

EXHIBIT S

7 CAROL LOEB SHLOSS,)

)

8 Plaintiff,)

) No. C 06-03718

JW

9 versus)

) January 31,

2007

10 SEAN SWEENEY, et al.,)

) Defendant.)

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

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16 A-P-P-E-A-R-A-N-C-E-S:

Center

17 For the Plaintiff: Stanford Law School

for Internet and Society

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By: ANTHONY T. FALZONE

DAVID S. OLSON

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20 Stanford, CA 94305-8610

21 For the Defendants: Jones Day
By: MARIA K. NELSON
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Los Angeles, CA 90071

24 Court Reporter: Georgina Galvan Colin
25 License No. 10723

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GEORGINA GALVAN COLIN, CSR 10723

2007 1 San Jose, California January 31,

2 P-R-O-C-E-E-D-I-N-G-S

3 THE CLERK: Calling case 06-03718,
Carol

4 Loeb Shloss versus Sean Sweeney, et al, on for
5 defendant's motion to dismiss. Fifteen minutes
6 each side.

7 Counsel, please step forward and state
8 your appearances.

9 MR. FALZONE: Anthony Falzone for
10 Professor Carol Shloss.

11 MR. OLSON: David Olson for Professor
12 Carol Shloss.

13 MS. NELSON: Your Honor, Maria Nelson
for
14 the estate of James Joyce. With me is my
associate

15 Anna Raimer, and the defendant Sean Sweeney.

16 MR. FALZONE: Your Honor, I have with
me
17 the plaintiff, Professor Carol Shloss.

18 THE COURT: Good morning. Good morning
19 all; welcome.

20 Very well, this is your motion,
21 Ms. Nelson, to dismiss.

22 MS. NELSON: That is correct, your
Honor.

23 THE COURT: Do you want to, you can
24 submit it on the papers or make an argument if
you
25 wish.

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1 MS. NELSON: I'm happy to make an
2 argument, your Honor.

3 First, I would like to clarify a few
4 points. The Estate, despite the fact that
Stephen
5 Joyce is not a party to the Estate, the Estate
6 certainly takes this proceeding very seriously.
7 And Mr. Joyce is not ignoring the proceeding. He
8 does consider these proceedings to be binding on
9 the Estate. The Estate is not covenanted to sue
on
10 the materials that Ms. Shloss added to the
website
11 after the initial complaint was filed. There are
12 good reasons for that. There was considerable
13 material that was added months after the

14 proceedings were started, but that does not mean
15 that there is a complaint on those materials
16 waiting in the wings either from the Estate or
from
17 Stephen Joyce. There is not. Neither the Estate
nor
18 its trustees, either one of them, have any
present
19 intention of suing Ms. Shloss over those 2006
20 materials.

21 The Estate did covenant not to sue on
the
22 original materials that were presented to it in
23 2005. That was actually a very practical
decision.
24 That doesn't mean that the Estate considers those
25 materials to be a fair use, it just means that
they

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1 don't consider them to be worth fighting over.
As
2 the declaration of Anna Raimer makes very clear,
3 the Estate's position is that the materials that
4 Shloss added to the website in 2005 are only
making

5 a very incremental difference over what was in
the 6 book.

7 THE COURT: Now, you started in the
8 middle and I appreciate with all this paper it's
9 fair to start in the middle, but let me back up.

10 MS. NELSON: Okay.

11 THE COURT: Because I understand the
12 thrust of your argument, the Court should dismiss
13 because there is no case or controversy because

the 14 Estate or anyone who would speak on behalf of the
15 Estate is willing to release and give a covenant
16 not to sue to the plaintiff for the material
which

17 she plans to publish, is that a correct
statement?

18 MS. NELSON: Only partially.

19 THE COURT: All right.

20 MS. NELSON: At this point, your Honor,
21 backing up, there was an original complaint and
22 then later on an amended complaint.

23 THE COURT: So what difference does
that 24 make?

25 MS. NELSON: The difference that that

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CERTIFICATE OF REPORTER

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Reporter

I, Georgina Galvan Colin, Court

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for the United States District Court for the

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Northern District of California, 280 South First

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Street, San Jose, California, do hereby certify:

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full,

That the foregoing transcript is a

9

true and correct transcript of the proceeding had

10

Case

in Carol Loeb Shloss vs Sean Sweeney, et al.,

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that

Number C-06-03718 JW, dated January 31, 2007,

12 I reported the same in stenotype to the best of
my
13 ability, and thereafter had the same transcribed
by
14 computer-aided transcription as herein appears.

15

16

17 Dated:

18

19 (Certified hard copy to follow)

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License Number 10723

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