

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

JOHN WILEY & SONS, INC.,
Plaintiff,

-against-

08 Civ. 7834 (DCP)

SUPAP KIRTSANG D/B/A
BLUECHRISTINE99 AND JOHN
DOE NOS. 1-5,

ECF Case

Defendants.

-----x

William Dunnegan and Laura Scileppi for the Plaintiff

Sam P. Israel for the Defendant

JOINT PRE-TRIAL ORDER

At the pretrial conference held on October 22, 2009 before the Hon.

Donald C. Pogue, and attended by counsel, the following matters were discussed and agreed to, and are hereby ORDERED:

1. **General.** The parties recognize that this joint pretrial order controls the subsequent course of the action unless the order is modified by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The attached schedules, each on a separate sheet, are part of this order.
2. **Parties and Counsel.** Schedule A sets forth the names of all parties; the names, addresses and telephone numbers of their respective attorneys, and the names of trial counsel for each party.

3. **Jurisdiction.** Schedule B-1 sets forth the statutes, legal doctrines, and facts upon which Plaintiff claims jurisdiction. Schedule B-2 indicates which of these, if any, are contested.

4. **Uncontested Facts.** All material facts that are without substantial controversy are set forth in Schedule C (in the form required by Rule 56). Material facts that are actually and in good faith controverted and which a party intends to establish at trial, are separately listed in Schedules C-1 and C-2. Facts not included in these schedules may not be established at trial.

5. **Claims and Defenses.** The parties' claims and defenses are separately listed in Schedule D-1 and D-2.

6. **Damages and Other Relief.** Claims with respect to damages and other relief sought by each party are detailed in Schedules E-1 and E-2.

7. **Waiver of Claims.** The parties waive all claims with respect to liability, damages, and other relief and all affirmative defenses which are not set forth in Schedules D and E.

8. **Triable Issues.** Schedules F-1 and F-2 set forth and separately number the issues of the case, without simply restating the disputed facts. All legal issues are to be addressed prior to the commencement of the trial. Schedules F-3 and F-4 set forth the position of the parties on the applicability of 17 U.S.C. § 109.

9. **Witnesses.** Schedules G-1 and G-2 list for the respective parties the witnesses they will or will probably call to testify at the trial, setting forth for each witness (a) name, (b) address, (c) a summary of expected testimony, and, for expert witnesses, (d) a curriculum vitae, (e) the area of expertise, and (f) the basis upon which

the proposing party claims said testimony to be reliable. Once the trial commences, no interruption in the testimony will be permitted. Any objection to a witness, and the grounds therefore, must be separately stated as Objections to Schedule G-1 and G-2.

10. **Deposition Testimony.** Any party proposing to use deposition testimony as evidence shall, at least three weeks prior to the trial date, notify all the adversaries of the testimony proposed to be read. Objections to any proposed deposition testimony shall be made in writing no later than two weeks prior to trial. The parties shall file with the Court copies of the depositions, indicating the portions to be read and the relative objections. The Court will rule on all such objections prior to commencement of the trial.

11. **Exhibits.** Schedules H-1 and H-2 list for the respective parties the exhibits to be offered in evidence by that party. Each list shall identify and describe each exhibit. Plaintiff's exhibits shall be identified by numbers, Defendant's by letters. The parties recognize that they will not be allowed to use at trial any exhibits or witnesses not identified in this joint pretrial order except upon prompt notice to all parties and to the Court, and upon a showing of good cause.

12. **Objections to Exhibits.** Schedules I-1 and I-2 list for the respective parties each adversary's exhibits whose authenticity or admissibility are contested. The parties shall state the specific ground for objection to each contested exhibit listed therein.

13. **Discovery.** All discovery is complete. Undisclosed discovery which surfaces during trial will be deemed untimely and subject to the sanction of exclusion or imposition of a monetary fine, or both.

14. Jury Trial. The case will be tried to a jury. The jury trial is applicable to all aspects of the case.

Additional Filing Prior to Trial in Jury Cases. In jury cases, unless otherwise ordered by the Court, each party shall file, at a date to be determined at the pretrial conference, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on compact disk in WordPerfect X3 format. This paragraph does not preclude supplemental requests for additional instructions during the course of trial or at the conclusion of the evidence on matters that cannot reasonably be anticipated unless the Court has directed otherwise, and provided that no request to charge shall be accepted unless made and submitted to the Court twenty-four (24) hours in advance of the time that summation commences.

15. Pretrial Legal Memoranda. Not fewer than seven (7) days before the trial, each counsel shall provide the Court with memoranda of law containing a discussion of any unresolved issue not fully addressed by the Pretrial Summary Memorandum.

16. Trial Time. The trial will take approximately 2 days.

Dated: New York, New York
September 29, 2009

30

DUNNEGAN LLC

By William Dunnegan

William Dunnegan (WD9316)

wd@dunnegan.com

Laura Scileppi (LS0114)

ls@dunnegan.com

Attorneys for Plaintiff

John Wiley & Sons, Inc.

350 Fifth Avenue

New York, New York 10118

(212) 332-8300

SAM P. ISRAEL, P.C.

By A. Israel

Sam P. Israel (SPI0270)

Attorney for Defendant

Supap Kirtsang

Twenty Third Floor

New York, New York 10006

Tel: 212-201-5345

Fax: 212-201-5343

SO ORDERED:

Daniel C. Pogue

Schedule A
Trial Counsel

A-1. Counsel for Wiley

William Dunnegan
Laura Scileppi
Dunnegan LLC
350 Fifth Avenue, Suite 4908
New York, New York 10118
Tel: (212) 332-8300
Fax: (212) 332-8301

A-2. Counsel for Kirtsaeng

Sam P. Israel
Sam P. Israel, P.C.
1 Liberty Plaza 23rd Floor
New York, NY 10006
Tel: 212-201-5345
Fax: 212-201-5343

Schedule B
Statement of Jurisdiction

B-1. Wiley's Statement of Jurisdiction

 This Court has subject matter jurisdiction over Wiley's copyright infringement claim in this action pursuant to 28 U.S.C. § 1331 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

B-2. Kirtsaeng's Statement of Jurisdiction

 The Defendant acknowledges that the Plaintiff purports to bring claims under the statutes cited and refers the issue of whether the Court has subject matter jurisdiction to the Court for its determination.

Schedule C
Uncontested Facts

A. The Defendant moved to the United States from Thailand in approximately 1997 to pursue a Bachelor of Science degree in mathematics at Cornell University; four years later he was awarded his degree.

B. At all times, of the Wiley textbooks the Defendant has sold, the Defendant has received and sold only Wiley textbooks printed abroad by the Plaintiff's authorized Asian subsidiary, Wiley Asia ("Foreign Editions").

C. Kirtsaeng did not personally bring books from overseas into this country; they were shipped to California *via* UPS express and ocean freight, as directed, by friends and family (who he would later reimburse from sales he would make on eBay).

D. All of the books sold by the Defendant had notices stating that the books are copyrighted in the United States.

C-1. Wiley's Disputed Material Facts

1. Wiley owns the following United States copyrights for the following works ("Wiley Copyrights"), for which it has received the following Certificates of Registration from the United States Registrar of Copyrights on the following dates:

Title
Date of Registration
Registration Number
<u>Edition Number</u>

Accounting Principles
July 13, 1987
TX-2-111-034
First Edition

Fundamentals of Heat and
Mass Transfer
July 28, 2006
TX-6-410-153
Sixth Edition

Fundamentals of Physics:
Part 1,
September 17, 2007
TX-6-827-902
Eighth Edition

Information Technology
for Management
August 20, 2004
TX-6-013-876
Fourth Edition

Introduction to Heat
Transfer
August 14, 2006
TX-6-407-668
Fifth Edition

Management
May 17, 2004
TX-5-964-667
Eighth Edition

Materials Science and Engineering:
An Introduction
June 19, 2006
TX-6-405-304
Seventh Edition

Organic Chemistry
April 19, 1989
TX-2-544-723
Fourth Edition

2. Kirtsaeng first infringed the Wiley Copyrights through the sale of a Foreign Edition after their date of registration, as his PayPal records evidence:

Title Date of Registration Registration Number <u>Edition Number</u>	PayPal Account Date of Sale Row Number <u>Edition Number</u>
Accounting Principles July 13, 1987 TX-2-111-034 First Edition	Trans. Log 2 December 23, 2007 20719 Eighth Edition
Fundamentals of Heat and Mass Transfer July 28, 2006 TX-6-410-153 Sixth Edition	Trans. Log 2 December 26, 2007 20594 Sixth Edition
Fundamentals of Physics: Part 1, September 17, 2007 TX-6-827-902 Eighth Edition	Trans. Log 2 August 16, 2008 11624 Eighth Edition
Information Technology for Management August 20, 2004 TX-6-013-876 Fourth Edition	Trans. Log 2 July 5, 2007 25155
Introduction to Heat Transfer August 14, 2006 TX-6-407-668 Fifth Edition	Trans. Log 2 December 28, 2007 20373 Fifth Edition
Management May 17, 2004 TX-5-964-667 Eighth Edition	Trans. Log 2 January 5, 2009 4417 Ninth Edition
Materials Science and Engineering: An Introduction June 19, 2006 TX-6-405-304 Seventh Edition	Trans. Log 2 August 5, 2007 24870

Organic Chemistry
April 19, 1989
TX-2-544-723
Fourth Edition

Trans. Log 2
May 21, 2008
13792
Ninth Edition

3. Kirtsaeng made additional sales of the following titles as set forth

on the following rows of the PayPal spreadsheet, PX 62.

Accounting Principles

Rows: 4253, 8453, 8506, 8542, 8624, 8630, 8672, 8682, 8683, 8832, 8844, 8859, 8966, 9001, 9025, 9123, 9151, 9324, 9411, 9435, 9487, 9535, 9553, 9618, 10296, 10327, 10546, 13205, 13211, 13251, 13269, 13281, 13286, 13299, 13333, 13361, 13543, 13578, 13666, 13849, 15570, 15937, 15948, 15959, 15993, 16036, 16116, 16135, 16148, 16161, 16174, 16219, 16255, 16294, 16404, 16422, 16443, 16452, 16457, 16529, 16605, 16660, 16706, 16876, 16887, 16910, 16922, 16975, 16981, 17022, 17081, 17219, 17246, 17257, 17298, 17350, 17400, 17461, 17503, 17533, 17540, 17570, 18387, 18794, 19569, 19854, 19975, 19992, 20530, 20719,

Fundamentals of Heat and Mass Transfer

Rows: 2563, 2681, 2702, 2814, 2978, 4022, 4142, 4267, 4276, 4286, 5612, 6018, 10364, 10371, 10385, 10395, 10430, 10487, 10501, 10536, 10557, 10599, 10723, 10830, 10844, 11116, 11130, 11218, 11282, 11305, 11323, 11370, 11396, 11400, 11461, 11486, 11547, 11668, 11669, 12675, 12697, 12717, 12719, 12746, 12889, 12910, 12947, 12963, 13040, 13063, 13072, 13146, 13163, 13184, 13232, 13248, 13292, 13298, 13449, 13585, 13603, 15067, 15228, 15400, 15511, 15515, 15529, 15545, 15585, 15614, 15693, 15722, 15746, 15860, 16175, 16208, 16311, 16410, 16463, 16997, 17075, 17106, 17116, 17133, 17218, 18491, 19723, 19884, 19990, 20081, 20360, 20560, 20594,

Fundamentals of Physics: Part 1

Rows: 1610, 2124, 2170, 2239, 2257, 2498, 2499, 2529, 2574, 2655, 2942, 2979, 3082, 3201, 3204, 3253, 3371, 3932, 3959, 4128, 4160, 4242, 4382, 5069, 5220, 5619, 9334, 10011, 10228, 10354, 10356, 11071, 11329, 11614, 11624, 22978, 23557, 23845, 23862, 25572, 25650, 25715, 25716,

Information Technology for Management

Rows: 84, 118-120, 132, 211, 250, 256, 355, 421, 424, 457, 477, 481, 497, 499, 644, 820, 825, 829, 1173, 1233, 1234, 1314, 1440, 1493, 1580, 2517, 2863, 5355, 5386, 5431, 5681, 5746, 5749, 5798, 5874, 6020, 6061, 6068, 6098, 6157, 6448, 6473, 6534, 6861, 7401, 7660, 7893, 7973, 7989, 8006, 8064, 8281, 8418, 8612, 8676, 8732, 8955, 9171, 9563, 10067, 10628, 10671, 10937, 12025, 12207, 12765, 13104, 13115, 13383, 13431, 13537, 13791, 14380, 16646, 16707, 16826, 16834, 16913, 17113, 17358, 17577, 17686, 17690, 17779, 18134, 18550, 18645, 18754, 18860, 19123, 19236, 19348, 19350, 19415, 19522, 19685, 20361, 20574, 25155,

Introduction to Heat Transfer

Rows: 6099, 6900, 6910, 6955, 7153, 7251, 7372, 7509, 7580, 8374, 8420, 8530, 8592, 8684, 8745, 9126, 9346, 9509, 9730, 10756, 11241, 11463, 11795, 11811, 11818, 11918, 11923, 11924, 11953, 12210, 12605, 12630, 12760, 12826, 12859, 12970, 12987, 13048, 13060, 13078, 13323, 13916, 14865, 15074, 15272, 15410, 15429, 15489, 15501, 15531, 15536, 15568, 15615, 15667, 15668, 15835, 16017, 16111, 16206, 16220, 16374, 16869, 16881, 16883, 16901, 16962, 17087, 17152, 17220, 18151, 18283, 18305, 18309, 18371, 18409, 18446, 18447, 18468, 18547, 18964, 18969, 19031, 19472, 19837, 19871, 19882, 20373,

Management

Rows: 1036, 1070, 1096, 1111, 1199, 1200, 1445, 1639, 1942, 2037, 2219, 2331, 2371, 2815, 2860, 2960, 2996, 3720, 3894, 4166, 4379, 4417, 15820, 15859, 15973, 16029, 16154, 16157, 16300, 16336, 16371, 16406, 16466, 16471, 16734, 16825, 16852, 16853, 16890, 16930, 16999, 17024, 17033, 17073, 17076, 17096, 17130, 17174, 17301, 17411, 17434, 17504, 17829, 17924, 18406, 18528, 18552, 18610, 19198, 20343,

Materials Science and Engineering: An Introduction

Rows: 558, 4380, 4412, 4498, 4575, 4707, 8634, 8831, 8904, 9037, 9270, 9357, 9663, 10072, 10521, 10639, 10735, 10862, 11126, 11155, 11345, 11353, 11366, 11434, 11472, 13719, 15094, 19552, 19749, 19791, 19839, 19914, 20239, 20583, 20628, 20677, 23420, 23442, 24595, 24691, 24870,

Organic Chemistry

Rows: 86, 94, 100, 141, 149, 156, 200, 209, 215, 216, 221, 229, 263, 311, 396, 451, 507, 568, 594, 636, 652, 656, 734, 1766, 1888, 2199, 3129, 4132, 5715, 5724, 5753, 6790, 6885, 6926, 6942, 6995, 7001, 7003, 7010, 7084, 7238, 7497, 7498, 7630, 7680, 7727, 7789, 7868, 7906, 7932, 7949, 7969, 8052, 8056, 8062, 8192, 8193, 8295, 8314, 8342, 8398, 8456, 8533, 8711, 8769, 8795, 8807, 8871, 8970, 9043, 9053, 9274, 9335, 9399, 9432, 9770, 9954, 10115, 10118, 10189, 10251, 10384, 10411, 10616, 10847, 11015, 11307, 11324, 11344, 11348, 11536, 11556, 11627, 11641, 12991, 13416, 13465, 13470, 13473, 13503, 13525, 13572, 13583, 13647, 13696, 13732, 13733, 13743, 13761, 13792,

4. Wiley did not consent to the importation into, or sale in, the United

States of any of the infringing books that are the subject of this case. The Foreign

Editions state on the back cover:

“Authorized for sale in Europe, Asia, Africa and the Middle East Only.
This book is authorized for sale in Europe, Asia, Africa and the Middle
East only may not be imported. Exportation from or importation of this

book to another region without the Publisher's authorization is illegal and is a violation of the Publisher's rights. The Publisher may take legal action to enforce its rights. The Publisher may recover damages and costs, including but not limited to lost profits and attorneys' fees, in the event legal action is required."

5. Wiley has filed numerous actions in the last four years to enforce its copyrights against foreign editions printed outside of the United States, and wrongfully sold in the United States without its consent.
6. Direct evidence demonstrates that Kirtsaeng had revenue of over \$37,000 from the sale of Foreign Editions that are the subject of Wiley's copyrights.
7. Kirtsaeng had additional revenue from the sale of copies Wiley's copyrighted works which he did not disclose in discovery.
8. Kirtsaeng has provided incomplete evidence of his expenses of his infringing sales.
9. Wiley is entitled to a substantial amount of statutory damages against Kirtsaeng.
10. Kirtsaeng's infringements were willful. In addition to seeing the warnings on the books, Kirtsaeng continued to sell infringing Foreign Editions of Wiley's books after notice of this action, and used fraudulent identities to open online accounts.
11. Kirtsaeng continues to fail to tell the truth about whether he knew that his sales of the Foreign Editions were unlawful.
12. Because Kirtsaeng has not complied with Wiley's document requests in good faith, Wiley cannot determine the full amount of Kirtsaeng's sales. Kirtsaeng provided incomplete records for some accounts. Kirtsaeng held his accounts in false names, and could have additional accounts in false names. Without complete sales

records, Wiley cannot calculate and prove Kirtsaeng's actual revenue from the infringing sales.

13. Kirtsaeng moved his profits from his infringing sales to accounts in foreign banks to attempt to avoid being held accountable for his unlawful actions.

14. Kirtsaeng routinely sold foreign editions of the works of other copyrights owners, for which he has not been, and may never be, held accountable.

15. The Jury should award statutory damages between (i) \$6,000, representing the infringement of 8 works at \$750 per work, and (ii) \$1,200,000 representing the infringement of 8 works at \$150,000 per work.

16. To the extent that it is relevant to prove irreparable harm, Wiley makes more profit from the sale of a United States Edition than from the sale of a Foreign Edition.

C-2. Kirtseng's Disputed Material Facts

1. The Defendant sold text books to pay for his education at the University of Southern California.

2. At all times the Defendant has received and sold only legitimate US copyright-bearing text books originally acquired from the copyright owner, namely John Wiley & Sons (Asia) Pte Ltd. ("Wiley Asia").

3. Before selling any books in the US, the Defendant researched the legality of selling books manufactured overseas in the US; in this process, the Defendant obtained a legal opinion stating unequivocally that such sales would comport with US copyright law.

4. Kirtsaeng did not personally bring books from overseas into this country; they were shipped to California *via* UPS express and ocean freight as directed by friends and family (who he would later reimburse from sales he would make on eBay).
5. All of the books sold by the Defendant had notices stating that the books are copyrighted in the United States by Wiley Asia.
6. The books sold by the Defendant were manufactured in accordance with an assignment agreement whereby the Plaintiff assigned to Wiley Asia certain of its copyrights.
7. The Wiley books sold by the Defendant and published by Wiley Asia had the exact same content and were of “comparable quality and appearance” as the version published in the United States.
8. The Plaintiff’s agreement with Wiley Asia does not prohibit shipments from overseas into the United States.
9. The inside flaps of the Wiley books sold by the Defendant state that their copyright is owned by Wiley Asia, which entity is not a party to this action
10. Wiley made profits equal to %10 on the sales of books purchased by the Defendant for resale in the United States.
11. Wiley has not produced records of its receipt of profits achieved on the sales of its books published in Thailand but resold in the United States.

Schedule D
Claims and Defenses

D-1. Wiley's Claims

- a. Wiley has asserted a claim for copyright infringement under 17 U.S.C. § 501.
- b. Wiley has asserted trademark infringement and unfair competition claims, which it hereby voluntarily dismisses.

D-2. Kirtsaeng's Defenses

- a. As to the Issue of Infringement:

1. First Sale

As is more fully discussed in a later section of this submission, where a party obtains copies of books lawfully made under, subject to, and in accordance with US copyright law the party may "sell or otherwise dispose" of the copies without prior authorization of the copyright holder.

2. Standing

Defendant sold books in the United States for which the copyrights had been assigned to Wiley Asia (and later to "Wiley India"). The copyright notice on the books advise the reader that the publisher (identified in the assignment agreement as Wiley Asia and later to Wiley India) has the right to take legal action to enforce the copyright. Wiley Asia/ Wiley India, as the copyrights owner, is the only party with standing to sue for infringement of its copyrights. See Nimmer § 12.02; See also Sybersound Records, Inc. v. UAV Corp., 517 F.3d 1137 (9th Cir. 2008) ("17 U.S.C.S. § 501(b) confers standing only to the legal or beneficial owner of an exclusive right who is entitled to institute an action for any infringement while he or she is the owner of it."). After a transfer of such

an exclusive right, only the exclusive licensee can sue for infringement of that right--even the copyright owner lacks the necessary standing to enforce the transferred ownership rights. See, e.g., Davis v. Blige, 505 F.3d 90, 101 (2nd Cir. 2007).¹

3. Waiver

The Plaintiff has assigned U.S. copyrights to Wiley Asia. Wiley imposed no geographical restriction on Wiley Asia's distribution of the copyrighted books.

¹ Among other things, the instant case raises issues of contract construction and the comparative rights of the foreign entity and the Plaintiff. Gold Cross Safety Corp., Inc. v. PHH Vehicle Management, et al., Civil Action No. 07-cv-2401 (WJM) 2008 U.S. Dist. LEXIS 50354 (D.N.J. June 25, 2008) (“[t]he lack of clarity from the plain terms of the Agreement informs the Court that a dismissal of the copyright infringement action would be imprudent at this stage of the litigation.”).

Schedule E
Damages and Other Relief

E-1. Wiley's Statement

Wiley seeks statutory damages pursuant to 17 U.S.C. § 504(c). The Jury should award statutory damages between (i) \$6,000, representing the infringement of 8 works at \$750 per work, and (ii) \$1,200,000 representing the infringement of 8 works at \$150,000 per work.

Wiley also seeks its costs in this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. The Court should determine those amounts after the verdict.

In addition, Wiley seeks a permanent injunction under 17 U.S.C. § 501.

E-2. Kirtsaeng's Statement

1. Absence of Willfulness

Wiley made profits on all of the Defendant's sales of Wiley's Foreign Editions including sales made by its affiliate John Wiley & Sons (Asia) Pte Ltd. Plus, Wiley has retained all profits made from the Defendant's resale of Wiley books. Consequently Wiley suffered no direct monetary harm from the Defendant's alleged infringement.

Under the Copyright Act, a plaintiff may receive up to \$ 150,000 in statutory damages only if "the infringement was committed willfully." 17 U.S.C. § 504(c)(2). Assuming that there were infringements—clearly the Defendant did not willfully infringe any of Wiley's copyrights as is evidenced by research materials produced to the Plaintiff (which support the Defendant's understanding his sales were in accordance with and not violations of US copyright laws) and by the fact that he openly identified the books he was selling as foreign editions.

In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$ 150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$ 200.

17 USCS § 504 (emphasis added). See Island Software & Computer Serv. v. Microsoft Corp., 413 F.3d 257, 263 (2d Cir. 2005) (“To prove ‘willfulness’ under the Copyright Act, the plaintiff must show (1) that the defendant was actually aware of the infringing activity, or (2) that the defendant's actions were the result of "reckless disregard" for, or ‘willful blindness’ to, the copyright holder's rights.”) (citing In re Aimster Copyright Litigation, 334 F.3d 643, 650 (7th Cir. 2003); Lipton v. Nature Co., 71 F.3d 464, 472 (2d Cir. 1995); N.A.S. Import Corp. v. Chenson Enters., Inc., 968 F.2d 250, 252 (2d Cir. 1992); Yurman Design, Inc. v. PAJ, Inc., 262 F.3d 101, 112 (2d Cir. 2001).

2. Equitable Consideration in An Assessment of Statutory Damages

Even beyond the issue of willfulness (a finding plainly not available on the facts before the Court), “[t]he court has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.” Columbia Pictures Television v. Krypton Broad., 106 F.3d 284, 296 (9th Cir. 1997); see also Shapkin/Crossroads Prods. v. Legacy Home Video, 1997 U.S. App. LEXIS 23175 (9th Cir. Cal. Aug. 29, 1997). Here, the Court should, within its discretion, opt for the minimum amount of statutory damages in that, at best, the issue of infringement is a *close call*, and not one readily apparent to the legal community, no less to an untrained foreign

student who conducted due diligence into the legality of his anticipated sales and was assured of their propriety under existing law.

A further equitable consideration is the fact that the Plaintiff made sales on each of the books purchased for resale by the Defendant.

Based upon the foregoing, any statutory award should be limited to \$6,000.

Finally, the fact that the Defendant fully disclosed that he was selling foreign editions of the books evidences clean hands; i.e., he was not seeking to pass off the foreign manufactured books as US made volumes. The Defendant submits that this, too, favors a minimal measure of statutory damages.