) the date the digital copy was created;	April 22, 2010	April 22, 2010	April 24, 2010	April 24, 2010
(i) the Virtual Location of the digital copy;	/sdr23/obj/wu/pairtree_root/89/01/03/18/53/3/89010318533.zip	/sdr23/obj/wu/pairtree_root/89/01/03/18/53/3/89010318533.zip	/sdr23/obj/wu/pairtree_root/89/01/03/18/53/3/89010318533.zip	/sdr23/obj/wu/pairtree_root/89/01/03/18/53/3/89010318533.zip
<i>Jesse James : last rebel of the Civil War</i> by T.J. Stiles				
(b) the date the digital copy was created;	January 5, 2009	January 5, 2009	January 5, 2009	

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr11/obj/mdp/pairtree root/39/01/50/55/82/32/00/39015055823200/39015055823200.zip	/sdr11/obj/mdp/pairtree root/39/01/50/55/82/32/00/39015055823200/39015055823200.zip	/sdr11/obj/mdp/pairtree root/39/01/50/55/82/32/00/39015055823200/39015055823200.zip	/sdr11/obj/mdp/pairtree root/39/01/50/55/82/32/00/39015055823200/39015055823200.zip
<i>Watching me, watching you</i> by Fay Weldon				
(b) the date the digital copy was created;	December 2, 2008	December 2, 2008	December 3, 2008	December 3, 2008
(i) the Virtual Location of the digital copy;	/sdr11/obj/mdp/pairtree root/39/01/50/16/98/17/58/39015016981758/39015016981758.zip	/sdr11/obj/mdp/pairtree root/39/01/50/16/98/17/58/39015016981758/39015016981758.zip	/sdr11/obj/mdp/pairtree root/39/01/50/16/98/17/58/39015016981758/39015016981758.zip	/sdr11/obj/mdp/pairtree root/39/01/50/16/98/17/58/39015016981758/39015016981758.zip
<i>Praxis : a novel</i> by Fay Weldon				
(b) the date the digital copy was created;	October 27, 2008	December 10, 2008	October 28, 2008	October 28, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/01/78/85/49/39015001788549.zip	/sdr10/obj/mdp/pairtree root/39/01/50/01/78/85/49/39015001788549.zip	/sdr10/obj/mdp/pairtree root/39/01/50/01/78/85/49/39015001788549.zip	/sdr10/obj/mdp/pairtree root/39/01/50/01/78/85/49/39015001788549.zip
<i>Puffball : a novel</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree -root/39/01/50/01/52/6 -8/16/39015001526816/ 39015001526816.zip			
<i>Remember me by Fay Weldon</i>	July 19, 2008	December 10, 2008	December 6, 2008	December 6, 2008
(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	/sdr7/obj/mdp/pairtree -root/39/01/50/04/12/41/ 89/39015004124189/39 015004124189.zip	/sdr7/obj/mdp/pairtree -root/39/01/50/04/12/41/ 89/39015004124189/39 015004124189.zip	/sdr7/obj/mdp/pairtree -root/39/01/50/04/12/41/ 89/39015004124189/39 015004124189.zip
<i>The heart of the country</i> by Fay Weldon	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008
(b) the date the digital copy was created;	(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree -root/39/01/50/12/99/2 -6/19/39015012992619/ 39015012992619.zip	/sdr10/obj/mdp/pairtree -root/39/01/50/12/99/2 -6/19/39015012992619/ 39015012992619.zip	/sdr10/obj/mdp/pairtree -root/39/01/50/12/99/2 -6/19/39015012992619/ 39015012992619.zip
<i>The hearts and lives of men</i> by Fay Weldon	(b) the date the digital copy was created;	November 3, 2009	November 4, 2009	November 4, 2009

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr8/obj/mdp/pairtree root/39/01/50/12/99/54/89/39015012995489/39015012995489.zip	/sdr8/obj/mdp/pairtree root/39/01/50/12/99/54/89/39015012995489/39015012995489.zip	/sdr8/obj/mdp/pairtree root/39/01/50/12/99/54/89/39015012995489/39015012995489.zip	/sdr8/obj/mdp/pairtree root/39/01/50/12/99/54/89/39015012995489/39015012995489.zip
<i>The rules of life</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 17, 2008	November 17, 2008
(i) the Virtual Location of the digital copy;	/sdr8/obj/mdp/pairtree root/39/01/50/12/98/86/74/39015012988674/39015012988674.zip	/sdr8/obj/mdp/pairtree root/39/01/50/12/98/86/74/39015012988674/39015012988674.zip	/sdr8/obj/mdp/pairtree root/39/01/50/12/98/86/74/39015012988674/39015012988674.zip	
<i>The Shrapnel Academy</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/14/72/24/10/39015014722410/39015014722410.zip	/sdr10/obj/mdp/pairtree root/39/01/50/14/72/24/10/39015014722410/39015014722410.zip	/sdr10/obj/mdp/pairtree root/39/01/50/14/72/24/10/39015014722410/39015014722410.zip	
<i>The heart of the country</i> by Fay Weldon				
(b) the date the digital copy was created;	October 11, 2009	October 11, 2009	October 13, 2009	October 13, 2009

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr4/obj/mdp/pairtree_root/39/01/50/25/81/37/37/39015025813737/39015025813737.zip	/sdr4/obj/mdp/pairtree_root/39/01/50/25/81/37/37/39015025813737/39015025813737.zip	/sdr4/obj/mdp/pairtree_root/39/01/50/25/81/37/37/39015025813737/39015025813737.zip	/sdr4/obj/mdp/pairtree_root/39/01/50/25/81/37/37/39015025813737/39015025813737.zip
<i>Sacred cows</i> by Fay Weldon				
(b) the date the digital copy was created;	June 15, 2009	June 15, 2009	June 18, 2009	June 18, 2009
(i) the Virtual Location of the digital copy;	/sdr13/obj/mdp/pairtree_root/39/01/50/47/56/16/03/39015047561603/39015047561603.zip	/sdr13/obj/mdp/pairtree_root/39/01/50/47/56/16/03/39015047561603/39015047561603.zip	/sdr13/obj/mdp/pairtree_root/39/01/50/47/56/16/03/39015047561603/39015047561603.zip	
<i>The fat woman's joke</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 29, 2008	November 29, 2008
(i) the Virtual Location of the digital copy;	/sdr8/obj/mdp/pairtree_root/39/01/50/19/98/21/18/39015019982118/39015019982118.zip	/sdr8/obj/mdp/pairtree_root/39/01/50/19/98/21/18/39015019982118/39015019982118.zip	/sdr8/obj/mdp/pairtree_root/39/01/50/19/98/21/18/39015019982118/39015019982118.zip	
<i>The cloning of Joanna May</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/14/75/38/52/39015014753852/39015014753852.zip	/sdr10/obj/mdp/pairtree root/39/01/50/14/75/38/52/39015014753852/39015014753852.zip	/sdr10/obj/mdp/pairtree root/39/01/50/14/75/38/52/39015014753852/39015014753852.zip	/sdr10/obj/mdp/pairtree root/39/01/50/14/75/38/52/39015014753852/39015014753852.zip
<i>Little sisters</i> by Fay Weldon				
(b) the date the digital copy was created;	May 9, 2007	December 10, 2008	November 26, 2008	November 26, 2008
(i) the Virtual Location of the digital copy;	/sdr8/obj/mdp/pairtree root/39/01/50/15/51/98/15/39015015519815/39015015519815.zip	/sdr8/obj/mdp/pairtree root/39/01/50/15/51/98/15/39015015519815/39015015519815.zip	/sdr8/obj/mdp/pairtree root/39/01/50/15/51/98/15/39015015519815/39015015519815.zip	/sdr8/obj/mdp/pairtree root/39/01/50/15/51/98/15/39015015519815/39015015519815.zip
<i>Darcy's utopia</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/18/93/4/92/39015018933492/39015018933492.zip	/sdr10/obj/mdp/pairtree root/39/01/50/18/93/4/92/39015018933492/39015018933492.zip	/sdr10/obj/mdp/pairtree root/39/01/50/18/93/4/92/39015018933492/39015018933492.zip	/sdr10/obj/mdp/pairtree root/39/01/50/18/93/4/92/39015018933492/39015018933492.zip
<i>The cloning of Joanna May</i> by Fay Weldon				
(b) the date the digital copy was created;	January 27, 2010	January 27, 2010	January 29, 2010	January 29, 2010

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr21/obj/mdp/pairtree_root/39/01/50/19/43/73/78/39015019437378/39015019437378.zip	/sdr21/obj/mdp/pairtree_root/39/01/50/19/43/73/78/39015019437378/39015019437378.zip	/sdr21/obj/mdp/pairtree_root/39/01/50/19/43/73/78/39015019437378/39015019437378.zip	/sdr21/obj/mdp/pairtree_root/39/01/50/19/43/73/78/39015019437378/39015019437378.zip
<i>Moon over Minneapolis/Why she couldn't stay</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 3, 2008	November 3, 2008
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/21/99/13/62/39015021991362/39015021991362.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/21/99/13/62/39015021991362/39015021991362.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/21/99/13/62/39015021991362/39015021991362.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/21/99/13/62/39015021991362/39015021991362.zip
<i>Life force</i> by Fay Weldon				
(b) the date the digital copy was created;	November 3, 2009	November 3, 2009	November 4, 2009	November 4, 2009
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree_root/39/01/50/56/89/04/63/39015056890463/39015056890463.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/56/89/04/63/39015056890463/39015056890463.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/56/89/04/63/39015056890463/39015056890463.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/56/89/04/63/39015056890463/39015056890463.zip
<i>Growing rich</i> by Fay Weldon				
(b) the date the digital copy was created;	November 3, 2009	November 3, 2009	November 4, 2009	November 4, 2009

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree root/39/01/50/25/20/0 7/29/39015025200729/ 39015025200729.zip	/sdr10/obj/mdp/pairtree root/39/01/50/25/20/0 7/29/39015025200729/ 39015025200729.zip	/sdr10/obj/mdp/pairtree root/39/01/50/25/20/0 7/29/39015025200729/ 39015025200729.zip	/sdr10/obj/mdp/pairtree root/39/01/50/25/20/0 7/29/39015025200729/ 39015025200729.zip
<i>Life force</i> by Fay Weldon	February 14, 2009	February 14, 2009	February 14, 2009	February 14, 2009
(b) the date the digital copy was created;	/sdr10/obj/mdp/pairtree root/39/01/50/55/16/6 1/96/39015055166196/ 39015055166196.zip	/sdr10/obj/mdp/pairtree root/39/01/50/55/16/6 1/96/39015055166196/ 39015055166196.zip	/sdr10/obj/mdp/pairtree root/39/01/50/55/16/6 1/96/39015055166196/ 39015055166196.zip	/sdr10/obj/mdp/pairtree root/39/01/50/55/16/6 1/96/39015055166196/ 39015055166196.zip
<i>Trouble</i> by Fay Weldon				
(b) the date the digital copy was created;	/sdr21/obj/mdp/pairtree root/39/01/50/32/71/9 4/48/39015032719448/ 39015032719448.zip	/sdr21/obj/mdp/pairtree root/39/01/50/32/71/9 4/48/39015032719448/ 39015032719448.zip	/sdr21/obj/mdp/pairtree root/39/01/50/32/71/9 4/48/39015032719448/ 39015032719448.zip	/sdr21/obj/mdp/pairtree root/39/01/50/32/71/9 4/48/39015032719448/ 39015032719448.zip
<i>Affliction</i> by Fay Weldon	July 19, 2008	December 10, 2008	November 12, 2008	November 12, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	(i) the Virtual Location of the digital copy;	Splitting by Fay Weldon	(b) the date the digital copy was created;	Wicked women : stories by Fay Weldon	Leader of the band by Fay Weldon	
Initial HathiTrust Digital Copy	/sdr6/obj/mdp/pairtree root/39/01/50/34/41/08/63/39015034410863/39 015034410863.zip		/sdr6/obj/mdp/pairtree root/39/01/50/34/41/08/63/39015034410863/39 015034410863.zip		/sdr6/obj/mdp/pairtree root/39/01/50/34/41/08/63/39015034410863/39 015034410863.zip	
Mirror Site HathiTrust Digital Copy			/sdr6/obj/mdp/pairtree root/39/01/50/34/41/08/63/39015034410863/39 015034410863.zip		/sdr6/obj/mdp/pairtree root/39/01/50/34/41/08/63/39015034410863/39 015034410863.zip	

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/98/_16/39015055109816/39015055109816.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/98/_16/39015055109816/39015055109816.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/98/_16/39015055109816/39015055109816.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/98/_16/39015055109816/39015055109816.zip
<i>Growing rich</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 18, 2008	November 18, 2008
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_72/39015055109972/39015055109972.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_72/39015055109972/39015055109972.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_72/39015055109972/39015055109972.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_72/39015055109972/39015055109972.zip
<i>The hearts and lives of men</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 18, 2008	November 18, 2008
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_64/39015055109964/39015055109964.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_64/39015055109964/39015055109964.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_64/39015055109964/39015055109964.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/55/10/99/_64/39015055109964/39015055109964.zip
<i>A hard time to be a father: a collection of short stories</i> by Fay Weldon				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 1, 2008	November 1, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/55/10/98/24/39015055109824.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/55/10/98/24/39015055109824.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/55/10/98/24/39015055109824.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/55/10/98/24/39015055109824.zip
<i>Life force</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 10, 2008	November 10, 2008
(i) the Virtual Location of the digital copy;				
<i>Nothing to wear and nowhere to hide: stories by Fay Weldon</i>				
(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	November 1, 2008	November 1, 2008
(i) the Virtual Location of the digital copy;				
<i>Big women</i> by Fay Weldon				
(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 29, 2008	November 29, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2**A-1063**

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr8/obj/mdp/pairtree_root/39/01/50/40/36/71/49/39015040367149/39015040367149.zip	/sdr8/obj/mdp/pairtree_root/39/01/50/40/36/71/49/39015040367149/39015040367149.zip	/sdr8/obj/mdp/pairtree_root/39/01/50/40/36/71/49/39015040367149/39015040367149.zip	/sdr8/obj/mdp/pairtree_root/39/01/50/40/36/71/49/39015040367149/39015040367149.zip
<i>Godless in Eden : a book of essay's</i> by Fay Weldon	(b) the date the digital copy was created;	October 31, 2008	December 10, 2008	October 31, 2008
	(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/48/57/82/34/39015048578234/39015048578234.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/48/57/82/34/39015048578234/39015048578234.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/48/57/82/34/39015048578234/39015048578234.zip
<i>Rhode Island blues</i> by Fay Weldon	(b) the date the digital copy was created;	October 27, 2008	December 10, 2008	October 31, 2008
	(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/49/52/42/39015049524427.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/49/52/42/39015049524427.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/49/52/42/39015049524427.zip
<i>The Bulgari connection</i> by Fay Weldon	(b) the date the digital copy was created;	July 19, 2008	December 10, 2008	November 17, 2008
				November 17, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr6/obj/mdp/pairtree_root/39/01/50/53/74/68/_41/39015053746841/39015053746841.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/53/74/68/_41/39015053746841/39015053746841.zip	/sdr6/obj/mdp/pairtree_root/39/01/50/53/74/68/_41/39015053746841/39015053746841.zip	
<i>Auto da fay</i> by Fay Weldon	(b) the date the digital copy was created;	November 11, 2009	November 11, 2009	
	(i) the Virtual Location of the digital copy;	/sdr10/obj/mdp/pairtree_root/39/01/50/55/18/1_5/75/39015055181575/_39015055181575.zip	/sdr10/obj/mdp/pairtree_root/39/01/50/55/18/1_5/75/39015055181575/_39015055181575.zip	
<i>Flood warning : a play</i> by Fay Weldon	(b) the date the digital copy was created;	July 10, 2009	July 10, 2009	
	(i) the Virtual Location of the digital copy;	/sdr14/obj/mdp/pairtree_root/39/01/50/58/11/8_7/98/39015058118798/_39015058118798.zip	/sdr14/obj/mdp/pairtree_root/39/01/50/58/11/8_7/98/39015058118798/_39015058118798.zip	
<i>Wicked women : stories</i> by Fay Weldon	(b) the date the digital copy was created;	January 27, 2010	January 27, 2010	
			January 29, 2010	January 29, 2010

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Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust

Interrogatory No. 2

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr21/obj/mdp/pairtree root/39/01/50/41/77/09/52/39015041770952.zip	/sdr21/obj/mdp/pairtree root/39/01/50/41/77/09/52/39015041770952.zip	/sdr21/obj/mdp/pairtree root/39/01/50/41/77/09/52/39015041770952.zip	/sdr21/obj/mdp/pairtree root/39/01/50/41/77/09/52/39015041770952.zip
Mantrapped by Fay Weldon				
(b) the date the digital copy was created;	September 21, 2008	December 10, 2008	December 18, 2008	December 18, 2008
(i) the Virtual Location of the digital copy;	/sdr9/obj/mdp/pairtree root/39/01/50/60/12/34/14/39015060123414/39015060123414.zip	/sdr9/obj/mdp/pairtree root/39/01/50/60/12/34/14/39015060123414/39015060123414.zip	/sdr9/obj/mdp/pairtree root/39/01/50/60/12/34/14/39015060123414/39015060123414.zip	/sdr9/obj/mdp/pairtree root/39/01/50/60/12/34/14/39015060123414/39015060123414.zip
She may not leave by Fay Weldon				
(b) the date the digital copy was created;	October 2, 2008	December 10, 2008	December 18, 2008	December 18, 2008
(i) the Virtual Location of the digital copy;	/sdr9/obj/mdp/pairtree root/39/01/50/62/61/12/42/39015062611242/39015062611242.zip	/sdr9/obj/mdp/pairtree root/39/01/50/62/61/12/42/39015062611242/39015062611242.zip	/sdr9/obj/mdp/pairtree root/39/01/50/62/61/12/42/39015062611242/39015062611242.zip	/sdr9/obj/mdp/pairtree root/39/01/50/62/61/12/42/39015062611242/39015062611242.zip
The spa decameron by Fay Weldon				
(b) the date the digital copy was created;	September 22, 2008	December 10, 2008	December 19, 2008	December 19, 2008

Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrustInterrogatory No. 2

(a) the title and author of the Work;	(i) the Virtual Location of the digital copy;	<i>The hearts and lives of men</i> by Fay Weldon	(b) the date the digital copy was created;	<i>Big women</i> by Fay Weldon	(b) the date the digital copy was created;	<i>Life force</i> by Fay Weldon	
Initial HathiTrust Digital Copy	/sdr9/obj/mdp/pairtree root/39/01/50/70/73/93/ 81/39015070739381/39 015070739381.zip		/sdr9/obj/mdp/pairtree root/39/01/50/70/73/93/ 81/39015070739381/39 015070739381.zip		/sdr9/obj/uc1/pairtree root/32/10/60/07/94/0 5/51/32106007940551/ 32106007940551.zip		
Mirror Site HathiTrust Digital Copy			/sdr9/obj/mdp/pairtree root/39/01/50/70/73/93/ 81/39015070739381/39 015070739381.zip		/sdr9/obj/uc1/pairtree root/32/10/60/07/94/0 5/51/32106007940551/ 32106007940551.zip		

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Exhibit A to Responses to Plaintiff's First Set of Interrogatories to Defendant HathiTrust**Interrogatory No. 2**

(a) the title and author of the Work;	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(i) the Virtual Location of the digital copy;	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	
Worst fears by Fay Weldon	(b) the date the digital copy was created;	September 2, 2010	September 2, 2010	September 3, 2010
(i) the Virtual Location of the digital copy;	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	/sdr20/obj/uc1/pairtree _root/32106011835037/ 0/3732106011835037/ 32106011835037.zip	

VERIFICATION

I, Paul N. Courant, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am University Librarian and Dean of Libraries at The University of Michigan (“UM”).
2. All of the information provided in the attached Responses to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust has been gathered from various employees of UM.
3. I am informed and believe that the best efforts of those employees have been employed in procuring the information, and on that basis I am informed and believe that the information is true and correct.

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

Executed this 8th day of February, 2012.



Paul N. Courant

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EXHIBIT 72

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHitrust, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

**SUPPLEMENTAL RESPONSE
TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO
DEFENDANT HATHTRUST**

Defendant Mary Sue Coleman (“Defendant”), in her official capacity as President of The University of Michigan (the “University”) and on behalf of the HathiTrust service, hereby supplements Defendant’s Responses to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust, served on Plaintiffs on February 8, 2012 (the “Initial Responses”) by stating the following supplemental response to Interrogatory No. 2 of Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust (“Interrogatories”) pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) and based upon information provided to her by employees of the University with personal knowledge of the relevant facts. Defendant incorporates by reference the “General Objections and Limitations” and the “Specific Objections and Limitations” asserted in the Initial Responses as if such objections were fully stated herein.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2

2. For each Work listed on Schedule A, provide the following information with regard to the Master Digital Copy, Master University Copy and all Secondary University Copies, HathiTrust Digital Copies and Third Party Digital Copies of the Work:

- (a) the title and author of the Work;
- (b) the date the digital copy was created;
- (c) the identity of the source of the digital copy;
- (d) a description of the equipment and method used to create the digital copy;
- (e) a description of the means by which the digital copy was transferred from its source;
- (f) the type of media (*e.g.*, DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;
- (g) the identity of any computer system connected to media on which the digital copy is stored;

- (h) the identity of any computer network to which a device storing the digital copy is connected;
- (i) the Physical Location of the digital copy;
- (j) the Virtual Location of the digital copy;
- (k) the identities of the individual(s) who authorized, directed, supervised, facilitated and/or participated in the creation of the digital copy, including each such individual's name and current address, as well as his or her employer (at the time of the digitization), job title and role in the creation of the digital copy;
- (l) the identities of the individual(s) who currently have authorized access to the Physical Location and/or Virtual Location of the digital copy, including each such individual's name and current address, as well as his or her current employer, title and job description.

RESPONSE: Defendant incorporates by reference each of the general and specific objections made to Interrogatory No. 2 in the Initial Responses as if such objections were fully stated herein. Defendant further objects to Interrogatory No. 2 on the grounds that it is vague and ambiguous to the extent that it seeks responses regarding digital copies containing "substantially all" of a Master Print Copy of a Work listed on Schedule A to the Interrogatories ("Schedule A") in that "substantially all" is not defined and the meaning of such term is not clear in the context of the Interrogatories, and to the extent it leaves unclear whether automatically generated binary index files, created to facilitate the full-text search functionality over the shared repository of digital collections of institutions participating in the HathiTrust Service (the "HathiTrust Digital Library" or "HDL) are responsive to the Interrogatories, particularly where the information sought in certain Interrogatories is inapplicable to such types of files or is unduly burdensome to collect and aggregate given the nature of such files.

Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that the University employs, for purposes of providing effective search functionality, an application that automatically generates binary index files. A set of these index

files is created at the HathiTrust server location in Ann Arbor, Michigan and is automatically synchronized to the HathiTrust server location in Indianapolis, Indiana.

With respect to subpart (a), Defendant refers Plaintiffs to her response to Interrogatory No. 2(a) in the Initial Responses, which identifies the title and author information requested.

Defendant objects to subpart (b) on the ground that it is unduly burdensome to the extent that it seeks a specific date on which each Work on Schedule A was automatically indexed. The index files are updated and synchronized continuously to reflect the contents of the HDL.

For subparts (c) – (f) and (i) Defendant responds that the index files at Ann Arbor and at Indianapolis are automatically created by operation of Solr Large-Scale Indexing Processors based on various file components of the digital works incorporated into the HDL at Ann Arbor. These index files are stored on Isilon Network Attached Storage at the Michigan Academic Computing Center (“MACC”), Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan and at the Informatics & Communications Technology Complex (“ICTC”), Room IT 024, 535 West Michigan Street, Indianapolis, Indiana. The University has entered into written agreements with four companies—EBSCO Publishing, Inc., Ex Libris Ltd., OCLC Online Computer Library Center, Inc., and ProQuest LLC—that make digital databases and related search capabilities available to specified educational institutions (the “Search Entities”). Under these agreements, the Search Entities obtain binary index files from the University through secured network transmission for the limited purpose of search only.

For subparts (g) – (h), Defendant responds that the Isilon Network Attached Storage server hard drives in Ann Arbor are connected to HathiTrust indexing servers, search servers, production web servers, ingest servers, development web servers, the HathiTrust private computer network, and the University campus computer network; the Isilon Network Attached

Storage server hard drives in Indianapolis are connected to HathiTrust search servers, production web servers, data set prop/repository validation servers, the HathiTrust private computer network, and the Indiana University-Purdue University Indianapolis campus computer network.

Defendant objects to subpart (j) on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome in that the index is fragmented into individual shards stored across numerous servers and determining the location of the index files associated with a particular work would be unduly burdensome.

For subpart (k), Defendant responds that the index files are created and synchronized automatically. For subpart (l), Defendant responds that the following individuals, all of whom are employed by the University and may be contacted through Defendants' counsel, have some form of access to the virtual location of the indexes at Ann Arbor and Indianapolis, and that the Search Entities obtain index files through rsync.

- Ezra Brooks, System administrator and programmer
- Tom Burton-West, Programmer
- William Dueber, Programmer
- Aaron Elkiss, System administrator and programmer
- Roger Espinosa, Programmer
- Phil Farber, Programmer
- Nasir Grewal, Programmer
- Brian Hall, Programmer
- Seth Johnson, Programmer
- Sebastien Korner, System administrator and programmer
- Tom Mooney, System administrator and programmer
- Chris Powell, Programmer
- Timothy Prettyman, Programmer,
- Ryan Rotter, System administrator and programmer
- Pranay Sethi, Programmer
- Cory Snavely, System administrator and programmer
- Peter Ulintz, Programmer
- Jeremy York, Special projects librarian

The individuals with access to the physical location of the indexes at Ann Arbor and Indianapolis are those identified in Interrogatory No. 2(l) in the Initial Responses.

DATED: April 9, 2012

Respectfully Submitted,



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Attorneys for Defendants

VERIFICATION

I, Paul N. Courant, pursuant to 28 U.S.C. § 1746, declare as follows:

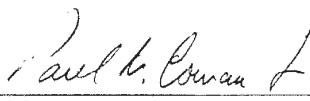
1. I am University Librarian and Dean of Libraries at The University of Michigan (the "University").

2. All of the information provided in the attached Supplemental Response to Plaintiffs' First Set of Interrogatories to Defendant HathiTrust has been gathered from various employees of the University.

3. I am informed and believe that the best efforts of those employees have been employed in procuring the information, and on that basis I am informed and believe that the information is true and correct.

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

Executed this 9th day of April, 2012.



Paul N. Courant

A-1077

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EXHIBIT 73

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHitrust, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

RESPONSES TO PLAINTIFFS'
FIRST SET OF
INTERROGATORIES
TO DEFENDANT
MARK G. YUDOF

Defendant Mark G. Yudof (“Defendant”), in his official capacity as President of The University of California (the “University”) states the following objections and responses to Plaintiffs’ First Set of Interrogatories to Defendant Mark G. Yudof pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) and based upon information provided to him by employees of the University with personal knowledge of the relevant facts.

A. GENERAL OBJECTIONS AND LIMITATIONS

1. Defendant’s discovery and investigation of the facts of this proceeding are continuing. These Interrogatory responses are based on information gathered as of the date of these responses. Defendant reserves the right to amend or supplement his responses when and if additional information is obtained, as required by the FRCP.

2. Defendant objects to each of Plaintiffs’ definitions and instructions to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

3. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

4. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is protected from disclosure by (a) agreements with other parties, including, but not limited to, confidentiality agreements, (b) court order, or (c) statute, regulation, administrative order or case law.

5. Defendant objects to the Interrogatories in their entirety and to each Interrogatory

to the extent that the information sought is commercially sensitive proprietary and/or confidential information and trade secrets (“Confidential Information”). Defendant will provide non-privileged, responsive Confidential Information only pursuant to the Protective Order in place in this litigation.

6. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought was prepared in anticipation of litigation, constitutes attorney work product, discloses mental impressions, conclusions, opinions, or legal theories of Defendant’s attorneys, contains privileged attorney-client communications (including but not limited to those subject to the common interest or joint defense privilege) or is otherwise protected from disclosure under applicable privileges, law, or rules, or because such information is not properly discoverable under the FRCP or the Local Rules. Any disclosure of such protected or privileged information in any response is inadvertent and shall not constitute a waiver of such privilege, protection or immunity.

7. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is (a) not in Defendant’s, the University’s, or the Library’s possession, custody, or control, (b) in the possession, custody, or control of Plaintiffs, (c) publicly available, or (d) as equally available and/or readily accessible to Plaintiffs as it is to Defendant. These interrogatory responses are based on a reasonably diligent search for and review of information in those areas within Defendant’s, the University’s, and the Library’s direct knowledge, custody, or control where information of the type requested would be expected to be found, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Interrogatories.

8. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they are vague, ambiguous, and/or contain terms that are undefined or otherwise unclear.

9. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is irrelevant to the subject matter of this action and to the extent that the Interrogatories are not reasonably calculated to lead to the discovery of admissible evidence.

10. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that they prematurely call for the disclosure of information that Defendant may obtain through discovery.

11. Defendant objects to the Interrogatories in their entirety and to each Interrogatory insofar as they assume disputed facts or legal conclusions. To the extent any interrogatory assumes disputed facts or legal conclusions, Defendant denies such disputed facts or legal conclusions. Any response or objection by Defendant with respect to any such Interrogatory is without prejudice to this objection and Defendant's right to dispute facts and legal conclusions assumed by the Interrogatories.

12. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they fail to contain defined time periods or limits, or seek information outside of the relevant time period. In particular, Defendant objects to all demands in the Interrogatories that require Defendant to search for, produce, disclose or identify information without any limitation as to time. Unless otherwise indicated in a particular Interrogatory or the response thereto, Defendant's responses refer only to the time period between October 6, 2008 and October 6, 2011.

13. No objection or limitation, or lack thereof, made in these responses and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

14. Defendant's responses to the Interrogatories are made without prejudice to the assertion of additional objections and responses by him at a later date or to Defendant's right to supplement, modify, or amend his responses as appropriate, and to rely upon and produce evidence during trial or at any other proceeding that may be held in this action.

15. Defendant reserves the right to object on any ground at any time to a demand for further response, and reserves the right to revise, supplement, correct, or add to these responses. Defendant expressly reserves any and all rights and privileges under the FRCP, the Local Rules, and any other law or rule, and the failure to assert such rights and privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

16. Defendant incorporates by reference these General Objections into each of the Responses and Specific Objections set forth below, as if fully set forth in each of them.

B. SPECIFIC OBJECTIONS AND LIMITATIONS

DEFINITIONS

1. Defendant objects to Plaintiffs' definition of "University" as overly broad and unduly burdensome in that it includes "each of its subsidiaries, divisions and affiliates, principals, officers, directors, members, employees, agents and attorneys," which refers to thousands of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action.

2. Defendant objects to Plaintiffs' definition of "Library" on the ground that it is vague and ambiguous.

3. Defendant objects to Plaintiffs' definition of "Master Print Copy" and to each Interrogatory including that term as vague and ambiguous in that Plaintiffs' definition of "Master Print Copy" refers to each "original print copy" without identifying the meaning of "original." As used in Plaintiffs' Interrogatories and theses responses, Defendant understands "Master Print Copy" to refer to a print copy of a Work purchased or otherwise acquired through lawful means by the University.

4. Defendant objects to Plaintiffs' definition of "Master Digital Copy" and to each Interrogatory including that term on the ground that they presume the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's, the University's, or the Library's knowledge. Defendant further objects to Plaintiffs' definition of "Master Digital Copy" and to each Interrogatory including that term to the extent that they seek information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Defendant states that upon information and belief Google prepared a "Master Digital Copy" of each Work listed on Schedule A to Plaintiffs' First Set of Interrogatories to Defendant Mark G. Yudof ("Schedule A") based on Master Print Copies, but further information concerning such Master Digital Copies lies with third parties and is not in Defendant's possession, custody, or control.

5. Defendant objects to Plaintiffs' definitions of "Master University Copy" and "Secondary University Copies" on the ground that they presume the existence of certain digital copies that do not exist. Defendant states that the University did not receive from Google a digital copy of any of the Works listed in Schedule A.

6. Defendant objects to Plaintiffs' definition of "HathiTrust Digital Copies" and to

each Interrogatory including that term on the ground that they presume the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's, the University's, or the Library's knowledge. Defendant further objects to Plaintiffs' definition of "HathiTrust Digital Copy" and to each Interrogatory including that term to the extent that they seek information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Defendant states that the Library requested that Google provide to the University of Michigan library digital copies of each of the Works listed on Schedule A based on Master Print Copies and, on information and belief, these digital works are now a part of the HathiTrust Digital Library, but further information concerning such digital copies lies with third parties and is not in the possession, custody, or control of Defendant, the University, or the Library.

7. Defendant objects to Plaintiffs' definition of "Third Party Digital Copies" and to each Interrogatory including that term on the ground that they presume the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's, the University's, or the Library's knowledge. Defendant further objects to Plaintiff's definition of "Third Party Digital Copies" and to each Interrogatory including that term as overly broad to the extent Plaintiffs' definition includes digital copies created from the Master Digital Copy or digital copies thereof because, as described above, the Master Digital Copy and information concerning the Master Digital Copy are with third parties and are not in the possession, custody, or control of Defendant, the Library, or the University.

INSTRUCTIONS

8. Defendant objects to Paragraph 1 of Plaintiffs' "Instructions" to the extent that it impermissibly seeks to impose burdens and requirements beyond those set forth in the FRCP 26

and 33 by requiring responses to the Interrogatories based upon the knowledge of, and information available to, parties other than the party upon which the Interrogatories are served, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Interrogatories. Defendant further objects to this definition because it could potentially refer to thousands of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action, and in this regard is overly broad, unduly burdensome, seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES TO INTERROGATORIES

1. For each Work listed on Schedule A, separately identify the total number of (i) print and (ii) digital copies the Library created of each Master Print Copy it owns.

RESPONSE: Defendant objects to Interrogatory No. 1 on the ground that it is vague and ambiguous in that it requests information without specifying the time or time period for which the information is sought. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that as of February 8, 2012, the Library has not created any print or digital copies from a Master Print Copy of any Work listed on Schedule A. Defendant further responds that the Library prepared for shipment to one of Google's scanning centers a Master Print Copy of each Work listed in Schedule A and, upon information and belief, Google prepared one or more digital copies of each Work listed on Schedule A based on Master Print Copies.

2. For each Master Print Copy of a Work listed on Schedule A that the University caused to be digitized, (i) describe the method by which the Library selected, identified, collected and transported the Master Print Copy for digitization, and (ii) identify the individuals (a) who directed or performed each of the foregoing actions, and (b) to whom the Master Print Copy was delivered for digitization.

RESPONSE: Defendant objects to Interrogatory No. 2 on the ground that it is vague and ambiguous in that “caused to be digitized” is not defined and the meaning of this phrase is not clear in the context of the Interrogatory. Defendant further objects to Interrogatory No. 2 to the extent it seeks the identity of individuals who directed or performed actions that were not directed or performed by Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds as follows:

(i) In certain instances, the Library collected works for digitization shelf by shelf and, subject to the work’s physical dimensions (very large or small works are not appropriate for the digitizing equipment used) and other operational considerations (e.g. the availability of relevant staff), selected works from each shelf, including the following Works listed on Schedule A:

Good troupers all: the story of Joseph Jefferson, by Gladys Malvern (Macrae Smith Company)

Dødsom over et folk? Imperialismen og Biafrakonflikten, by Helge Rønning (Pax)

Lilith, by J.R. Salamanca (Simon & Schuster)

Embarkation, by J.R. Salamanca (Knopf)

The lost country: a novel, by J. R. Salamanca (Simon & Schuster)

A sea change, by J.R. Salamanca (Knopf)

Southern light, by J.R. Salamanca (Knopf)

In other instances, the Library self-selected certain candidate works for digitization through its facility at University of California San Diego, which included the following Work listed on Schedule A:

Talking with adventurers, by Christina M. Allen, Pat Cummings, and Linda C. Cummings (National Geographic Society).

In other instances, Google Inc. (“Google”) provided the Library with a list of candidate works for digitization, which included the following Works listed on Schedule A:

Marguerite Duras a Montreal, by André Roy (Editions Spirale)

The hearts and lives of men, by Fay Weldon (Heinemann)

Big women, by Fay Weldon (Flamingo)

Life force, by Fay Weldon (Penguin Books)
Worst fears, by Fay Weldon (Flamingo)

The Library's staff retrieved the Master Print Copy of each Work on Schedule A and prepared them for shipment to one of Google's scanning centers. Google arranged for transportation of the Master Print Copies from, and back to, the Library.

(ii) (a) For each of the foregoing actions that was directed or performed by the Library, the individuals who were primarily responsible for such actions were Ivy Anderson, Director of Collection Development and Management at the California Digital Library, and Heather Christenson, Mass Digitization Project Manager at the California Digital Library. Additional individuals who shared responsibility for such actions in connection with a specific Work(s) listed on Schedule A are as follows:

- Bernie Hurley, Director, Northern Regional Library Facility, for:

Good troupers all: the story of Joseph Jefferson, by Gladys Malvern
Dødsom over et folk? Imperialismen og Biafrakonflikten, by Helge Rønning
Lilith, by J.R. Salamanca
Embarkation, by J.R. Salamanca
The lost country: a novel, by J. R. Salamanca
A sea change, by J.R. Salamanca
Southern light, by J.R. Salamanca

- Martha Hruska, Associate University Librarian for Collection Services,

University of California San Diego, for:

Talking with adventurers, by Christina M. Allen, Pat Cummings, and Linda C. Cummings

For each of the foregoing actions that was directed or performed by Google, the individuals who were primarily responsible for such actions in whole and/or in part are, upon information and belief, Jodi Healy-Pritchett, Library Partner Manager for Google; Todd Flynn, Library Partner Manager for Google; Kurt Groetsch, Collections Specialist for Google; and Robert Nagle, Manager, Book Search Operations for Google.

(b) A Master Print Copy of each Work on Schedule A was delivered to Google for digitization.

3. For each Work listed on Schedule A, provide the following information with regard to the Master Digital Copy, Master University Copy, and all Secondary University Copies, HathiTrust Digital Copies and Third Party Digital Copies of the Work:

- a. the title and author of the Work;
- b. the date the digital copy was created;
- c. the identity of the source of the digital copy;
- d. a description of the equipment and method used to create the digital copy;
- e. a description of the means by which the digital copy was transferred from its source;
- f. the type of media (e.g., DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;
- g. the identity of any computer system connected to media on which the digital copy is stored;
- h. the identity of any computer network to which a device storing the digital copy is connected;
- i. the Physical Location of the digital copy;
- j. the Virtual Location of the digital copy;
- k. the identities of the individual(s) who authorized, directed, supervised, facilitated and/or participated in the creation of the digital copy, including each such individual's name and current address, as well as his or her employer (at the time of the digitization), job title and role in the creation of the digital copy;
- l. the identities of the individual(s) who currently have authorized access to the Physical Location and/or Virtual Location of the digital copy, including each such individual's name and current address, as well as his or her current employer, title and job description.

RESPONSE: Defendant objects to Interrogatory No. 3 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession,

custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Interrogatory No. 3 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Defendant further objects to Interrogatory No. 3 on the grounds that subparts (c) and (e) are vague and ambiguous in that "source" and "transferred from its source" are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant also objects to Interrogatory No. 3 on the grounds that subparts (g), (h), (i), and (j) seek Confidential Information regarding the identity of computer systems and computer networks and regarding the "Physical Location" and "Virtual Location" of digitized works, and the disclosure of such Confidential Information would compromise the security of the HDL. Defendant also objects to Interrogatory No. 3 on the grounds that subpart (k) is vague and ambiguous in that "authorized," "directed," "supervised," "facilitated" and "participated" are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant further objects to Interrogatory No. 3 on the grounds that subpart (l) seeks private and confidential information protected from disclosure by agreements with other parties, and by federal statutes and regulations.

Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that no Master University Copy or Secondary University Copies exist of any of the Works listed on Schedule A, and that Defendant has no knowledge or information concerning the existence of any Third Party Digital Copies of any Work listed on Schedule A. Defendant further responds that, upon information and belief, Google prepared a Master Digital Copy of each Work listed on Schedule A based on Master Print Copies, but further information concerning such Master Digital Copies lies with third parties and is not in Defendant's

possession, custody, or control. Defendant further responds that, upon information and belief, a HathiTrust Digital Copy exists for each Work listed on Schedule A, but any information concerning such HathiTrust Digital Copies lies with third parties and is not in Defendant's possession, custody, or control.

Based, in part, on information provided to the Library by Google, Defendant provides the following further response only as to the Master Digital Copy of each Work listed on Schedule A, and disclaims any knowledge concerning any other digital copies of such Works:

(a) the title and author of the Works are:

Good troupers all: the story of Joseph Jefferson, by Gladys Malvern (Macrae Smith Company)

Talking with adventurers, by Christina M. Allen, Pat Cummings, and Linda C. Cummings (National Geographic Society)

Dødsom over et folk? Imperialismen og Biafrakonflikten, by Helge Rønning (Pax)

Marguerite Duras a Montreal, André Roy (Editions Spirale)

Lilith, by J.R. Salamanca (Simon & Schuster)

Embarkation, by J.R. Salamanca (Knopf)

The lost country: a novel, by J. R. Salamanca (Simon & Schuster)

A sea change, by J.R. Salamanca (Knopf)

Southern light, by J.R. Salamanca (Knopf)

The hearts and lives of men, by Fay Weldon (Heinemann)

Big women, by Fay Weldon (Flamingo)

Life force, by Fay Weldon (Penguin Books)

Worst fears, by Fay Weldon (Flamingo)

(b) upon information and belief, Master Digital Copies of each Work listed on

Schedule A were created on the following dates:

Good troupers all: the story of Joseph Jefferson – February 2, 2011

Talking with adventurers – November 24, 2009

Dødsom over et folk? Imperialismen og Biafrakonflikten – May 14, 2009

Marguerite Duras a Montreal – April 30, 2008

Lilith – November 17, 2008

Embarkation – June 18, 2008

The lost country: a novel – June 18, 2008

A sea change – June 18, 2008

Southern light – June 18, 2008

The hearts and lives of men – May 23, 2008

Big women – May 28, 2008

Life force – May 28, 2008
Worst fears – May 27, 2008.

(c) Defendant reiterates his objection to this sub-part on the ground that “source” is not defined and the meaning of such term is not clear in the context of the Interrogatory. Subject to this objection, and without waiving the same, Defendant understands that the Master Digital Copies of the Works on Schedule A were prepared by Google based on Master Print Copies.

(d) This subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(e) Defendant reiterates his objection to this subpart on the ground that “transferred from its source” is not defined and the meaning of such phrase is not clear in the context of the Interrogatory. Subject to this objection, and without waiving the same, Defendant responds that this subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(f) This subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(g) Defendant reiterates his objection to this sub-part on the ground that it calls for Confidential Information. Subject to this objection, and without waiving the same, Defendant responds that this subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(h) Defendant reiterates his objection to this subpart on the ground that it calls for Confidential Information. Subject to this objection, and without waiving the same, Defendant responds that this subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(i) Defendant reiterates his objection to this subpart on the ground that it calls for Confidential Information. Subject to this objection, and without waiving the same, Defendant responds that this subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(j) Defendant reiterates his objection to this sub-part on the ground that it calls for Confidential Information. Subject to this objection, and without waiving the same, Defendant responds that this subpart calls for information in the possession, custody, or control of third parties, including Google, and that is not known to Defendant, the University or the Library.

(k) For the identities of the individuals that selected, identified, collected and/or transported to Google the Master Print Copies of each Work listed on Schedule A, see Defendant's response to Interrogatory 2(ii)(a) above. None of these individuals were directly involved in the creation of the Master Digital Copy nor, upon information and belief, were Jodi Healy-Pritchett, Library Partner Manager for Google; Todd Flynn, Library Partner Manager for Google; Kurt Groetsch, Collections Specialist for Google; and Robert Nagle, Manager, Book Search Operations for Google.

(l) Defendant reiterates his objection to this subpart on the ground that it seeks private and confidential information protected from disclosure by agreements with other parties, and by federal statutes and regulations. Subject to this objection, and without waiving the same, Defendant responds that neither Defendant, the University nor the Library have any knowledge of the identities of any individuals with authorized access to the Physical and/or Virtual Location of any digital copies made from the Master Print Copy.

4. Identify the number of books the University contributed to HathiTrust and the estimated number of those books the University believes are protected by copyright.

RESPONSE: Defendant objects to Interrogatory No. 4 on the ground that the phrase “books the University contributed” is not defined and the meaning of such phrase is not clear in the context of the Interrogatory. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that the University has contributed no “books” to the HathiTrust. Defendant further responds that, as of December 9, 2011, the University had provided Google with 3,105,945 volumes that, upon information and belief, were digitized and are now in the HDL. Defendant does not have an estimate of the number of such works that are protected by copyright under the United States Copyright Act.

5. Describe in detail the process followed by the University between May 16, 2011 and September 16, 2011 in connection with the Orphan Works Project to determine whether a work would be designated as an “orphan candidate.”

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant responds that, aside from providing assistance in refining the process used by the University of Michigan library to isolate prospective “orphan candidates” in its initiative to, *inter alia*, identify “orphan works”—in-copyright works for which the copyright holder cannot be found—and eventually to make lawful uses of these works, an initiative which the University of Michigan library calls the “Orphan Works Project,” the University has not otherwise participated in, nor taken any other actions whatsoever in connection with designating “orphan candidates” for, the University of Michigan library’s “Orphan Works Project.” Defendant further responds that the University was not substantively involved in the “Orphan Works Project” in any capacity between May 16, 2011 and September 16, 2011.

6. Identify the individual(s) who authorized, directed, supervised, facilitated and/or participated in the Orphan Works Project between May 16, 2011 and September 16, 2011, including each such individual’s name and current address, as well as his or her employer (at the

time the individual was involved with the Orphan Works Project), job title and role in the Orphan Works Project.

RESPONSE: Defendant objects to Interrogatory No. 6 on the ground that the terms “authorized,” “directed,” “supervised,” “facilitated” and “participated” are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant further objects to Interrogatory No. 6 to the extent it seeks the identity of individuals who were involved in performing actions that were not instructed, overseen and/or performed by Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that, aside from providing assistance in refining the process used by the “Orphan Works Project” to isolate prospective “orphan candidates,” the University has not otherwise participated in the “Orphan Works Project.” Defendant further responds that the University was not substantively involved in the “Orphan Works Project” in any capacity between May 16, 2011 and September 16, 2011.

DATED: February 8, 2012

Respectfully Submitted,

Allison Scott Roach

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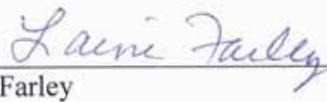
VERIFICATION

I, Laine Farley, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Executive Director of the California Digital Library, a unit in the department of Academic Planning, Programs, and Coordination at the University of California (the "University").
2. All of the information provided in the attached Responses to Plaintiffs' First Set of Interrogatories to Defendant Mark G. Yudof has been gathered from various employees of the University.
3. I am informed and believe that the best efforts of those employees have been employed in procuring the information, and on that basis I am informed and believe that the information is true and correct.

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

Executed this 8 day of February, 2012.



Laine Farley

A-1096

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EXHIBIT 75

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHitrust, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

RESPONSES TO PLAINTIFFS'
FIRST SET OF
INTERROGATORIES TO
DEFENDANT MARY SUE
COLEMAN

Defendant Mary Sue Coleman (“Defendant”), in her official capacity as President of The University of Michigan (the “University”) states the following objections and responses to Plaintiffs’ First Set of Interrogatories to Defendant Mary Sue Coleman pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (“FRCP”) and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) and based upon information provided to her by employees of the University with personal knowledge of the relevant facts.

A. GENERAL OBJECTIONS AND LIMITATIONS

1. Defendant’s discovery and investigation of the facts of this proceeding are continuing. These Interrogatory responses are based on information gathered as of the date of these responses. Defendant reserves the right to amend or supplement her responses when and if additional information is obtained, as required by the FRCP.

2. Defendant objects to each of Plaintiffs’ definitions and instructions to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

3. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

4. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is protected from disclosure by (a) agreements with other parties, including, but not limited to, confidentiality agreements, (b) court order, or (c) statute, regulation, administrative order or case law.

5. Defendant objects to the Interrogatories in their entirety and to each Interrogatory

to the extent that the information sought is commercially sensitive proprietary and/or confidential information and trade secrets (“Confidential Information”). Defendant will provide non-privileged, responsive Confidential Information only pursuant to the Protective Order in place in this litigation.

6. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought was prepared in anticipation of litigation, constitutes attorney work product, discloses mental impressions, conclusions, opinions, or legal theories of Defendant’s attorneys, contains privileged attorney-client communications (including but not limited to those subject to the common interest or joint defendant privilege) or is otherwise protected from disclosure under applicable privileges, law, or rules, or because such information is not properly discoverable under the FRCP or the Local Rules. Any disclosure of such protected or privileged information in any response is inadvertent and shall not constitute a waiver of such privilege, protection or immunity.

7. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is (a) not in Defendant’s, the University’s, or the Library’s possession, custody, or control, (b) in the possession, custody, or control of Plaintiffs, (c) publicly available, or (d) as equally available and/or readily accessible to Plaintiffs as it is to Defendant. These interrogatory responses are based on a reasonably diligent search for and review of information in those areas within Defendant’s, the University’s, and the direct knowledge, custody, or control where information of the type requested would be expected to be found, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Interrogatories.

8. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they are vague, ambiguous, and/or contain terms that are undefined or otherwise unclear.

9. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that the information sought is irrelevant to the subject matter of this action and to the extent that the Interrogatories are not reasonably calculated to lead to the discovery of admissible evidence.

10. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent that they prematurely call for the disclosure of information that Defendant may obtain through discovery.

11. Defendant objects to the Interrogatories in their entirety and to each Interrogatory insofar as they assume disputed facts or legal conclusions. To the extent any interrogatory assumes disputed facts or legal conclusions, Defendant denies such disputed facts or legal conclusions. Any response or objection by Defendant with respect to any such Interrogatory is without prejudice to this objection and Defendant's right to dispute facts and legal conclusions assumed by the Interrogatories.

12. Defendant objects to the Interrogatories in their entirety and to each Interrogatory to the extent they fail to contain defined time periods or limits, or seek information outside of the relevant time period. In particular, Defendant objects to all demands in the Interrogatories that require Defendant to search for, produce, disclose or identify information without any limitation as to time. Unless otherwise indicated in a particular Interrogatory or the response thereto, Defendant's responses refer only to the time period between October 6, 2008 and October 6, 2011.

13. No objection or limitation, or lack thereof, made in these responses and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

14. Defendant's responses to the Interrogatories are made without prejudice to the assertion of additional objections and responses by her at a later date or to Defendant's right to supplement, modify, or amend her responses as appropriate, and to rely upon and produce evidence during trial or at any other proceeding that may be held in this action.

15. Defendant reserves the right to object on any ground at any time to a demand for further response, and reserves the right to revise, supplement, correct, or add to these responses. Defendant expressly reserves any and all rights and privileges under the FRCP, the Local Rules, and any other law or rule, and the failure to assert such rights and privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

16. Defendant incorporates by reference these General Objections into each of the Responses and Specific Objections set forth below, as if fully set forth in each of them.

B. SPECIFIC OBJECTIONS AND LIMITATIONS

DEFINITIONS

1. Defendant objects to Plaintiffs' definition of "University" and to each Interrogatory including that term as overly broad and unduly burdensome in that it includes "each of its subsidiaries, divisions and affiliates, principals, officers, directors, members, employees, agents and attorneys," which refers to thousands of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action.

2. Defendant objects to Plaintiffs' definition of "Library" on the ground that it is

vague and ambiguous.

3. Defendant objects to Plaintiffs' definition of "Master Print Copy" and to each Interrogatory including that term as vague and ambiguous in that Plaintiffs' definition of "Master Print Copy" refers to each "original print copy" without identifying the meaning of "original." As used in Plaintiffs' Interrogatories and theses responses, Defendant understands "Master Print Copy" to refer to a print copy of a Work purchased or otherwise acquired through lawful means by the University.

4. Defendant objects to Plaintiffs' definition of "Master Digital Copy" and to each Interrogatory including that term on the ground that they presume the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's, the University's, or the Library's knowledge. Defendant further objects to Plaintiffs' definition of "Master Digital Copy" and to each Interrogatory including that term to the extent that they seek information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Defendant states that upon information and belief Google prepared a "Master Digital Copy" of each Work listed on Schedule A to Plaintiffs' Set of Interrogatories to Defendant Mary Sue Coleman ("Schedule A") based on Master Print Copies, but further information concerning such Master Digital Copies lies with third parties and is not in Defendant's possession, custody, or control.

5. Defendant objects to Plaintiffs' definitions of "Master University Copy," "Secondary University Copies," and "HathiTrust Digital Copies" and to each Interrogatory including those terms as vague and ambiguous and unnecessarily duplicative. Defendant states that four "HathiTrust Digital Copies" are maintained to store and preserve the digitized works in

the HathiTrust Digital Library (“HDL”), the shared repository of digital collections of institutions participating in the HathiTrust Service: (1) the “Initial HathiTrust Digital Copy” received from Google and incorporated into the HDL at the University, (2) the “Mirror Site HathiTrust Digital Copy,” (3) the “First Backup Tape HathiTrust Digital Copy,” and (4) the “Second Backup Tape HathiTrust Digital Copy.” The “Master University Copy,” as defined by Plaintiffs, is the same as the “Initial HathiTrust Digital Copy” defined above and will be referred to as such in Defendant’s responses. In addition, the only “Secondary University Copies” that exist are also “HathiTrust Digital Copies,” namely, the “Mirror Site HathiTrust Digital Copy,” the “First Backup Tape HathiTrust Digital Copy,” and the “Second Backup Tape HathiTrust Digital Copy” defined above.

6. Defendant objects to Plaintiffs’ definition of “Third Party Digital Copies” and to each Interrogatory including that term on the ground that they presume the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant’s, the University’s, or the Library’s knowledge. Defendant further objects to Plaintiff’s definition of “Third Party Digital Copies” and to each Interrogatory including that term as overly broad to the extent Plaintiffs’ definition includes digital copies created from the Master Digital Copy or digital copies thereof because, as described above, the Master Digital Copy and information concerning the Master Digital Copy are with third parties and are not in the possession, custody, or control of Defendant, the Library, or the University.

INSTRUCTIONS

7. Defendant objects to Paragraph 1 of Plaintiffs’ “Instructions” to the extent that it impermissibly seeks to impose burdens and requirements beyond those set forth in the FRCP 26 and 33 by requiring responses to the Interrogatories based upon the knowledge of, and

information available to, parties other than the party upon which the Interrogatories are served, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Interrogatories. Defendant further objects to this definition because it could potentially refer to hundreds of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action, and in this regard is overly broad, unduly burdensome, seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES TO INTERROGATORIES

1. For each Work listed on Schedule A, separately identify the total number of (i) print and (ii) digital copies the Library created of each Master Print Copy it owns.

RESPONSE: Defendant objects to Interrogatory No. 1 on the ground that it is vague and ambiguous in that it requests information without specifying the time or time period for which the information is sought. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that as of February 8, 2012, the Library has not created any print or digital copies from a Master Print Copy of any Work listed on Schedule A. Defendant further responds that the Library prepared for shipment to one of Google's scanning centers a Master Print Copy of each Work listed in Schedule A and, upon information and belief, Google prepared one or more digital copies of each Work listed on Schedule A based on Master Print Copies.

2. For each Master Print Copy of a Work listed on Schedule A that the University caused to be digitized, (i) describe the method by which the Library selected, identified, collected and transported the Master Print Copy for digitization, and (ii) identify the individuals (a) who directed or performed each of the foregoing actions, and (b) to whom the Master Print Copy was delivered for digitization.

RESPONSE: Defendant objects to Interrogatory No. 2 on the ground that it is vague and ambiguous in that “caused to be digitized” is not defined and the meaning of this phrase is not clear in the context of the Interrogatory. Defendant further objects to Interrogatory No. 2 to the extent it seeks the identity of individuals who directed or performed actions that were not directed or performed by Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds as follows:

(i) In certain instances, the Library collected works for digitization shelf by shelf, selecting every work on each shelf, including the following Works listed on Schedule A:

Trond Andreassen, *Bok-Norge: en litteratursosiologisk oversikt* (Universitetsforlaget)
Pat Cummings, *Talking With Artists: Volume 1* Bradbury Press
Pat Cummings, *Talking With Artists: Volume 2* (Simon & Schuster Books for Young Readers)
Angelo Loukakis, *Vernacular Dreams* (University of Queensland Press)
Roxana Robinson, *Summer light* (Viking)
Roxana Robinson, *Georgia O'Keeffe : a life* (Harper & Row)
Roxana Robinson, *A glimpse of scarlet and other stories* (E. Burlingame Books)
Roxana Robinson, *A glimpse of scarlet and other stories* (HarperPerennial)
Roxana Robinson, *Asking for love and other stories* (Random House)
Roxana Robinson, *Sweetwater : a novel* (Random House)
Roxana Robinson, *A perfect stranger: and other stories* (Random House)
André Roy Marguerite, *Duras à Montréal* (Spirale)
J.R. Salamanca, *Southern light : a novel* (Knopf)
J.R. Salamanca, *Embarkation* (Knopf)
J.R. Salamanca, *The lost country: a novel* (Simon & Schuster)
J.R. Salamanca, *A sea change* (Knopf)
J.R. Salamanca, *That summer's trance : a novel* (Welcome Rain)
J.R. Salamanca, *Lilith* (Simon & Schuster)
James Shapiro, *Oberammergau* (Pantheon Books)
T.J. Stiles, *Jesse James : last rebel of the Civil War* (A.A. Knopf)
Fay Weldon, *Watching me, watching you* (Summit Books)
Fay Weldon, *Praxis : a novel* (Summit Books)
Fay Weldon, *Puffball : a novel* (Summit Books)
Fay Weldon, *Remember me* (Random House)
Fay Weldon, *The heart of the country* (Hutchinson)
Fay Weldon, *The hearts and lives of men* (Heinemann)
Fay Weldon, *The rules of life* (Hutchinson)
Fay Weldon, *The Shrapnel Academy* (Viking)
Fay Weldon, *The heart of the country* (Viking)

Fay Weldon, *Sacred cows* (Chatto & Windus)
Fay Weldon, *The fat woman's joke* (Academy Chicago)
Fay Weldon, *The cloning of Joanna May Collins*
Fay Weldon, *Little sisters* (Chivers Press)
Fay Weldon, *Darcy's utopia* (Collins)
Fay Weldon, *The cloning of Joanna May* (Penguin Books)
Fay Weldon, *Moon over Minneapolis/Why she couldn't stay* (HarperCollins)
Fay Weldon, *Life force* (Viking)
Fay Weldon, *Growing rich* (HarperCollins)
Fay Weldon, *Life force* (HarperCollins)
Fay Weldon, *Trouble* (Penguin Books)
Fay Weldon, *Affliction* (HarperCollins)
Fay Weldon, *Splitting* (Flamingo)
Fay Weldon, *Leader of the band* (Penguin Books)
Fay Weldon, *Growing rich* (Flamingo)
Fay Weldon, *The hearts and lives of men* (Flamingo)
Fay Weldon, *A hard time to be a father: a collection of short Stories* (Flamingo)
Fay Weldon, *Life force* (HarperCollins)
Fay Weldon, *Nothing to wear and nowhere to hide: stories* (Flamingo)
Fay Weldon, *Big women* (Flamingo)
Fay Weldon, *Godless in Eden : a book of essays* (Flamingo)
Fay Weldon, *Rhode Island blues* (Flamingo)
Fay Weldon, *The Bulgari connection* (Flamingo)
Fay Weldon, *Auto da fay* (Flamingo)
Fay Weldon, *Flood warning : a play* (Samuel French)
Fay Weldon, *Wicked women : stories* (The Atlantic Monthly Press)
Fay Weldon, *Mantrapped* (Fourth Estate)
Fay Weldon, *She may not leave* (Fourth Estate)
Fay Weldon, *The spa decameron* (Quercus)

In other instances, Google Inc. (“Google”) provided the Library with a list of candidate works for digitization, which included the following Works listed on Schedule A:

Pat Cummings, *C.L.O.U.D.S.* (Lothrop, Lee & Shepard Books)
Pat Cummings, *Clean Your Room, Harvey Moon!* (Bradbury Press)
Pat Cummings, *Jimmy Lee Did It* (Lothrop, Lee & Shepard Books)
Fay Weldon, *Wicked women : stories* (The Atlantic Monthly Press)

The Library’s staff retrieved the Master Print Copy of each Work listed in Schedule A and prepared them for shipment to one of Google’s scanning centers. Google arranged for transportation of the Master Print Copies from, and back to, the Library.

(ii) (a) For each of the foregoing actions that was directed or performed by the Library, the individuals who were primarily responsible for such actions are Susan Wooding, Operations Manager/Hatcher-Shapiro Access Unit; Geoffrey Stoll, Information Resources Intermediate Supervisor; Anne Karle-Zenith and Julia Lovett, Special Project Librarians; and Library stacks employees Maureen Hoyi, Alan Steele, and Adam McDermott. For each of the foregoing actions that was directed or performed by Google, the individual who was primarily responsible for such actions is, upon information and belief, Ben Bunnell, Google Project Manager.

(b) A Master Print Copy of each Work on Schedule A was delivered to Google for digitization.

3. For each Work listed on Schedule A, provide the following information with regard to the Master Digital Copy, Master University Copy and all Secondary University Copies, HathiTrust Digital Copies and Third Party Digital Copies of the Work:

- (a) the title and author of the Work;
- (b) the date the digital copy was created;
- (c) the identity of the source of the digital copy;
- (d) a description of the equipment and method used to create the digital copy;
- (e) a description of the means by which the digital copy was transferred from its source;
- (f) the type of media (*e.g.*, DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;
- (g) the identity of any computer system connected to media on which the digital copy is stored;
- (h) the identity of any computer network to which a device storing the digital copy is connected;
- (i) the Physical Location of the digital copy;

- (j) the Virtual Location of the digital copy;
- (k) the identities of the individual(s) who authorized, directed, supervised, facilitated and/or participated in the creation of the digital copy, including each such individual's name and current address, as well as his or her employer (at the time of the digitization), job title and role in the creation of the digital copy;
- (l) the identities of the individual(s) who currently have authorized access to the Physical Location and/or Virtual Location of the digital copy, including each such individual's name and current address, as well as his or her current employer, title and job description.

RESPONSE: Defendant objects to Interrogatory No. 3 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's, the University's, or the Library's knowledge. Defendant further objects to Interrogatory No. 3 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Defendant further objects to Interrogatory No. 3 on the ground that subparts (c) and (e) are vague and ambiguous in that "source" and "transferred from its source" are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant also objects to Interrogatory No. 3 on the ground that subparts (g), (h), (i), and (j) seek Confidential Information regarding the identity of computer systems and computer networks and regarding the "Physical Location" and "Virtual Location" of digitized works, and the disclosure of such Confidential Information would compromise the security of the HDL. Defendant further objects to Interrogatory No. 3 on the ground that subpart (k) is vague and ambiguous in that "authorized," "directed," "supervised," "facilitated" and "participated" are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant also objects to Interrogatory No. 3 as overly broad and unduly burdensome to the extent that subpart (k) seeks the current address of individuals who were employed by the

University at the time of the digitization but who are no longer employed by the University or involved in the HathiTrust service. Defendant further objects to Interrogatory No. 3 on the ground that subpart (l) seeks private and confidential information protected from disclosure by agreements with other parties, and by federal statutes and regulations.

Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that, upon information and belief, Google prepared a Master Digital Copy of each Work listed on Schedule A based on Master Print Copies, but further information concerning such Master Digital Copies lies with third parties and is not in Defendant's possession, custody, or control. Defendant further responds that no Third Party Digital Copies have been created from the HathiTrust Digital Copies of any Work listed on Schedule A, and that four HathiTrust Digital Copies are maintained to store and preserve the digitized works in the HDL: (1) the "Initial HathiTrust Digital Copy" received from Google and incorporated into the HDL at the University, (2) the "Mirror Site HathiTrust Digital Copy," (3) the "First Backup Tape HathiTrust Digital Copy," and (4) the "Second Backup Tape HathiTrust Digital Copy." In addition, the "Master University Copy," as defined by Plaintiffs, is the same as the Initial HathiTrust Digital Copy defined above and will be referred to as such in Defendant's responses. Moreover, the only "Secondary University Copies" that exist are HathiTrust Digital Copies, namely, the Mirror Site HathiTrust Digital Copy, the First Backup Tape HathiTrust Digital Copy, and the Second Backup Tape HathiTrust Digital Copy defined above.

With respect to the Master Digital Copy and the HathiTrust Digital Copies, Defendant provides responses to subparts (a), (b), and (j) in the attached **Exhibit A**. Because Defendant's responses to subparts (c)-(i), (k), and (l) are the same for each Work listed in Schedule A and for Plaintiffs' convenience, Defendant provides responses to these subparts below.

In response to subparts (c)-(i), Defendant provides the information in the chart below, which applies to the Master Digital Copy and the HathiTrust Digital Copies for each of the Works listed on Schedule A.

	Master Digital Copy	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
(c) the identity of the source of the digital copy;	On information and belief, the Master Print Copies	Google Return Interface	The Initial HathiTrust Digital Copy	The Initial HathiTrust Digital Copy	The First Backup Tape HathiTrust Digital Copy
(d) a description of the equipment and method used to create the digital copy;	Such information is not in Defendant's, the University's, or the Library's possession, custody, or control.	Google Return Interface.	Isilon SyncIQ	Tivoli Storage Manager backup	Internal Tivoli Storage Manager replication
(e) a description of the means by which the digital copy was transferred from its source;	Such information is not in Defendant's, the University's, or the Library's possession, custody, or control.	Google Return Interface.	Isilon SyncIQ	Tivoli Storage Manager backup protocol	Tivoli Storage Manager backup protocol
(f) the type of media (e.g., DVD, flash drive, internal/external hard drive, tape backup, etc.) on which the digital copy is stored;	Such information is not in Defendant's, the University's, or the Library's possession, custody, or control.	Isilon Network Attached Storage	Isilon Network Attached Storage	Encrypted tape	Encrypted tape
(g) the identity of any computer system connected to media on which the digital copy is stored;	Such information is not in Defendant's, the University's, or the Library's possession, custody, or control.	Two HathiTrust production web servers, four HathiTrust ingest servers, and four HathiTrust development web servers	Two HathiTrust production web servers and two HathiTrust data set prep / repository validation servers	Four University of Michigan Information Technology Services Tivoli Storage Manager servers located at the Michigan Academic Computing Center	Four University of Michigan Information Technology Services Tivoli Storage Manager servers located at the Arbor Lakes Data Facility
(h) the identity of any computer	Such information is not in Defendant's, the	The HathiTrust private	The HathiTrust private	The University of Michigan	The University of Michigan

network to which a device storing the digital copy is connected;	University's, or the Library's possession, custody, or control.	computer network and the University of Michigan campus computer network	computer network and the Indiana University – Purdue University Indianapolis campus computer network	campus computer network	campus computer network
(i) the Physical Location of the digital copy;	Such information is not in Defendant's, the University's, or the Library's possession, custody, or control.	Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan	Informatics & Communications Technology Complex, Room IT 024, 535 West Michigan Street, Indianapolis, Indiana	Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan	Arbor Lakes Data Facility, Room 9100, Arbor Lakes Building 1, 4251 Plymouth Rd., Ann Arbor, Michigan

In response to subpart (k), Defendant provides the information in the chart below, which applies to the Master Digital Copy and the HathiTrust Digital Copies for each of the Works listed on Schedule A. All individuals identified as employees of the University may be contacted through Defendants' counsel.

Master Digital Copy	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
Upon information and belief, Google prepared a Master Digital Copy of each Work listed on Schedule A based on Master Print Copies, but further information concerning such Master Digital Copies, including the identities of the individual(s) at Google who authorized, directed, supervised, facilitated, and/or participated in the	By entering the December 14, 2004 Cooperative Agreement with Google, the Regents of the University of Michigan/University Library, Ann Arbor Campus authorized the creation of the Initial HathiTrust Digital Copy. Per the terms of the Cooperative Agreement, Google provided the Library with the ability to obtain the Initial HathiTrust Digital	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time,	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time,	The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Feeman, who was employed as a University of Michigan Library IT Core Services staff member at the time,

creation of the Master Digital Copies, is not in Defendant's, the University's, or the Library's possession, custody, or control. By entering the December 14, 2004 Cooperative Agreement with Google, the Regents of the University of Michigan/University Library, Ann Arbor Campus authorized the creation of the Master Digital Copy.	Copy. The University of Michigan Library IT Core Services staff, namely, Ezra Brooks, Aaron Elkiss, Sebastien Körner, Thomas Mooney, Ryan Rotter, and Cory Snavely, all of whom are employed by the University, as well as Jessica Freeman, who was employed as a University of Michigan Library IT Core Services staff member at the time, were primarily responsible for obtaining the Initial HathiTrust Digital Copy from Google Return Interface.	were primarily responsible for the creation of the Mirror Site HathiTrust Digital Copy using Isilon SyncIQ.	were primarily responsible for the creation of the First Backup Tape HathiTrust Digital Copy using Tivoli Storage Backup manager.	were primarily responsible for the creation of the Second Backup Tape HathiTrust Digital Copy using Tivoli Storage Manager replication.
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In response to subpart (l), Defendant provides the information in the chart below, which applies to the Master Digital Copy and the HathiTrust Digital Copies for each of the Works listed on Schedule A as of February 1, 2012. All individuals identified as employees of the University, the University of Wisconsin, or Indiana University may be contacted through Defendants' counsel.

Master Digital Copy	Initial HathiTrust Digital Copy	Mirror Site HathiTrust Digital Copy	First Backup Tape HathiTrust Digital Copy	Second Backup Tape HathiTrust Digital Copy
Upon information and belief, Google prepared a Master Digital Copy of each Work	Ezra Brooks, Aaron Elkiss, Sebastien Körner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to	Hafid Adnane, Chad Harris, and Andrew Poland, System Administrators, Indiana University, and Ezra Brooks, Aaron Elkiss, Sebastien Körner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and	Mike Garrison, Cameron Hanover, Phil Jessel, David Nowell, and Steve	Mike Garrison, Cameron Hanover, Phil Jessel, David Nowell, and Steve

listed on Schedule A based on Master Print Copies, but further information concerning such Master Digital Copies, including the identities of the individual(s) who have authorized access to the Physical Location of the Master Digital Copies, is not in Defendant's, the University's, or the Library's possession, custody, or control.	the Physical Location of the Initial HathiTrust Digital Copy.	Programmers, University of Michigan Library, are authorized for certain access to the Physical Location of the Mirror Site HathiTrust Digital Copy.	Simmons, who are Tivoli Storage Manager Administrators, University of Michigan Information Technology Services, are authorized for certain access to the Physical Location of the First Backup Tape HathiTrust Digital Copy.	Simmons, who are Tivoli Storage Manager Administrators, University of Michigan Information Technology Services, are authorized for certain access to the Physical Location of the Second Backup Tape HathiTrust Digital Copy.
Upon information and belief, Google prepared a Master Digital Copy of each Work listed on Schedule A based on Master Print Copies, but further information concerning such Master Digital Copies, including the	John Wilkin, Associate University Librarian, University of Michigan Library; Zack Lane, Copyright Researcher, Columbia University, 535 West 114th Street, New York, New York 10027; Janet Black, Kathy Marlett, Jo McClamroch, and Sherri Michaels, Copyright Researchers, Indiana University; Judith Ahronheim, David Fulmer, Dennis McWhinnie, Gregory Nichols, and Christine Wilcox, Copyright Researchers, University of Michigan; Carla Dewey Urban, Copyright Researcher, University of Minnesota, 3675 Arboretum Drive, Chaska, Minnesota, 55318; Sue Zuriff, Copyright	John Wilkin, Associate University Librarian, University of Michigan Library; Zack Lane, Copyright Researcher, Columbia University, 535 West 114th Street, New York, New York 10027; Janet Black, Kathy Marlett, Jo McClamroch, and Sherri Michaels, Copyright Researchers, Indiana University; Judith Ahronheim, David Fulmer, Dennis McWhinnie, Gregory Nichols, and Christine Wilcox, Copyright Researchers, University of Michigan; Carla Dewey Urban, Copyright Researcher, University of Minnesota, 3675 Arboretum Drive, Chaska, Minnesota, 55318; Sue Zuriff, Copyright	Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Virtual	Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, who are System Administrators and Programmers, University of Michigan Library, are authorized for certain access to the Virtual

identities of the individual(s) who have authorized access to the Virtual Location of the Master Digital Copies, is not in Defendant's, the University's, or the Library's possession, custody, or control.	55318; Sue Zuriff, Copyright Researchers, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55455; Lisa Nachreiner, Karen Rattunde, Rita Roemer, and Al Seeger, Copyright Researchers, University of Wisconsin; Bobby Glushko Copyright Specialist, University of Michigan Library; Melissa Levine, Lead Copyright Officer, University of Michigan Library; Benjamin Tobey, Lisa Jackson Hardman, Melvin Whitehead, Neena Adams, Bryan Birchmeier, Katie Kujala, and Monica Tsuneishi, Orphan Works Investigators, University of Michigan Library; Martin Brennan, Sharon Farb, Diane Gurman, Leslie McMichael, and Angela Riggio, Orphan Works Investigators, University of California Los Angeles, Charles E. Young Research Library Building, Los Angeles, California 90095-1575; Lara Unger and Lawrence Wentzel, Digitization Specialists, University of Michigan Library; Jackie Bronicki, Image Quality Researcher, University of Michigan Library; Emily Campbell, Martin Knott, Connie McGuire, Liz Mustard, Chris Powell, and Ellen Wilson, Librarians, University of Michigan Library; Shane Beers, Digital Preservation Specialist, University of Michigan Library; Tom West-Burton, Roger Espinosa, Phillip Farber, Nasir Grewal, Brian Hall, Tim Prettyman, Pranay Sethi, Peter Ulitz, and John Weise, Programmers, University of Michigan Library; Kat Hagedorn, Project Manager, University of Michigan Library; Julia Lovett and Jeremy York, Special Projects Librarians, University of Michigan Library; Angelina Zaytsev, Project Assistant, University of	Researchers, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55455; Lisa Nachreiner, Karen Rattunde, Rita Roemer, and Al Seeger, Copyright Researchers, University of Wisconsin; Bobby Glushko, Copyright Specialist, University of Michigan Library; Melissa Levine, Lead Copyright Officer, University of Michigan Library; Benjamin Tobey, Lisa Jackson Hardman, Melvin Whitehead, Neena Adams, Bryan Birchmeier, Katie Kujala, and Monica Tsuneishi, Orphan Works Investigators, University of Michigan Library; Martin Brennan, Sharon Farb, Diane Gurman, Leslie McMichael, and Angela Riggio, Orphan Works Investigators, University of California Los Angeles, Charles E. Young Research Library Building, Los Angeles, California 90095-1575; Lara Unger and Lawrence Wentzel, Digitization Specialists, University of Michigan Library; Jackie Bronicki, Image Quality Researcher, University of Michigan Library; Emily Campbell, Martin Knott, Connie McGuire, Liz Mustard, Chris Powell, and Ellen Wilson, Librarians, University of Michigan Library; Shane Beers, Digital Preservation Specialist, University of Michigan Library; Tom West-Burton, Roger Espinosa, Phillip Farber, Nasir Grewal, Brian Hall, Tim Prettyman, Pranay Sethi, Peter Ulitz, and John Weise, Programmers, University of Michigan Library; Kat Hagedorn, Project Manager, University of Michigan Library; Julia Lovett and Jeremy York, Special Projects Librarians, University of Michigan Library; Angelina Zaytsev, Project Assistant, University of	Location of the First Backup Tape HathiTrust Digital Copy.	Location of the Second Backup Tape HathiTrust Digital Copy.
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Assistant, University of Michigan Library; Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, System Administrators and Programmers, University of Michigan Library; Suzanne Chapman, User Interface Specialist, University of Michigan Library; and 32 University of Michigan students and/or employees who receive authorization through the University of Michigan's Office of Services for Students with Disabilities as part of the reasonable accommodations provided to them under federal law are authorized for certain access to the Virtual Location of the Initial HathiTrust Digital Copy.	Michigan Library; Ezra Brooks, Aaron Elkiss, Sebastien Korner, Thomas Mooney, Ryan Rotter, and Cory Snavely, System Administrators and Programmers, University of Michigan Library; Suzanne Chapman, User Interface Specialist, University of Michigan Library, and 32 University of Michigan students and/or employees who receive authorization through the University of Michigan's Office of Services for Students with Disabilities as part of the reasonable accommodations provided to them under federal law are authorized for certain access to the Virtual Location of the Second HathiTrust Digital Copy.		
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4. Identify the number of books the University contributed to HathiTrust and the estimated number of those books the University believes are protected by copyright.

RESPONSE: Defendant objects to Interrogatory No. 4 on the ground that the phrase “books the University contributed” is not defined and the meaning of such phrase is not clear in the context of the Interrogatory. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that the University has contributed no “books” to HathiTrust. Defendant further responds that, as of December 20, 2011, the University, through its Library, had incorporated into the HathiTrust Digital Library 4,490,155 digitized volumes; the Library does not currently have an estimate of the number of such works that are protected by copyright under the United States Copyright Act, as the Library’s efforts to determine the copyright status of works in the HathiTrust Digital Library are ongoing.

5. Describe in detail the process followed by the University between May 16, 2011 and September 16, 2011 in connection with the Orphan Works Project to determine whether a work would be designated as an “orphan candidate.”

RESPONSE: Subject to the foregoing general objections and without waiving the same, Defendant responds that the process followed by the University and the Library between May 16, 2011 and September 16, 2011 in connection with the “Orphan Works Project” (an initiative to, *inter alia*, identify “orphan works,” in-copyright works for which the copyright holder cannot be found (“OWP”)) to determine whether a work would be designated as an “orphan works candidate” (which, after further investigation, the Library may have decided to make available to certain users of the HathiTrust Service on a limited basis) included the steps described below (the “Initial OWP Process”). During the period from May 16, 2011 to September 16, 2011, the Initial OWP Process was continually being evaluated and adjusted based on information acquired and analyzed through the Initial OWP Process.

(1) The Library began its review of works under the Initial OWP Process on or about May 16, 2011. The works reviewed in the Initial OWP Process were works that were determined to be in-copyright by the University and the Library’s Copyright Review Management System. Works reviewed in the Initial OWP Process were reviewed by Orphan Works Investigators (“OWIs”) who were hired and trained specifically to conduct the OWP research.

(2) To begin their review of each work, OWIs were provided with information concerning the work including but not limited to bibliographic data.

(3) After verifying the bibliographic data, the OWI conducted searches for the work on Amazon.com and, in certain circumstances, Bookfinder.com to determine whether the work was available in print and unused. If, through these searches, the OWI identified the work available in print, he or she stopped review of the work; if the OWI identified the work as not available in print, he or she continued to the next step of the review.

(4) The purpose of the next step in the OWI's review was to determine whether a rights holder for the work could be located, beginning with research regarding the work's publisher. If, through his or her research, the OWI identified contact information for the publisher, he or she noted the contact information in the shared spreadsheets and stopped review of the work; if the OWI could not identify contact information for the publisher, the OWI noted this fact on the shared spreadsheets and continued to the next step of the review process.

(5) If no contact information could be identified for the work's publisher, the OWI began to research authors, copyright renewers, and other potential rights holders for the work, such as copyright holders listed on the title page verso and other leads identified during research. If the OWI was able to identify email or telephone contact information for a potential rights holder, the OWI would record the contact information, and stop his or her review of the work. If the OWI was unable to identify email or telephone contact information for a potential rights holder, the OWI coded the work as a potential orphan works candidate.

(6) Once the primary review was completed for a particular work, a secondary, blind review was undertaken by a different OWI. If the final codes entered for the primary and secondary review matched, then the work either became an orphan works candidate or did not as indicated by the coding. If the final codes of the primary and secondary review did not match, a conflict, or third, review was conducted.

(7) The bibliographic information for works identified as orphan works candidates were posted on the HathiTrust service website (and also could be viewed on the Library website). The first list of bibliographic information for orphan work candidates was posted on the HathiTrust service website on or about July 15, 2011. The bibliographic information for these candidates, and others subsequently added, were intended to be publicly posted for ninety days as a further

effort to identify the rights holders of the works. If the rights holder for one of the orphan work candidates identified him/herself, or even if a third party brought forward information leading to a link between a work and a rights holder, the work was removed from the list of candidates and from the OWP. (Indeed, if a copyright holder were identified at any time—even after the expiration of the planned ninety-day period—the copyright holder’s work would have been removed from the OWP, consistent with the OWP’s purpose to identify and provide certain access only to genuine orphan works.)

(8) On September 16, 2011, before the expiration of the ninety-day online posting period of the bibliographic information for the first set of orphan works candidates, and before any works were made available through the OWP, the Library withdrew from the “HathiTrust Digital Library – Orphan works candidates” webpage the bibliographic information for the initial list of orphan works candidates and issued a statement that it had “begun an examination of [its] procedures” to “create a more robust, transparent, and fully documented process.”

6. Identify the individual(s) who authorized, directed, supervised, facilitated and/or participated in the Orphan Works Project between May 16, 2011 and September 16, 2011, including each such individual’s name and current address, as well as his or her employer (at the time the individual was involved with the Orphan Works Project), job title and role in the Orphan Works Project.

RESPONSE: Defendant objects to Interrogatory No. 6 on the ground that the terms “authorized,” “directed,” “supervised,” “facilitated” and “participated” are not defined and the meaning of such terms is not clear in the context of the Interrogatory. Defendant also objects to Interrogatory No. 6 as overly broad and unduly burdensome to the extent it seeks the current address of individuals who were employed by the UM at the time the individual was involved with the Initial OWP Process but who are no longer employed by UM or involved with the OWP Project. Subject to the foregoing general and specific objections and without waiving the same,