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23 SEAN SWEENEY, IN HIS CAPACITY AS  
24 TRUSTEE OF THE ESTATE OF JAMES  
25 JOYCE, AND THE ESTATE OF JAMES  
26 JOYCE

27 UNITED STATES DISTRICT COURT  
28 NORTHERN DISTRICT OF CALIFORNIA

29 **CAROL LOEB SHLOSS,**

30 **Plaintiff,**

31 **v.**

32 **SEAN SWEENEY, in his capacity as**  
33 **trustee of the Estate of James Joyce,**  
34 **and THE ESTATE OF JAMES**  
35 **JOYCE,**

36 **Defendants.**

37 **Case No. C 06 3718 JW HRL**

38 **JOINT CASE MANAGEMENT**  
39 **STATEMENT**

40 **Date: February 12, 2007**

41 **Time: 10:00 a.m.**

42 **Place: Courtroom, Hon. James**  
43 **Ware**

1 Plaintiff Carol Loeb Shloss ("Shloss") and defendants Sean Sweeney and the  
2 Estate of James Joyce ("Estate") jointly submit this Case Management Statement  
3 and Proposed Order.

#### 4 DESCRIPTION OF THE CASE

5 Shloss wrote a book about Lucia Joyce, including about her influence on her  
6 father James Joyce's work *Finnegans Wake* (the "Book"). Prior to the Book's  
7 publication, the Estate contacted both Shloss and her publisher, Farrar Straus &  
8 Giroux (the "Publisher"). The Book was published in December 2003 with the title  
9 *Lucia Joyce: To Dance in the Wake*. In or about March 2005, Shloss notified the  
10 Estate she intended to publish a website to supplement her book, and attached a  
11 copy of that proposed website for the Estate to evaluate (the "Website"). Shloss's  
12 lawyers and the Estate's lawyers engaged in correspondence about the Website in  
13 2005. In June 2006, Shloss commenced an action before this Court, seeking a  
14 declaratory judgment and injunctive relief that publication of the Website would not  
15 infringe any copyright of the Estate's, that the 1922 Paris first edition of *Ulysses* is  
16 in the public domain in the United States, that publication of the Website would  
17 constitute fair use, and that the Estate was barred from enforcing its copyrights  
18 against Shloss because it had engaged in copyright misuse and unclean hands.

19 After the Complaint was filed, Shloss expanded the Website to add new  
20 materials. The new materials consist of new text from Shloss, as well as quotes  
21 from works by James Joyce and Lucia Joyce. The revised version of the Website is  
22 referred to as the 2006 Website. The materials added to the Website are referred to  
23 as the "Additional Materials." Shloss had not disclosed to the Estate the Additional  
24 Materials before she filed the Complaint, but did provide the Estate with a full copy  
25 of all Additional Materials in September 2006. Shloss filed an Amended  
26 Complaint on October 25, 2006, to cover the 2006 Website and the Additional  
27 Materials. The Estate covenanted not to sue Shloss as to the Website as it existed  
28 in 2005.

1           **LEGAL ISSUES IN DISPUTE**

2           The parties differ as to the following:

3           a) Whether the Additional Materials Shloss intends to publish in her 2006  
4 Website, if and when published, will infringe any copyrights owned or controlled  
5 by the Estate of James Joyce;

6           b) Whether Shloss's use of Defendants' copyrighted materials is protected by  
7 fair use;

8           c) Whether the Estate is prevented from enforcing the copyrights at issue  
9 against Shloss by virtue of copyright misuse or unclean hands;

10           d) Whether James Joyce's 1922 Paris first edition of *Ulysses* is in the public  
11 domain in the United States; and  
12

13           e) Whether either party should be awarded attorney's fees and costs for the  
14 lawsuit.  
15

16           **MOTION PRACTICE**

17           The Estate contends that the Estate itself is not a proper party to the action  
18 because it has no capacity to sue or be sued. Further, the Estate may file a motion  
19 for summary judgment on Shloss' affirmative defenses of copyright misuse and  
20 unclean hands.  
21

22           The parties believe that the issues of copyright infringement or fair use of the  
23 Additional Materials can be substantially narrowed, if not resolved altogether, by  
24 motion practice.  
25  
26  
27  
28

1 The parties currently are discussing whether a protective order is appropriate  
2 and, if so, the nature of the protective order. If that issue cannot be resolved by the  
3 parties, it may need to be resolved through motion practice.  
4

5 **PARTIES**

6 All named defendants have been served with process and have appeared in  
7 this action.  
8

9 Shloss contends that Stephen James Joyce may need to be joined in this  
10 dispute individually, or that the additional action filed by Shloss against him should  
11 be consolidated with this one, in order to afford complete relief to Shloss.  
12

13 The Estate does not contemplate joinder of any additional parties.  
14

15 **ALTERNATIVE DISPUTE RESOLUTION**

16 The parties have filed a Stipulation and Proposed Order Selecting Mediation.  
17 A mediator has been appointed by the Court, and mediation is scheduled for  
18 March 16, 2007.  
19

20 **DISCLOSURES/DISCOVERY.**

21 The parties have agreed to exchange initial disclosures under Fed. R. Civ.  
22 P. 26(a)(1) on or about March 28, 2007. The parties anticipate that their initial  
23 disclosures will comply with Fed. R. Civ. P. 26(a)(1) as written.  
24

25 Shloss contemplates that extensive discovery will be needed regarding the  
26 Estate's unclean hands and copyright misuse, possibly involving depositions of  
27 international witnesses.  
28

1 The Estate contemplates that little discovery will be needed. The Estate  
2 believes that the case will center around whether Shloss' proposed use of some or  
3 all of the Additional Materials on the 2006 Website constitutes copyright  
4 infringement or fair use. The Estate further believes that the affirmative defenses of  
5 copyright misuse and unclean hands are moot in light of the fact that no  
6 counterclaim for copyright infringement was asserted.  
7

8  
9 Shloss anticipates that the number of depositions may need to be increased to  
10 approximately fifteen (15) for each side. The Estate does not contemplate that any  
11 changes to the limitations on discovery imposed under the Federal Rules of Civil  
12 Procedure should be made at this time.  
13

14 The parties have agreed that no discovery will be exchanged until after  
15 mediation.  
16

17 **SCHEDULE**

18 The Court entered a Scheduling Order on or about February 9, 2007. At this  
19 point in time, the parties have no comments on the Scheduling Order except to note  
20 that they already have contacted the ADR unit and have a mediation scheduled for  
21 March 16, 2007.  
22

23  
24 **TRIAL SCHEDULE**

25 Shloss believes that a trial of 7 to 10 days will be appropriate.  
26  
27  
28



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