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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)

**DECLARATION OF MARGARET LEARY IN SUPPORT OF  
 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Margaret Leary, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I submit this declaration in support of the defendant libraries' motion for summary judgment. Unless otherwise noted, I make this declaration based upon my own personal knowledge.

2. From 1979 to 2011, I taught a law school course in advanced legal research at the University of Michigan Law School. This course taught students about the content of major sources of the law for the U.S., international organizations, and other nations; how to use those sources; and how to construct an efficient and effective strategy for conducting that research by using secondary (material about the law) as well as primary (text of the law) materials.

3. I have also carried out my own research, most notably into the life and times of Michigan Law graduate and donor of the Michigan Law quadrangle, William W. Cook (1858-1930). I have published a book based on this research, titled *Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle*. Other of my publications are listed at: [http://www.law.umich.edu/library/guests/pubsfaculty/facultypages/Pages/leary\\_margaret.aspx](http://www.law.umich.edu/library/guests/pubsfaculty/facultypages/Pages/leary_margaret.aspx).

4. I have a B.A. from Cornell University, a M.A. in library science from the University of Minnesota, and a J.D. from the William Mitchell College of Law.

5. I have worked in law libraries since 1970, and at the University of Michigan Law Library since 1973. From 1984 until 2011 I was the Director and Librarian of that library, which is one of the world's largest and most comprehensive: over 1 million volumes of law and law related materials, designed to support research in any topic, for any country, at any period of time.

6. As the Director and Librarian of the Michigan Law Library, my responsibilities included oversight of all aspects of the library's operation: 40 full time employees, a \$7 million annual budget, and 100,000 square feet of space. I oversaw collection development (purchase of, and contractual access to, all formats of material) and services, including reference and research service to law school faculty, students, and other users (assisting and guiding researchers with their research needs).

7. Since retiring from the Michigan Law Library, for the last six months I have worked as a volunteer reference librarian, two days a week, at the Bentley Historical Library; and have taken courses in Michigan history, which require me to do research.

8. I am very familiar with the HathiTrust program from those several perspectives: as the builder of a collection; as the person responsible for ensuring the long-term availability of the information in the collection; as the provider of information within and beyond our collection to users; as a teacher of the best techniques and resources for doing effective and efficient research; and as a researcher seeking everything findable about William W. Cook, a man who played a critical role in the development of the University of Michigan Law School but is not widely known outside of the Michigan Law School community and who died more than eighty years ago. I have watched, and benefitted from, the HathiTrust program since its inception, and, as further described below, I have experienced how it has greatly expanded the capacity for new scholarship and learning.

9. As an experienced researcher, I have seen first hand how the HathiTrust program has expanded the use of print works through the ability to electronically search for terms present anywhere in the text of a work. The HathiTrust program has opened up books to me—and everyone--that I would never have thought of looking at in print—either because I didn't know about them, or didn't think they would have relevant information in them. The HathiTrust program also enables me to find the exact page on which a name, term, or set of words occurs, which no index can do comprehensively. This expands and extends my use of print, both from libraries and from bookstores.

10. For example, when researching my recent book on William Cook, I benefitted from the ability to search the text of an enormous number of books. By searching the various

forms of Cook's name, I found it mentioned in dozens of books, including Ida Tarbell's *History of the Standard Oil Company*. The results did not give me the full text, so I went to the University of Michigan's main library and checked out the printed book.

11. My search had told me the exact pages where Cook's name appeared, which saved hours of time (the book is two volumes). From Tarbell, I learned that Cook had published a book entitled *Trusts* which included the full text of the Standard Oil Trust Agreement, which had until then not been public. I also learned that the Ohio Attorney General named David Watson discovered the copy of the Standard Oil Trust Agreement in Cook's work and immediately determined that the Agreement violated at least six Ohio statutes. Watson brought suit. The action dragged out and ultimately failed, but it created negative public opinion about the behavior of a huge and important trust, and ultimately drove Standard Oil from Cleveland to New York City.

12. As a result of my search, I discovered that Cook, only five years out of law school, through his research and writing exerted a powerful influence on the development of American law. This example illustrates perfectly the power of a full text search; I simply could not have discovered this connection between Mr. Cook and the history of the Standard Oil Company through searches of catalog information – the catalog information for Tarbell's work does not list Cook nor is he listed in the index or table of contents.

13. Tarbell's book is a classic for many reasons (written by a woman, excellent journalistic techniques, role in antitrust movement) but I would never have taken the trouble to read the whole book on the off chance that she would mention Cook. Without the HathiTrust, I would never have found how important *Trusts* was. In seven years of research, I did not find that information anywhere else.

14. Another example from my Cook research is that HathiTrust books enabled me to search and find his name in directories of clubs I would not otherwise have known he belonged to, and seeing who other members were. The directories were not in University of Michigan libraries, and I would not have travelled to California, Wisconsin, or other states where I knew there were print copies because the chance of finding useful information was so small. In the HathiTrust, I can do a search in five minutes and have a definitive answer to the question “Was Cook a member?”

15. During the course of my research on Cook, I purchased at least two books because of references to Cook, or companies and people important in his life, that I found via HathiTrust or Google search-only searches: Hollinger, *Science, Jews and Secular Culture*, Princeton University Press, 1996; and Usselman, *Regulating Railroad Innovation*, Cambridge University Press, 2002. Of course, had I not discovered these works through my research, I would never have purchased them.

16. As the Director and Librarian of the Michigan Law Library, I also have first hand experience assisting other researchers in accessing works relevant to their research. Before libraries used digitizing as a means to preserve our collections, we used microform (small reproductions of works that a researcher could view through magnification).

17. I was very involved in an organization then called the Law Library Microform Consortium, or LLMC. LLMC is a cooperative of academic law libraries that collectively microfilmed as much material as possible.

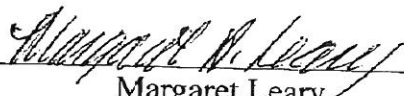
18. We learned an important lesson from this project: users make choices about the amount of time and effort to put into getting at a particular item. The effort of using microform stopped some people some of the time. They didn't like using a special machine; they didn't like

reading the sometimes blurry or blotchy film; they didn't like the kind of printouts; they didn't like having to wait for the library to deliver the film to them; they didn't like not being able to "check out" the item. I had many experiences with law school faculty and other users deciding not to consult an item, such as an old newspaper, book, Congressional hearing or state session law, when the only form available was microform.

19. In my view, libraries should not put such obstacles in front of users and any technology that makes it easier for users to discover books vastly improves the quality of scholarship.

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

Date: June 26, 2012

  
Margaret Leary