

1 NELSON E. ROTH, SBN 67350
 ner3@cornell.edu
 2 CORNELL UNIVERSITY
 300 CCC Building
 3 Garden Avenue
 Ithaca, New York 14853-2601
 4 Telephone: (607)255-5124
 Facsimile: (607)255-2794
 5

6 BERT H. DEIXLER, SBN 70614
 bdeixler@proskauer.com
 CHARLES S. SIMS, New York Attorney Registration No. 1535640
 7 admitted *pro hac vice*
 csims@proskauer.com

8 CLIFFORD S. DAVIDSON, SBN 246119
 cdavidson@proskauer.com
 9 PROSKAUER ROSE LLP
 2049 Century Park East, 32nd Floor
 10 Los Angeles, CA 90067-3206
 Telephone: (310) 557-2900
 11 Facsimile: (310) 557-2193

12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 KEVIN VANDGINDEREN,
 15 Plaintiff,
 16 v.
 17 CORNELL UNIVERSITY,
 18 Defendant.
 19

) Case No. 07-CV-2045-BTM-JMA
) Hon. Barry T. Moskowitz
)
) DECLARATION OF ANNE
) RICHARDSON KENNEY IN
) SUPPORT OF DEFENDANT'S
) REQUEST FOR JUDICIAL
) NOTICE IN SUPPORT OF
) SPECIAL MOTION TO STRIKE
) PLAINTIFF'S COMPLAINT
) PURSUANT TO SECTION 425.16
) OF THE CALIFORNIA CODE OF
) CIVIL PROCEDURE

20
 21
 22 [Per chambers, no oral argument
 unless requested by the Court]

23
 24 [Special Motion to Strike and
 Request for Judicial Notice filed
 concurrently]

25
 26 Hearing Date: December 21, 2007
 Time: 11:00 a.m.
 27 Place: Courtroom 15

28 Action Filed: October 1, 2007

DECLARATION OF ANNE RICHARDSON KENNEY IN SUPPORT OF REQUEST FOR
 JUDICIAL NOTICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF ANNE RICHARDSON KENNEY

I, Anne Richardson Kenney, declare as follows:

1. I am the Interim University Librarian at Cornell University in Ithaca, New York, and I have held this position since February 2007. I have been employed by Cornell University for the past twenty years in various library capacities. Unless otherwise indicated, I have personal knowledge of the facts set forth herein through my employment at Cornell University. If called as a witness, I could and would testify competently to the following.

2. The mission of the Cornell University Library (“CUL”) is to enrich the intellectual life of the University. CUL fulfills this mission in part by providing a stable and reliable knowledge base, organizing information into meaningful and manageable forms, making available well-equipped and functional work places on campus, and serving as a major cultural repository. Preservation of information resources is integral to CUL’s mission.

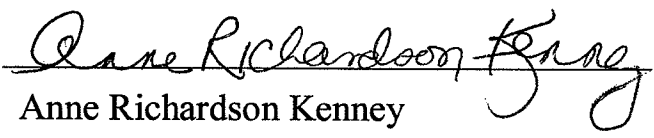
3. With the advent of the Internet, and the availability of digitization as a means to archive material previously available only in paper form, CUL has engaged in multiple long-term projects to digitize information resources in its collection. Many of these digital materials are stored in CUL’s institutional repository, known as eCommons.

4. One of the specific resources being digitized is a weekly University publication called the *Cornell Chronicle*. Paper copies of the *Cornell Chronicle* are maintained in CUL, where they have been maintained for years, and they are accessible to library patrons who are physically present on campus. The *Cornell Chronicle* has also been microfilmed, and is available to anyone who has access to a library that participates in the interlibrary loan system. Digitized copies of the *Cornell Chronicle* are accessible to anyone who has computer access to CUL’s eCommons.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. I have examined the online image of the March 17, 1983 *Cornell Chronicle* cited in the Complaint in this matter, which is accessible at, http://ecommons.library.cornell.edu/bitstream/1813/5350/14/014_24.pdf, and a true printout of which is attached as Exhibit B to the Request for Judicial Notice. The online image and Exhibit B are authentic copies of the paper version maintained in the CUL. Indeed, the online image is simply a digital picture of the physical newspaper, as one can see from the edges of the newspaper visible in the online image as well as the printout of that online image, Exhibit B.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed this 29th day of October, 2007, at Ithaca, New York.


Anne Richardson Kenney