

EXHIBIT A

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
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**OBJECTIONS AND RESPONSES OF PLAINTIFF THE AUTHORS GUILD,
INC. TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff The Authors Guild, Inc. (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

ESCAPE THE NIGHT
FAIR WARNING
MURDER BY AN ARISTOCRAT

Works by Sax Rohmer:

THE TRAIL OF FU MANCHU
PRESIDENT FU MANCHU

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated or expected to be generated from distribution of these works in digital format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's works. In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and "dark archiving" of a digital version the works on Schedule A to the HathiTrust Digital Library but without making such works available to others to view, print or

download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such works available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such works available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted works, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works due to the availability of such works for others to

view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such works as public domain or "orphan works";

- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiff's works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiff's claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's works *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Moreover, Plaintiff objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

hardback, paperback, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse; wholesaler; retailer; Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purposes of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and “dark archiving” of a digital version the

works on Schedule A to a “digital archive” in which such works are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other

earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff's work(s) "for use by blind or other persons with disabilities" (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

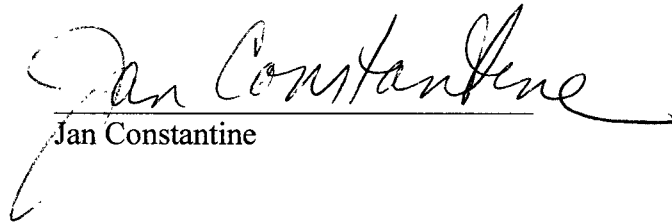
By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Jan Constantine, General Counsel for Plaintiff The Authors Guild, Inc., have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Jan Constantine

EXHIBIT B

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
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THE AUTHORS GUILD, INC., et al, :
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**OBJECTIONS AND RESPONSES OF PLAINTIFF THE AUTHORS LEAGUE
FUND, INC. TO DEFENDANTS' SECOND SET OF INTERROGATORIES
AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff The Authors League Fund, Inc. ("Plaintiff") hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the "Local Rules"), Plaintiff's objections and responses to Defendants' Second Set of Interrogatories and Requests for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify “the specific digital, electronic or other machine-readable format” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that none of the works on Schedule A have been distributed pursuant to Plaintiff’s authorization, in digital, electronic or other machine-readable format within the last ten years, but notes that recent inquiries and efforts have made to distribute the works on Schedule in electronic format. Plaintiff will conduct a reasonable search and produce documents, if any, concerning such inquiries and efforts.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s works. In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a)

Defendants' uploading and "dark archiving" of a digital version the works on Schedule A to the HathiTrust Digital Library but without making such works available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such works available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such works available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted works, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works due to the availability of such works for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such works as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiff's works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiff's claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's works *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Moreover, Plaintiff objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 7.

REQUEST NO. 6: All documents concerning any physical, logical/technical, administrative and/or other controls used to ensure the safety and security of any work listed on Schedule A when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse; wholesaler; retailer; Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purposes of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without

waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and “dark archiving” of a digital version the works on Schedule A to a “digital archive” in which such works are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121

specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants’ Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Isabel Howe, Director of Plaintiff The Authors League Fund, Inc., have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 2012.


Isabel Howe

EXHIBIT C

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
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THE AUTHORS GUILD, INC., et al, :
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 Defendants. :
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**OBJECTIONS AND RESPONSES OF PLAINTIFF THE AUSTRALIAN SOCIETY OF
AUTHORS TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff The Australian Society of Authors Limited (“Plaintiff”) hereby submits,
pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3
of the Local Rules for the United States District Court for the Southern District of New York (the
“Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories
and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth
below into each and every specific response. From time to time a specific response may restate a
General Objection for emphasis or some other reason. The failure to include any General

format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that none of the works on Schedule A have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's works. In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and "dark archiving" of a digital version the works on Schedule A to the HathiTrust Digital Library but without making such works available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such works available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such works available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted works, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with full-text searching;

- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works due to the availability of such works for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such works as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiff's works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiff's claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's works *without*

Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and “dark archiving” of a digital version the works on Schedule A to a “digital archive” in which such works are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or

expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants’ Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.
Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Angelo Loukakis, Executive Director for Plaintiff The Australian Society of Authors Limited, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Angelo Loukakis

EXHIBIT D

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

OBJECTIONS AND RESPONSES OF PLAINTIFF THE AUTHORS’ LICENSING AND COLLECTING SOCIETY TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Plaintiff The Authors’ Licensing and Collecting Society Ltd. (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

sought by this request is likely to be in the possession or custody of third parties over whom Plaintiff does not exercise control.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this request relating to the works listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that neither work on Schedule A has been distributed, pursuant to the relevant member's authorization, in digital, electronic or other machine-readable format at any time since 2001.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s works. In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and “dark archiving” of a digital version the works on Schedule A to the HathiTrust Digital Library but without making such works available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such works available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such works available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants’ aforementioned uses upon the potential market for or value of the copyrighted works, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted works for inclusion in a digital archive for preservation purposes;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works due to the availability of such works for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such works as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of

interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff's works, but to "printed works" in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase "inclusion of such work in a digital archive" is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and "dark archiving" of a digital version the works on Schedule A to a "digital archive" in which such works are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Owen Atkinson, Chief Executive for Plaintiff the Authors' Licensing and Collecting Society Ltd., have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 2012.



Owen Atkinson

EXHIBIT E

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

OBJECTIONS AND RESPONSES OF PLAINTIFF THE WRITERS’ UNION OF CANADA TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Plaintiff The Writers’ Union of Canada (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that portions of FOLKLORE OF CANADA have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001. Plaintiff will conduct a reasonable search and produce documents relating to the distribution of this work in digital format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's works. In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or

value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and “dark archiving” of a digital version the works on Schedule A to the HathiTrust Digital Library but without making such works available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such works available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such works available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants’ aforementioned uses upon the potential market for or value of the copyrighted works, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted works for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted works for use purely in connection with non-consumptive research;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted works due to the availability of such works for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such works as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

objectionable in that it is not limited to documents relating to Plaintiff's works, but to "printed works" in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase "inclusion of such work in a digital archive" is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and "dark archiving" of a digital version the works on Schedule A to a "digital archive" in which such works are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents concerning the works listed on Schedule A have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s works in the United States “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Kelly Duffin, Executive Director for Plaintiff The Writers' Union of Canada, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Kelly Duffin

EXHIBIT F

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF TROND ANDREASSEN
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Trond Andreassen (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

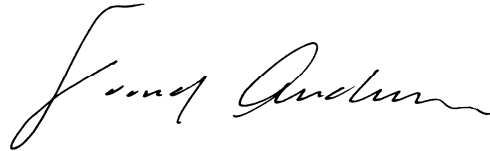
By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, Trond Andreassen, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 8, 2012.

A handwritten signature in black ink, appearing to read "Trond Andreassen", written in a cursive style.

Trond Andreassen

EXHIBIT G

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF PAT CUMMINGS
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Pat Cummings (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff identifies the following as work(s) on Schedule A that have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001:

JIMMY LEE DID IT

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of the work(s) in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other

technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

REQUEST NO. 6: All documents concerning any physical, logical/technical, administrative and/or other controls used to ensure the safety and security of any work listed on Schedule A when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback,, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse, wholesaler, retailer, Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be

generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Pat Cummings, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 5, 2012.



Pat Cummings

EXHIBIT H

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Jeremy S. Goldman
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF ERIK GRUNDSTRÖM
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Erik Grundström (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, indicate whether that work has been distributed, pursuant to your authorization, in digital, electronic or other machine-readable format at any time since 2001 and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff identifies no works on Schedule A that have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001..

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other

technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

REQUEST NO. 6: All documents concerning any physical, logical/technical, administrative and/or other controls used to ensure the safety and security of any work listed on Schedule A when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback,, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse, wholesaler, retailer, Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be

generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
Jeremy S. Goldman
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erosenthal@fkks.com
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Attorneys for Plaintiffs

VERIFICATION

I, Erik Grundström, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 10, 2012.

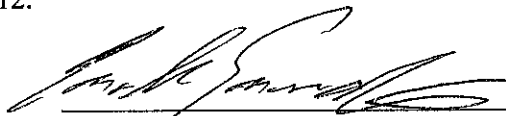

Erik Grundström

EXHIBIT I

Edward H. Rosenthal
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF ANGELO LOUKAKIS
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Angelo Loukakis (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, indicate whether that work has been distributed, pursuant to your authorization, in digital, electronic or other machine-readable format at any time since 2001 and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff identifies no works on Schedule A that have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001..

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other

technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

REQUEST NO. 6: All documents concerning any physical, logical/technical, administrative and/or other controls used to ensure the safety and security of any work listed on Schedule A when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback,, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse, wholesaler, retailer, Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be

generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Angelo Loukakis, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 9, 2012.

A handwritten signature in cursive script, appearing to read "Loukakis".

Angelo Loukakis

EXHIBIT J

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF HELGE RØNNING
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Helge Rønning (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or

download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;

- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without*

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Helge Rønning, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 8, 2012.



Helge Rønning

EXHIBIT K

Edward H. Rosenthal
Jeremy S. Goldman
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF ROXANA ROBINSON
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Roxana Robinson (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001:

A PERFECT STRANGER
SWEETWATER

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of the work(s) in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is "the effect of the use upon the *potential* market for or value of the copyrighted work." Plaintiff further objects that the phrase "solely by virtue of . . . the inclusion of the work in Defendants' digital archives" is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants' uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or

download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";

- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's

display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
March 28, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

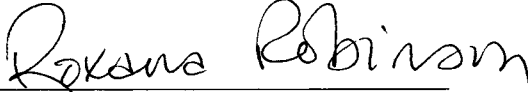
By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
Jeremy S. Goldman
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Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Roxana Robinson, have read the foregoing responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 28, 2012.



Roxana Robinson

EXHIBIT L

Edward H. Rosenthal
Jeremy S. Goldman
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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF ANDRÉ ROY
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff André Roy (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

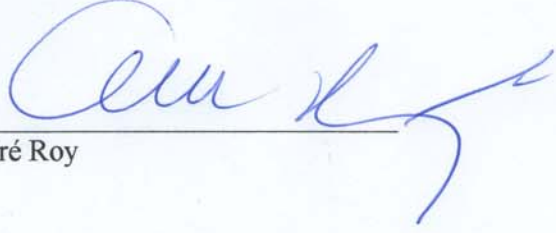
By: /s/ Jeremy S. Goldman

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erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, André Roy, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 10th, 2012.



André Roy

EXHIBIT M

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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X	:	
THE AUTHORS GUILD, INC., et al,	:	
	:	Index No. 11 Civ. 6351 (HB)
Plaintiffs,	:	
	:	
- against -	:	
	:	
HATHITRUST, et al.	:	
	:	
Defendants.	:	
-----X	:	

**OBJECTIONS AND RESPONSES OF PLAINTIFF J.R. SALAMANCA
 TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
 FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff J.R. Salamanca (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

concerning royalties generated from distribution of the work(s) in electronic format, but notes that statements for works only recently released for sale may not yet be available.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or

download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;

- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without*

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

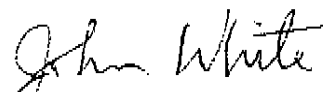
By: /s/ Jeremy S. Goldman

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Fax: (212) 593-9175
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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, John White, literary agent for J.R. Salamanca, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April __, 2012.



John White

EXHIBIT N

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X		
THE AUTHORS GUILD, INC., et al,	:	
	:	Index No. 11 Civ. 6351 (HB)
Plaintiffs,	:	
	:	
- against -	:	
	:	
HATHITRUST, et al.	:	
	:	
Defendants.	:	
-----X		

**OBJECTIONS AND RESPONSES OF PLAINTIFF JAMES SHAPIRO
 TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
 FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff James Shapiro (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, indicate whether that work has been distributed, pursuant to your authorization, in digital, electronic or other machine-readable format at any time since 2001 and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Plaintiff objects that this Interrogatory on the ground that it is duplicative, as Plaintiff already identified whether any of Plaintiff's works on Schedule A have been distributed in electronic format and the publisher of any such works. Moreover, Plaintiff objects that the request to identify "the specific digital, electronic or other machine-readable format" is vague and ambiguous. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff identifies the following as work(s) on Schedule A that have been distributed, pursuant to Plaintiff's authorization, in digital, electronic or other machine-readable format at any time since 2001:

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Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of the work(s) in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff "will suffer" in the future as a result of Defendants' various unauthorized uses of Plaintiff's work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants' fair use defense under 17 U.S.C. §

107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants’ aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff’s copyrighted work(s) for use purely in connection with non-consumptive research;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121

specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants’ Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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Attorneys for Plaintiffs

VERIFICATION

I, James Shapiro, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April __, 2012.

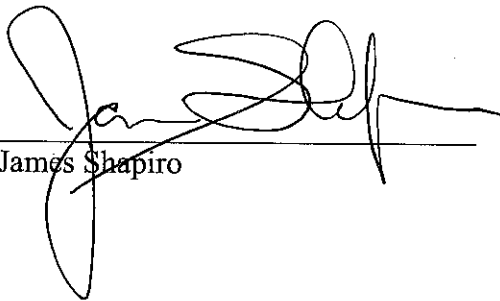

James Shapiro

EXHIBIT O

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF DANIELE SIMPSON
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Daniele Simpson (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Daniele Simpson, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 10th, 2012.

Daniele Simpson
Daniele Simpson

EXHIBIT P

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Jeremy S. Goldman
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jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF T.J. STILES
TO DEFENDANTS’ SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff T.J. Stiles (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and

- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the

documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, T.J. Stiles, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 2012.

T.J. Stiles



EXHIBIT Q

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF FAY WELDON
TO DEFENDANTS' SECOND SET OF INTERROGATORIES AND REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Fay Weldon (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Second Set of Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

AUTO DA FAY
BIG WOMEN
MANTRAPPED
NOTHING TO WEAR AND NOWHERE TO HIDE
PUFFBALL
REMEMBER ME
RHODE ISLAND BLUES
SHE MAY NOT LEAVE
SPLITTING
THE BULGARI CONNECTION
WATCHING ME, WATCHING YOU
WORST FEARS

Plaintiff will conduct a reasonable search and produce documents, if any, concerning royalties generated from distribution of these works in electronic format.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, identify with specificity any alleged harm you have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants’ digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that it is impossible to predict, and therefore to identify, the harm that Plaintiff “will suffer” in the future as a result of Defendants’ various unauthorized uses of Plaintiff’s work(s). In addition, to the extent this Interrogatory is being used in connection with Defendants’ fair use defense under 17 U.S.C. § 107, the correct standard, to the extent it is relevant, is “the effect of the use upon the *potential* market for or value of the copyrighted work.” Plaintiff further objects that the phrase “solely by virtue of . . . the inclusion of the work in Defendants’ digital archives” is vague and ambiguous.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff responds that to date, Plaintiff has not identified any specific, quantifiable past harm, or any documents relating to any such past harm, that Plaintiff has suffered solely by virtue of (a) Defendants’ uploading and archiving of a digital version the work(s) on Schedule A to the

HathiTrust Digital Library but without making such work(s) available to others to view, print or download, (b) the availability of a digital version of the work for use purely in connection with non-consumptive research but without making such work(s) available to others to view, print or download; (c) the availability of a digital version of the work for use purely in connection with full-text searching but without making such work(s) available to others to view, print or download; or (d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

With respect to the effect of Defendants' aforementioned uses upon the potential market for or value of the copyrighted work, Plaintiff identifies the following:

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for inclusion in a digital archive for preservation purposes;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with non-consumptive research;
- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) for use purely in connection with full-text searching;
- Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;

- Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiff's copyrighted work(s) due to the availability of such work(s) for others to view, print and download on Defendants' websites as a result of the accidental or mistaken identification of such work(s) as public domain or "orphan works";
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy due to breaches in security;
- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works; and
- Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiff's copyrighted works to libraries and/or archives.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of each such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Plaintiff objects to this Interrogatory on the ground that the security of Plaintiffs' works that are or have been stored, distributed, sold and/or licensed *with* Plaintiff's authorization is relevant to neither Plaintiffs' claims nor Defendants' valid defenses, which concern Defendants' digitization, reproduction and distribution of Plaintiff's work(s) *without* Plaintiff's authorization, and are therefore beyond the scope of discovery pursuant to Fed. R. Civ. P. 26. Plaintiff further objects that this Interrogatory on the ground that most of the information sought by this Interrogatory is in the possession or custody of third parties over whom Plaintiff does not exercise control.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent

Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Plaintiff objects to this Request on the same grounds as set forth in response to Interrogatory No. 6.

REQUEST NO. 7: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purpose of a) electronic archiving; b) non-consumptive research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 8: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Plaintiff objects to this Request on the ground that the phrase “inclusion of such work in a digital archive” is undefined, vague and ambiguous. Subject to and without waiving the foregoing objection or any General Objections, to date Plaintiff has identified no documents concerning revenues or other earnings of any kind generated or expected to be generated in whole or in part by the mere uploading and archiving of a digital version the work(s) on Schedule A to a “digital archive” in which such work(s) are not made available for purchase, viewing, printing or downloading.

REQUEST NO. 9: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 10: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, to date no documents have been identified that are responsive to this Request.

REQUEST NO. 11: For each work, if any, listed on Schedule A, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is beyond the scope of discovery in this lawsuit. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff responds that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiff is not claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution of copies of Plaintiff’s work(s) “for use by blind or other persons with disabilities” (as defined in 17 U.S.C. § 121(d)(1)).

REQUEST NO. 12: All non-privileged documents concerning the HathiTrust and/or Defendants’ alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 13: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 14: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, any such documents will be produced.

Dated: New York, New York
April 10, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.


By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Fay Weldon, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April ____, 2012.



Fay Weldon

EXHIBIT R

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF UNEQ TO
DEFENDANTS' SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

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jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Francis Farley-Chevrier, Directeur Général for Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers), have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 9, 2012.

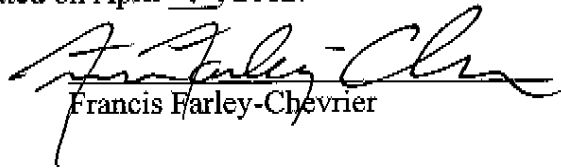

Francis Farley-Chevrier

EXHIBIT S

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF SFF TO
DEFENDANTS’ SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Sveriges Författarförbund (The Swedish Writers’ Union) (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

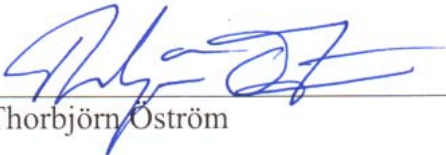
By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
Jeremy S. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel.: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Thorbjörn Öström, General Counsel for Plaintiff Sveriges Författarförbund (The Swedish Writers' Union), have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Thorbjörn Öström

EXHIBIT T

Edward H. Rosenthal
Jeremy S. Goldman
FRANKFURT KURNIT KLEIN & SELZ, P.C.
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE AUTHORS GUILD, INC., et al, :
 : Index No. 11 Civ. 6351 (HB)
 Plaintiffs, :
 :
 - against - :
 :
 HATHITRUST, et al. :
 :
 Defendants. :
-----X

**OBJECTIONS AND RESPONSES OF PLAINTIFF NFFO TO
DEFENDANTS’ SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Norsk faglitterær forfatter- og oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
Jeremy S. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel.: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

VERIFICATION

I, Jan Terje Helmlı, General Counsel for Plaintiff Norsk Faglitterær Forfatter- Og Oversetterforening, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 20, 2012.



Jan Terje Helmlı

EXHIBIT U

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 THE AUTHORS GUILD, INC., ET AL.,
6
7 Plaintiff,
8 Index no. 11 Civ. 6351 (HB)
9 VS.
10
11 HATHITRUST, et al.,
12
13 Defendants.

14 -----X

15 **C O N F I D E N T I A L**

16 DEPOSITION
17 OF
18 PAT CUMMINGS
19 Tuesday, May 22, 2012
20 1114 Avenue of the Americas
21 New York, New York

22 Reported by:
23 AYLETTE GONZALEZ, CLR
24 JOB NO. 49735
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DATE: May 22, 2012

TIME: 9:57 a.m.

Deposition of PAT CUMMINGS, held at the
offices of KILPATRICK TOWNSEND & STOCKTON, LLP,
1114 Avenue of the Americas, New York, New
York, 10036, pursuant to NOTICE, before
AYLETTE GONZALEZ, a Certified LiveNote
Reporter and Notary Public of the State of
New York.

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

KILPATRICK TOWNSEND & STOCKTON

Counsel for Defendant

1114 Avenue of the Americas

New York, New York 10036

BY: JOSEPH PETERSEN, ESQ.

FRANKFURT KURNIT KLEIN & SELZ

Counsel for Plaintiff

488 Madison Avenue

New York, New York 10022

BY: JEREMY GOLDMAN, ESQ.

ALSO PRESENT:

JAN CONSTANTINE, The Authors Guild, Inc.

1 CONFIDENTIAL-PAT CUMMINGS

2 P A T C U M M I N G S, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. PETERSEN:

8 Q. Good morning, Ms. Cummings. My
9 name is Joe Petersen. I'm counsel for the
10 libraries in the HathiTrust matter.

11 Q. Could you please state your name
12 and address for the record.

13 A. Pat Cummings. 28 Tiffany Place,
14 Brooklyn, New York 11231.

15 Q. And have you ever been deposed
16 before?

17 A. No.

18 Q. Let me give you a quick rundown on
19 the rules. I'll be asking a series of
20 questions. My goal isn't to trick you at all.
21 If you don't understand the question, please
22 let me know, and I'll rephrase the question.
23 Is that clear?

24 A. Yes.

25 Q. And just -- the Reporter is taking

1 CONFIDENTIAL-PAT CUMMINGS

2 libraries are currently doing. At this point
3 in time, do you have any understanding of the
4 use made by the libraries with respect to the
5 digitized works in the HathiTrust Corpus?

6 MR. GOLDMAN: Object to the form;
7 lacks foundation.

8 A. I don't know what uses they're
9 making of it.

10 Q. Do you have any knowledge as to
11 whether or not those -- your works are
12 available to someone who accesses the
13 HathiTrust Corpus? Are those works available
14 in full text?

15 MR. GOLDMAN: Object to the form.

16 A. I don't know.

17 Q. Have you ever used the HathiTrust
18 website?

19 A. No.

20 Q. Have you ever seen the HathiTrust
21 website?

22 A. No.

23 Q. Turning back in time to when
24 Mr. Aiken approached you concerning this
25 lawsuit, was there any discussion concerning

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. You say an extreme cherry-picked
3 item. What do you mean by that?

4 A. I mean that if you have a problem
5 with somebody taking your work, to say that
6 you're depriving blind people seemed to come
7 out of -- not left field, but seemed to be an
8 extreme situation that was not the intent of
9 the suit. And to the best of my memory, our
10 discussion was about how to present the
11 Guild's position publicly so that we were
12 representing ourselves in the manner that we
13 felt, you know, our issues to be, and not to
14 be defined.

15 Q. Would you agree with me that it's
16 beneficial to individuals with disabilities to
17 have access to the works that have been
18 digitized as part of the HathiTrust project?

19 A. No.

20 MR. GOLDMAN: Objection to the
21 form.

22 A. No.

23 Q. So, you do not believe the print
24 disabled should have access to those works?

25 MR. GOLDMAN: Objection to the

1 CONFIDENTIAL-PAT CUMMINGS

2 form.

3 A. No.

4 Q. I'm going to mark, as PC-5, a
5 document entitled, "Objections And Responses
6 of Plaintiff Pat Cummings To Defendants' First
7 Set Of Interrogatories And Request For The
8 Production of Documents."

9 (Exhibit PC-5, document entitled
10 "Objections And Responses Of Plaintiff
11 Pat Cummings to Defendants' First Set
12 Of Interrogatories And Requests For
13 The Production of Documents," marked
14 for identification, as of this date.)

15 MR. GOLDMAN: Is there a question
16 pending?

17 MR. PETERSEN: I'm waiting for
18 her, Ms. Cummings, to read the
19 document.

20 Q. Do you recognize Exhibit 5?

21 A. Yes.

22 Q. Have you seen it before today?

23 A. Yes.

24 Q. What is it?

25 A. Okay; it is the Objections And

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. So, how could it be that it could
3 have any impact on your sales if the libraries
4 are not making the digital copy available of
5 your work? How could that have any bearing
6 upon sales of your works?

7 A. I wouldn't know. That's the
8 answer.

9 MR. PETERSEN: I don't think I
10 have anything further. Thank you very
11 much for your time. I do appreciate
12 it.

13 (Whereupon, at 12:34 p.m., the
14 Examination of this Witness was
15 concluded.)
16
17

18 _____
19 PAT CUMMINGS

20 Subscribed and sworn to before me
21 This _____ day of _____, 2012.
22

23 _____
24 NOTARY PUBLIC
25

CONFIDENTIAL-PAT CUMMINGS

-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
PAT CUMMINGS	MR. PETERSEN	4

DIRECTIONS: [None]

MOTIONS: [None]

REQUESTS: [None]

-----EXHIBITS-----

DEFENDANT'S EXHIBIT FOR I.D.

Exhibit PC-1,
 Three pages of the website of Pat
 Cummings.....25

Exhibit PC-2,
 Document bearing Bates label
 AG0003864 through '866.....43

Exhibit PC-3,
 Document bearing Bates label
 AG0003867 through '868.....48

Exhibit PC-4,
 Document bearing Bates label
 AG0003870 through '872.....49

CONFIDENTIAL-PAT CUMMINGS

-----EXHIBITS-----

DEFENDANT'S EXHIBIT FOR I.D.

Exhibit PC-5,
Document entitled "Objections And
Responses Of Plaintiff Pat Cummings
to Defendants' First Set Of
Interrogatories And Requests For The
Production of Documents.....57

Exhibit PC-6,
Digital copy of Talking with Artists...73

Exhibit PC-7,
Document entitled "Objections and
Responses of Plaintiff Pat Cummings
to Defendants' Second Set Of
Interrogatories And Requests For The
Production of Documents.....74

Exhibit PC-8,
Document bearing Bates label
AG0002346 through '346.....79

Exhibit PC-9,
Document bearing Bates label
AG0000063 through '079.....86

CONFIDENTIAL-PAT CUMMINGS

-----EXHIBITS-----

DEFENDANT'S EXHIBIT FOR I.D.

Exhibit PC-10,
Document bearing Bates label
AG0002365 through '351.....89

Exhibit PC-11,
Document bearing Bates label
AG0000027 through '042.....95

Exhibit PC-12,
Document bearing Bates label
AG0002388 through '2408.....97

Exhibit PC-13,
Document bearing Bates label
AG0000011 through '026.....103

Exhibit PC-14,
Document bearing Bates number
AG0002479 through '485.....105

Exhibit PC-15,
Document bearing Bates label
AG0002301 through '345.....113

Exhibit PC-16,
Document bearing Bates label
AG0000043 through '044.....114

CONFIDENTIAL-PAT CUMMINGS

-----EXHIBITS-----

DEFENDANT'S EXHIBIT FOR I.D.

Exhibit PC-17,

Document bearing Bates label

AG0002387 through '366.....116

Exhibit PC-18,

Document bearing Bates label

AG0002426 through '409.....118

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CONFIDENTIAL-PAT CUMMINGS

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF RICHMOND)

I, AYLETTE GONZALEZ, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness, PAT CUMMINGS,
whose examination is hereinbefore set forth
was duly sworn and that such examination is a
true record of the testimony given by that
witness.

I further certify that I am not
related to any of the parties to this action
by blood or by marriage and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of June, 2012.

AYLETTE GONZALEZ
(Notary Public No. 01G06228612
Expiration date: 9/27/2014)

CONFIDENTIAL-PAT CUMMINGS

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: The Authors Guild Inc v. HathiTrust

Dep. Date: May 22, 2012

Deponent: PAT CUMMINGS

Pg.	Ln.	Now Reads	Should Read	Reason
5	_____	_____	_____	_____
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19	_____	_____	_____	_____

PAT CUMMINGS

SUBSCRIBED AND SWORN BEFORE ME,

This ___ day of _____, 2012.

Notary Public

My Commission Expires: _____

EXHIBIT V

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 THE AUTHORS GUILD, INC.,
6 et al.,
7 Plaintiffs,
8 vs. Index No.
9 HATHITRUST, et al., 11 Civ. 6351 (HB)
10 Defendants.
11 -----x

12 VIDEO TELECONFERENCE
13 DEPOSITION OF HELGE RØNNING
14 New York, New York
15 May 29, 2012
16
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24 Reported by:
25 FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 50107

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May 29, 2012
11:30 a.m.

VIDEO TELECONFERENCED deposition
of HELGE RØNNING, held at the offices of
Kilpatrick, Townsend & Stockton LLP,
1114 Avenue of the Americas,
New York, New York, pursuant to
Notice, before Francis X. Frederick, a
Certified Shorthand Reporter, Registered
Merit Reporter and Notary Public of the
States of New York and New Jersey.

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

FRANKFURT KURNIT KLEIN & SELZ

Attorneys for Plaintiffs

488 Madison Avenue

New York, New York 10022

BY: JEREMY GOLDMAN, ESQ.

KILPATRICK TOWNSEND & STOCKTON

Attorneys for Defendants

1114 Avenue of the Americas

New York, New York 10036

BY: JOSEPH PETERSEN, ESQ.

1 H. RØNNING

2 H E L G E R O N N I N G, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. PETERSEN:

8 Q. Good afternoon, Professor Rønning.
9 Should I refer to you as Professor Rønning or
10 Dr. Rønning or Mr. Rønning? How would you
11 like me to refer to you?

12 A. Professor is fine with me.

13 Q. That's great. That certainly
14 suits me as well.

15 Good afternoon, Professor Rønning.
16 My name is Joe Petersen. And I'm counsel for
17 the Libraries in the HathiTrust case. Have
18 you ever sat for a deposition before?

19 A. No.

20 Q. Okay. So given that, and given
21 the fact that we're doing this on video, I'll
22 just briefly give you some of the ground rules
23 for the deposition. I'm sure as you
24 understand, I'm going to be asking you
25 questions here this afternoon. And when I do

1 H. RØNNING

2 rights to my works.

3 Q. So you never concerned yourself at
4 all with the type of use made by the libraries
5 with respect to the digitization project.

6 MR. ROSENTHAL: Objection.

7 Q. Professor, as you sit here today
8 do you have any understanding of the types of
9 uses made by my clients with respect to the in
10 copyright -- the works that are presumed to be
11 in copyright that are included in the
12 HathiTrust digital library?

13 MR. ROSENTHAL: Objection.

14 A. No. And let me answer -- let me
15 answer.

16 You are, according to Norwegian
17 copyright law, not allowed to do digitization
18 without explicit permission of the author or a
19 representative of the author because that goes
20 against the basis of all continental copyright
21 acts, namely the moral right to your work.

22 Q. So you're viewing this through the
23 lens of Norwegian copyright law; is that
24 correct, Professor?

25 MR. ROSENTHAL: Objection.

1 H. RØNNING

2 a student in the US wanted -- that was blind
3 wanted to read one of your articles, do you
4 have any knowledge as to how that student
5 could obtain a copy that he or she could
6 actually understand?

7 MR. ROSENTHAL: Objection.

8 A. No, I do not know. I mean, I know
9 what's the situation in Norway. And I know
10 that that material for the people with
11 impaired sight would typically be handled by
12 the Norwegian Foundation for the Blind and
13 they would do that under the Norwegian
14 Copyright Act and those who are owed copyright
15 to be paid remuneration. Typically, if a
16 blind student wants a book to be as an audio
17 book he or she can ask for it and then it can
18 be recorded for him and the copyright owner
19 will be remunerated and she will get it under
20 the Norwegian Foundation.

21 Q. But you have no understanding of
22 how a US student would obtain -- would -- a US
23 student with a print disability would obtain
24 access to your works.

25 A. No. Why should I?

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H. RØNNING

questions. Thank you very much,
Professor. You're done.

THE WITNESS: All right. This has
been very interesting.

(Time Noted: 2:27 p.m.)

HELGE RØNNING

Subscribed and sworn to before me
this 29th day of May, 2012.

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, FRANCIS X. FREDERICK, a
Notary Public within and for the State
of New York, do hereby certify:

That HELGE RØNNING, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of
the testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 8th day of
June, 2012.

FRANCIS X. FREDERICK

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----- INFORMATION REQUESTS -----

DIRECTIONS: 100
RULINGS: NONE
TO BE FURNISHED: NONE
REQUESTS: NONE
MOTIONS: NONE

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NAME OF CASE: AUTHORS GUILD v. HATHITRUST

DATE OF DEPOSITION: MAY 29, 2012

NAME OF WITNESS: HELGE RØNNING

Reason codes:

- 1. To clarify the record.
- 2. To conform to the facts.
- 3. To correct transcription errors.

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HELGE RØNNING

EXHIBIT W

Peter Leonard (Univ. Chicago)

Timothy R. Tangherlini (UCLA)

Trawling in the Sea of the Great Unread:

Sub-Corpus Topic Modeling and Humanities Research

Abstract

Given a small, well-understood corpus that is of interest to a Humanities scholar, we propose *sub-corpus topic modeling* (STM) as a tool for discovering meaningful passages in a larger collection of less well understood texts. STM allows Humanities scholars to discover unknown passages from the vast sea of works that Moretti calls the “great unread,” and to significantly increase the researcher’s ability to discuss aspects of influence and the development of intellectual movements across a broader swath of the literary landscape. In this article, we test three typical Humanities research problems: in the first, a researcher wants to find text passages that exhibit latent semantic similarities to a collection of influential non literary texts from a single author (here Darwin); in the second, a researcher wants to discover literary passages related to a well understood corpus of literary texts (here emblematic texts from the Modern Breakthrough); and in the third, a researcher hopes to understand the influence that a particular domain (here folklore) has had on the realm of literature over a series of decades. We explore these research challenges with three experiments, the first focused on the echoes of Darwin’s work in the broader Danish literary realm; the second focused on unknown authors from the “Modern Breakthrough,” a shift in Danish (and Nordic) literature away from Romanticism and toward Naturalism starting in the 1870s, and concomitant with the translation of Darwin’s works into Danish; and the

third focused on the emergence of folklore and a turn toward rural motifs in Danish literature from Romanticism through the progressive literature of the early twentieth century.

Keywords: Topic Modeling, Literature, The Modern Breakthrough, Folklore, Denmark

Introduction

Over the past five years, literary scholars have acquired access to increasingly large collections of digitized texts. Consequently, they struggle with a new inflection of the age-old problem that for any given research question there exist far too many works in the target corpus to be able to read all of them carefully. While simple barriers such as physical access restricted research in the past, these barriers have begun to disappear in the digital age and people now have broad access to previously difficult to access works. To account for this change in access to materials, researchers must conduct searches that not only have high precision as was the case with the limited searches based on canonical views of literary history—standard practice in Humanities research for many centuries—but also have high recall. If one has access to all of the fiction published in Denmark from 1860-1920, for example, and one is engaged in a study focused on this literature, one can no longer suggest that reading the best-known works (and some from around the edges) provides adequate coverage of the literary landscape. Similarly, if one is interested in specific literary themes or topics, the desire to discover those themes or topics across the entire corpus is too enticing to ignore.

Text-mining techniques that allow for the rapid identification of “passages of interest” contribute significantly to a scholar’s ability to narrow down a broader corpus into a research collection and to understand the relationships between the works in this collection, thereby holding out the promise that one can develop a more encompassing

understanding of a particular field. Accordingly, one of the goals of our work is to develop techniques that allow for the rapid identification of a large collection of passages from mostly unknown works that intersect with well-known passages from well-known works. These techniques in turn can contribute to the development of new perspectives not only on the known corners of the literary realm (e.g. “the canon”) but also on parts of the literary corpus largely ignored by previous scholarship. By developing these techniques, problems posed by the recent emergence of “big data” collections of literature such as Google Books, HathíTrust, and the Internet Archive, no longer stand as barriers to research but instead as considerable research assets. The challenge resides in developing fast, intuitive and easy-to-use techniques that address the problems of “big data” collections while taking advantage of the expert knowledge that has developed over the course of many decades in the study of literature.

With the emergence of “big data” collections, there are too many accessible texts to read each one closely; even if one could read them closely, it is unlikely that one could read them consistently; and if one could read them consistently, it is inconceivable that one would be able to remember even a small percentage of them. Developing a model of “meaning” by applying unsupervised machine learning techniques across the entire corpus might be a solution to this problem. Yet, while this is an intriguing idea and one not addressed in this paper, such an approach would have limited applicability beyond providing a first level approximation of the general contours of topics in a particular literature at a particular time.

[1] Except for encyclopedic projects, most contemporary literary scholarship does not focus on making broad generalizations about a national literature, but rather emphasizes narrower developments in the literary landscape coupled to a thorough contextual knowledge of the impact and spread of those developments. Not surprisingly, analysis of this type is largely

dependent on a scholar's "domain expertise".

Literary domain expertise is formed from the study of an imperfect and largely arbitrary canon.[2] In "The Slaughterhouse of Literature," Franco Moretti notes that "[t]he majority of books disappear forever—and 'majority' actually misses the point: if we set today's canon of nineteenth-century British novels at two hundred titles (which is a very high figure), they would still be only about 0.5 percent of all published novels" (Moretti 2000, 207). Despite this arbitrariness underlying canon formation, an inherent *passive* connection exists between the canon and the hundreds of thousands of literary works digitized in a project such as Google Books. Thus the canonical texts upon which domain expertise is largely founded form a part, no matter how statistically insignificant, of the entire corpus. An excellent example of this can be found in the context of Nordic literature, the literature that comprises our "domain expertise." One of the goals of our work is to transform this *passive* relationship between the canonical texts on the one hand and all of the other books in the Google Books corpus on the other hand into an *active* relationship. This transformation represents an important step toward developing techniques for the discovery of "passages of interest" in a large unlabeled corpus given a series of well-understood texts.

We conceive of this approach as a targeted fishing expedition: a small sub-corpus of literary works serves as a trawl line and is passed through the "Sea of the Great Unread"; whatever gets "caught" will likely be of interest to someone interested in the sub-corpus. By considering all of the books in the domain but limiting the search to topics of interest based on the sub-corpus (or "corpus of interest"), this approach greatly increases the recall of otherwise overly "precise" searches that have characterized canonical research in the Humanities.[3] In our work presented below, we fashion the hooks on our trawl line by implementing Latent Dirichlet Allocation (Blei, Ng, Jordan 2007) on a small, well-

understood sub-corpus and use the derived topic models to “catch” texts in the larger, poorly understood corpus.[4] We label this approach *sub-corpus topic modeling* (STM) [figure 1].

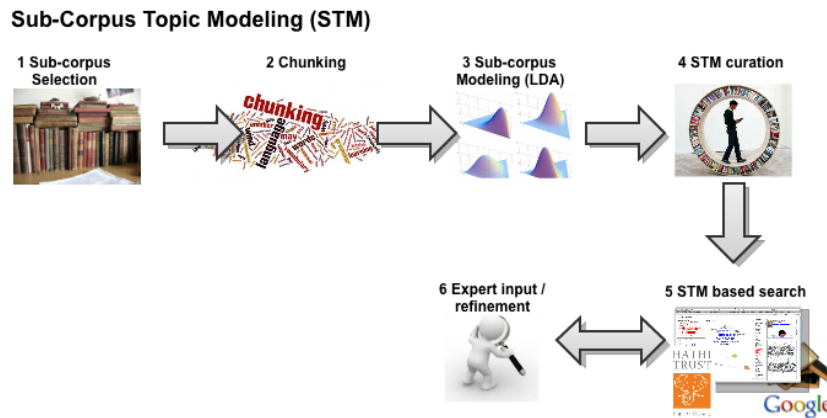


fig. 1: Flowchart showing the STM process

Limitations of Keyword Search

“Whole text” search based on probabilistic topic modeling has distinct advantages over simple keyword search. Certainly, the temptation exists for many literary scholars to believe that their domain expertise provides them with sufficient knowledge to perform productive keyword searches. For example, if “the countryside” is an important concept in nineteenth century British novels, a domain expert should be able to develop a limited set of keywords—or perhaps key phrases—related to the countryside, such as “manor”, “farm”, and “field”, and retrieve a large number of new texts. Implementing a simple thesaurus or WordNet approach could further augment this strategy. This approach certainly aligns with current search strategies in the Humanities, yet it often fails to provide the higher degree of recall that the current research environment demands. Similarly, it fails to discover passages that do not include those particular keywords (or their synonyms). Apart from being tedious (particularly in the case of highly inflected languages such as Icelandic), this strategy, for all intents and purposes, increases recall simply by iterating through a series of high-precision

searches. It also produces results that are hard to duplicate.

Cameron Blevins's work on the application of topic modeling to *Martha Ballard's Diary* provides a good counter example to keyword search (Blevins 2010). Spirituality emerges as an important theme in Ballard's diary, a late-eighteenth/early-nineteenth century text written over the course of three decades by a midwife in Maine. Yet a search for the keyword "God" misses numerous passages related to spirituality, as Ballard uses paraphrases such as "his great name to him who is kind to the Evle and unthankfull, whose tender mercies are over all his work" (Blevins 2010). Even a researcher with an expert grasp of how Americans in the late eighteenth century expressed their thoughts about religion and God would risk missing passages that did not conform to these expectations. In a series of electronic articles on the diary, Blevins demonstrates that a more productive approach is to let the corpus organize itself into coherent topics (Blevins 2010). The historian can then label the resulting topics with meaningful descriptions. Here, the computer algorithm is given the task of what it does best: counting words and calculating probabilities of term co-occurrence. The scholar is given the task of what he or she does best: applying domain expertise and experience for labeling and curating the topics.

This division of labor has significant implications for the extraction of meaning from large corpora. As opposed to keyword search which requires that the researcher know what to look for *a priori*, the topic modeling approach asks the algorithm to reveal latent semantic patterns in the data, and couples these latent patterns with expert-applied labels. The researcher can subsequently "curate" these labeled topics, weeding out uninteresting ones and focusing on those that appear promising for the research problem at hand. Since topic modeling algorithms can never "understand" the words they process and similarly cannot propose firm conclusions about the books they have "read," scholars must serve in those

crucial capacities.

In what follows, we present preliminary findings from three experiments that make use of STM as a means for sophisticated search in a large, unlabeled corpus and explore the extent to which this approach provides results that would be hard to achieve with keyword search.[5] The STM dashboard [see figure 2 as an example] provides the researcher with useful information including (a) visualizations that show topics as a word cloud and an n-gram cloud and that also allow the researcher to label the topics, (b) a bar-graph showing the number of text passages (chunks) per year, (c) a ranked list of text chunks, (d) a pie-chart showing the degree of saturation for any given selected text chunk, and (e) a drill-down method for not only reading the identified passage but also linking to the full work in Google Books. At the bottom of the screen, a simple network visualization of labeled topics (f) allows a researcher to move between topics with links based on shared passages in the sub-corpus. In this context, it is important to understand that LDA conceives of texts as a mixture of topics. In future implementations of the STM dashboard, a researcher will be able to upload a sub-corpus and select the number of topics to generate for that sub-corpus, as well as curate the generated model by providing labels for topics or deleting them (topic model curation).[6]

First Experiment: Natural Science, Naturalism and the Modern Breakthrough

The translation of Charles Darwin's publications in the early 1870s into Danish was a seminal event in Nordic literary history. Though an English-speaking elite could read *On the Origin of the Species* in 1859 and *The Descent of Man* in 1871, Peter Kjærgaard, Niels Gregersen and Hans Hjermitsev note that the translation of the original texts, "was an important step in the education of the public. Without the book[s] in Danish the public was easily misled by the voices of immature adherents... Being able to read the original work[s], they could now

witness for themselves” (Kjærgaard, Gregersen and Hjerimitslev 2008, 150). At the time, progressive Danish intellectuals were in desperate need of transformative ideas from abroad in literature as well as in science. Conservatism and parochialism threatened to be triumphant, led in part by the Romantic leanings of Denmark’s foremost scientist Hans Christian Ørsted who, in his non-scientific writings, set a tone of disinterest in Positivism.

Frustrated by the slow pace of change and the threat of backsliding, the radical literary critic Georg Brandes eagerly appropriated Darwin’s ideas on natural selection as a weapon in his fight against Theocentrism, a notion that was quickly developing a stranglehold on intellectual and artistic trends. Although initially on the edges of the literary and academic establishment, Brandes, his brother Edvard (a leading journalist), and a close circle of artists and intellectuals echoed Brandes’s passionate argument that “[w]riters should present nature, the world and the people in it as they were and, through that, work in the service of progressive ideas and social reform” (Kjærgaard, Gregerslev and Hjerimitslev 2008, 149). Consequently, as Kjærgaard, Gregersen and Hjerimitslev note, “Darwin was celebrated in Brandes’s circle as founder of an entirely new—and to them correct—view of nature” (2008, 149).

At the beginning of the 1870s, Jens Peter Jacobsen, a young Danish botanist, began publishing articles explaining and promoting Darwinism in the journal, *Nyt dansk Maanedsskrift* [New Danish Monthly], a magazine that was closely allied with the Brandes circle. Jacobsen had previously received the gold medal from the University of Copenhagen given to the best thesis for his fieldwork on fresh-water algae but by the 1880s had largely abandoned his scientific endeavors to pursue literature. Suffering from tuberculosis, Jacobsen left Copenhagen and moved back to his parents’ house in northern Jutland and began writing poetry and fiction. He is now recognized not for his botanical work, but rather

for his literary oeuvre and is considered to be one of Denmark's most important authors. This position was solidified by his inclusion, despite his young age, in Brandes's *Det moderne Gjennembruds Mænd* [Men of the Modern Breakthrough] (1883), a defining work in Nordic literary studies. In Jacobsen, Brandes found an advocate of Darwin equally comfortable with the written page and the Petri dish, a characteristic entirely consistent with the goals of the Modern Breakthrough.

After honing his thoughts on Darwin by publishing summaries, interpretations, and commentaries, Jacobsen undertook a translation of *On the Origin of the Species*, published as one volume in 1872, and a translation of the first two volumes of *The Descent of Man*, published in 1874 and 1875 respectively. These were well received and widely read (or at least, widely purchased). Although the myth of Jacobsen as the first significant promoter of Darwinism in Denmark is likely apocryphal, his interpretive work and unabridged translations solidified his role as an important spoke in the scientific and literary networks of the time. Partly because of Jacobsen and Brandes's roles in promoting Darwin's work in Denmark, Darwin received as much interest in fields outside of the Natural Sciences as within (Kjærgaard and Gregersen 2006). Jacobsen himself wrote of his desire to “exchange the ancient poetry of Mystery with the new poetry of Law, [...] swap arbitrary, supernatural and personal Governance for a clear Order of Nature” (Jacobsen 1871a, 419).[7]

Given these developments, and the role of Darwin's writings in anchoring the push toward Naturalism, a challenge question immediately presents itself: Can we find traces of this shift to a natural-scientific understanding of society presaged by the translation of Darwin's works in the 1870s by Jacobsen in the larger corpus of Danish language works in Google Books? Beyond the works of Jacobsen, are there other literary works lurking in the Sea of the Great Unread that can help us explore the penetration of Darwin's ideas—granted

filtered through Jacobsen’s translational lens—into the broader literary world? As outlined above, our strategy is to let Jacobsen’s translations of Darwin organize themselves into “topic models” and then use these as the basis of our fishing expedition. Instead of presuming that we know which keywords best represent this Naturalist turn, we allow the algorithm to present groupings of “text chunks”—in this case paragraphs—that we label and curate.[8] This labeled and curated sub-corpus topic model becomes the basis of the subsequent searches in the broader corpus of Danish literary texts. Presumably, if Danish literature is influenced by Jacobsen’s translations of Darwin, then we should discover many of these works ranked highly in the resulting search results.

Concatenating the Danish translations of *On the Origin of Species* and *The Descent of Man* and modeling the topics in these works at the level of one hundred topics generates some interesting results. One topic, that we label “social instinct,” is constituted by words and phrases such as *instinkter* [instincts], *følelser* [feelings], *sympathy* [sympathy], *moralske følelse* [moral feeling] and *selskabelige instinkter* [social instincts]:

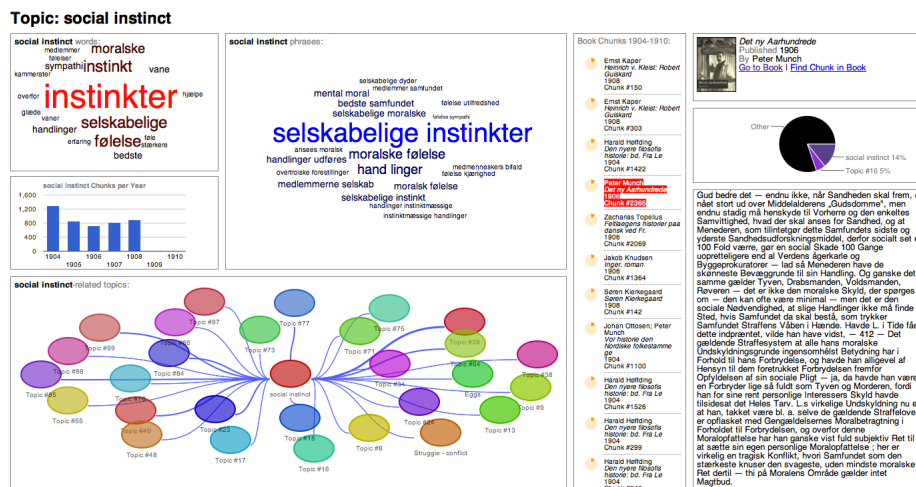


fig 2: The topic, “Social Instincts”, and the STM dashboard.

Two of the top-rated passages of Jacobsen’s translations of Darwin for this topic include:[9]

Social animals are partly impelled by a wish to aid the members of the same

community in a general manner, but more commonly to perform certain definite actions. Man is impelled by the same general wish to aid his fellows, but has few or no special instincts (Darwin 1871, 392).

I am aware that some persons maintain that actions performed impulsively... do not come under the dominion of the moral sense, and cannot be called moral... But it appears scarcely possible to draw any clear line of distinction of this kind; though the distinction may be real. As far as exalted motives are concerned, many instances have been recorded of barbarians, destitute of any feeling of general benevolence towards mankind, and not guided by any religious motive, who have deliberately as prisoners sacrificed their lives, rather than betray their comrades; and surely their conduct ought to be considered as moral (Darwin 1874, 96).

As hoped, the algorithm discovers a number of interesting texts that support the contention that Darwin's topics were influential outside of the natural sciences including several intriguing examples from the intellectual press such as the monthly *Det nye Aarhundrede* (The New Century).

In a reformist piece on the subject of “Det gældende Straffesystem” [The Current Penal System], a largely forgotten yet at the time influential Police Inspector, August Goll (1866-1936), laments the unfairness of Danish criminal law as “...truly a tragic conflict, in which Society as the strongest crushes the weakest, without the slightest moral right to do so—for in the zone of morality no dictate can apply” (Goll 1906, 409). A similar passage appears in *Kriminal-Antropologiske Studier over Danske Forbrydere* (Criminal-Anthropological Studies of Danish Criminals), in which the obscure physician and progressive prison reformer, Christian Geill (1860-1938), opines that “For the sociological school [of thought],

criminality is only one of the many symptoms of social illnesses; it is this sickness itself which must be attacked through treatment” (Geill 1906, 7). Although Goll and Geill are essentially unknown in Danish intellectual circles today, their work was instrumental in ushering in prison reforms at the start of the twentieth century, and their work on the rights and the humane treatment of prisoners—moving away from a position that criminals were born that way—still informs Danish theories of the prison today.

Although these first two passages are from a non-fiction work and an opinion article—revealing that questions related to Darwin’s conception of “social instinct” had broad appeal across many fields—similar passages also appear in literature. For example, in Jakob Knudsen’s (1858-1917) novel *Inger*, a man asks the parish minister whether he considers his affair with Inger to be dishonorable (*arelost*). The minister responds:[10]

Yes, Ditlev, I must. And that is dishonorable you will notice more strongly and clearly each day it continues unfortunately. Because it is society alone that decides what is honor and what is shame. You have offended society’s morals and laws, such as they are nowadays, and that is what counts (and must count) with respect to honor and shame—no matter how good a conscience you may have had in your own ignorance (Knudsen 1906, 253).

Popular (yet scandalous) at the time of its publication, *Inger*, which tells of a love triangle between a woman, her husband and her live-in lover has, in later years, been consigned to the Sea of the Great Unread. Despite the disappearance of all of these works from the “domain expertise” of current scholars, STM “rediscovers” them. In each of these passages—all chosen from a single year, 1906—Darwin’s thoughts on the tension between human being and citizen, between the individual and society, is captured well.

A second topic, labeled “struggle for survival,” invokes words and phrases such as

fight one another, defense against enemies, fight against, weapon, fight, defense, rivals, strength and occupation. The most saturated passage for this topic in the Darwinian texts is a description of polygamous birds “furnished with special weapons for fighting with their rivals, namely spurs, which can be used with fearful effect” (Darwin 1874, 311). Darwin nuances this language of struggle in *On the Origin of the Species* by noting (in another highly-ranked passage):

I should premise that I use the term Struggle for Existence in a large and metaphorical sense, including dependence of one being on another, and including (which is more important) not only the life of the individual, but success in leaving progeny. Two canine animals in a time of dearth, may be truly said to struggle with each other which shall get food and live. But a plant on the edge of a desert is said to struggle for life against the drought, though more properly it should be said to be dependent on the moisture (Darwin 1859, 50).

One of the most highly-ranked passages from literature published in 1906 is a paragraph from historian Hans Thorvald Olrik’s biography of the twelfth-century archbishop Absalon (Olrik 1909). Describing the development of a rebellion in Southern Sweden, Olrik writes:

In short, it was the earlier society, prehistoric society’s fight against the innovations and transformations of the Valdemar era and this rupture included the political, the religious and the social. Yet these counter-currents against the ruling powers were so uneven at first they could not immediately coalesce into a solid plan and clear desire. The Scanian Uprising was very hesitant at first, the common people barely knew what they wanted themselves, and threw themselves in a seemingly random fashion into the struggle first against the state, then against the Church and finally against the

upper class. But during the course of these events, the streams find each other, and finally the uprising becomes a foaming river, tearing into everything along the way, so the strongest forces in the country would have to come together in order to stem the danger (Olrík 1909, 46).

Olrík's metaphor is based on nature, comparing a conflict in human interests to one of geologic and hydrological forces. Here, Darwinian concepts of the "struggle for survival" have been incorporated in early twentieth century historiography, a development that Jacobsen and Brandes would likely have applauded. At the very least, this topic might be a useful investigatory tool to more closely examine metaphors of naturalized conflict in both history and fiction writing in early twentieth century Denmark.

Second Experiment: Missing Authors of the Modern Breakthrough

The naturalist turn in literary circles was a significant break—perhaps the most significant break—in Danish literary history. Yet, for many years, the break was traced almost exclusively in the work of the small number of authors that Brandes identified as the men of the Modern Breakthrough (1883). As such, Danish literary history, and the impact of the work of Darwin on the literary landscape, was largely constrained to a handful of canonical authors. It was not until 1983, with Pål Dahlerup's *Det moderne gennembruds kvinder* [Women of the Modern Breakthrough], that women were included in the canon of the Modern Breakthrough, and perhaps only begrudgingly so. Dahlerup's book was more important in that it challenged the general canonical premise of Nordic literary history: if we missed all of these women authors and their quite interesting and engaging works, what else were we missing?

In this second experiment, we approach this problem of the "Missing Authors of the Modern Breakthrough." To address it, we modeled representative work from Jacobsen's

fiction and that of two other “Men of the Modern Breakthrough”, Sophus Schandorf and Holger Drachman. This trawl line, tuned to the Modern Breakthrough as defined by Brandes and expressed in the works of these three canonical authors, should catch passages from other authors recognized as Modern Breakthrough authors; ideally, if one accepts Dahlerup’s underlying premise that the seventy women whom she identified as having their literary debut during the heyday of the Modern Breakthrough contributed to the contours of the Breakthrough, STM should also place passages from their work among the results with high topic saturation. A successful result would also include the identification of relatively unknown authors or texts (and passages) among these highly-ranked search results.

The Modern Breakthrough, modeled at fifty topics, provides some interesting results but, as with the other experiments, also brings to the fore the somewhat unpredictable nature of the Google Books corpus—a fairly large number of indices, statistical compendia, and catalogs tend to overload the topic models, returning these in very high ranked positions. At fifty topics, this problem is somewhat easier to ignore, while at lower levels, the initial rank list of “saturated” passages can at times be overwhelmed by these “junk fish.” A refinement to our tool would allow the researcher to rapidly clean the target collection of uninteresting results and rerun the algorithm in an iterative fashion. That said, the results of modeling the Modern Breakthrough offers some interesting results.

One topic, focusing on a woman’s thoughts, uncovered several interesting passages from a work by Magdalene Thoresen (1819-1903), a relatively obscure female writer mentioned in Dahlerup’s work. Thoresen began her career as an author in the period between the Golden Age of Danish Romanicism and the Modern Breakthrough, with a short story, “En Aften i Bergen” (1858). As she developed as an author, the relationship between the sexes became one of her main themes, in line with the gender debate that was a

main focus of the Modern Breakthrough. Not surprisingly, the topic also captures passages from several male Modern Breakthrough authors as well. Passages from Thoresen’s work, *Elvedrag og andre fortællinger* (1893), are saturated with another topic as well, labeled “her self” and constituted by words such as *hende* [her], *hendes* [hers], *hendes fader* [her father], *hendes øjne* [her eyes]. The topic interestingly also captures passages from Bjørnstjerne Bjørnson, Norway’s leading Romantic nationalist author, Evald Tang Kristensen’s collections of legends (see below), and a tragedy by the Nobel prize-winning Modern Breakthrough author Karl Gjellerup. A topic that quite by chance appears directly below this in our topic curation browser—a topic related to “intelligence”—reveals numerous passages from Darwin (!) and Gjellerup:

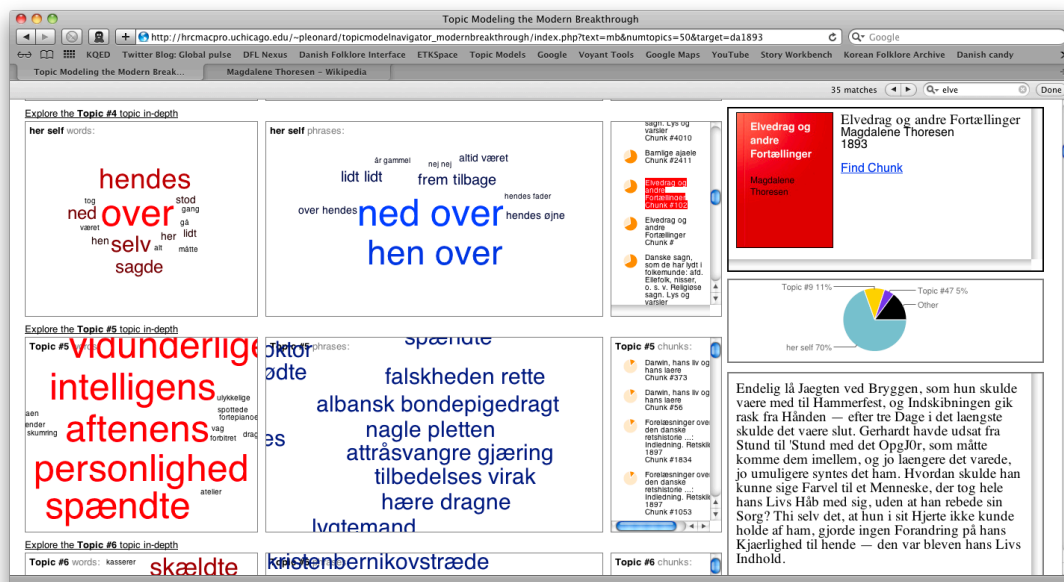


fig. 3: The topic “her self” and “intelligence” as seen in the topic curation interface.

Thoresen is not, however, the only woman writer that STM identifies.

Perhaps one of the least well-known, but fascinating female authorships, of the late nineteenth century is that of Alfhilda Mechlenburg (1831-1908) (Dahlerup 1983, 148-151).

The daughter of an Army Captain, Alfhilda spent much of her youth in Sønderjylland along

the German border, but moved in her late teens to Norway. After the tragic death of her husband and her child, she returned to Denmark where she began a writing career, a career that her two younger sisters had already engaged. Mechlenburg was hardly an adherent of the Modern Breakthrough ideals, but was rather initially caught up in a Romantic idealism that, as with Bauditz's neo-Biedermeier oeuvre, was extremely popular. In Mechlenburg's case, she was able to capture a very large portion of the largely urban, literate female reading public even though she published under the male pseudonym Ivar Ring. By 1882, Mechlenburg had managed to become one of the authors funded by the state budget, which freed her up to write even more including her collection of short stories, *I Vaar* (1895). In a somewhat hard to interpret topic that deals with men, little girls, god, black robes and shouting, passages from this collection appear along with Wied's *Ungdomshistorier* (1895), while another topic related to longing, death and inheritance places passages from her work not only alongside this work by Wied, but also Edvard Brandes's three act play, *Muhammed* (1895).

The list of late nineteenth century woman writers from whose works passages are recognized as being allied with better known male writers from the Modern Breakthrough is surprisingly large, and reveals the extent to which STM can be used to identify both authors of interest but also passages of interest. Anna Erslev (1862-1919), another of the female authors discussed by Dahlerup (1983, 400-420), appears most dramatically in a topic related to delight and disagreement—an interesting juxtaposition that in some ways captures the tensions that the Modern Breakthrough wanted to bring into art. Erslev's lyrical “folk historical” play about the ancient Danish king Valdemar was a bit of a departure from her focus on children's literature (a pedagogical endeavor that associates her with Carl Ewald and his translation of the Grimms' fairy tales, see below), yet aligned her with progressive

ideas about education that were catching on in Denmark. Perhaps more interesting is that STM's passage identification places her work close to that of Amalie Skram, long considered to be the leading, progressive feminist voice in late nineteenth century Scandinavian literature.

It is not only the relatively unknown female authors whose works are caught by the Modern Breakthrough trawl line. Rehearsing all of the intriguing and relatively unknown passages that (a) exhibit a degree of latent similarity with the main works of the main Modern Breakthrough authors and (b) exhibit that same similarity with known but less canonical works would be an exhausting exercise. Nevertheless it is worth noting that many of the caught passages come from authors whose work was later disregarded as not being central to the Modern Breakthrough or was otherwise ignored as it complicated the picture of the period. Vilhelm Østergaard's novel, *Danmarks Vovehals* (1894), a historical novel about Peder Skram, a nearly legendary sixteenth century Danish military adventurer, is clearly one such work. Interestingly, Østergaard played an important role as a consultant at Gyldendal, editing the "Gyldendal library" of Danish literature (175 volumes) and this broad literary exposure to the leading authors of the nineteenth century emerges in his picaresque engagement with different styles, his debut collection of short stories echoing the far more famous H. C. Andersen, his later works picking up on themes from Schandorf, while his theatrical work was largely comprised of dramatizations of several of Sophus Bauditz's novels. Østergaard's novel about Skram stands as a weak echo of J.P. Jacobsen's *Marie Grubbe* and, like the rest of his authorship, while popular in its time, never broke through into the canon.

The Modern Breakthrough is far too central a phenomenon in Nordic literary history to be able to explore its complexities here. Nevertheless, STM offers a novel method for

finding evidence to help explore these complexities. Indeed, the discovery of interesting intersections and juxtapositions of not only authorships but also individual passages is a key advantage to this method over more standard search methods. Adding more authors to the mix, particularly given STM's uncanny ability to snag unknown or forgotten ones, is a key element in the struggle for increased recall in Humanities research. While STM will not supplant analysis and hard work in the archives, it does offer the opportunity to develop a more sophisticated map of the intersections of authors, known and unknown, during this period of considerable artistic upheaval in Denmark and the Nordic countries.

Third Experiment: Folklore, Regional Literature and the "Folk Breakthrough"

Most casual observers of Danish literature are aware of the central place that Hans Christian Andersen (1805-1875) occupies in Nordic literary history, a reputation solidified by the international success of his "Fairy Tales." Yet H.C. Andersen was hardly the only Danish author to engage folkloric themes in his literary oeuvre, and the impact of folklore on the literary landscape extended far beyond the limited realm of Andersen's authorship. Folklore collection became an important endeavor in the early nineteenth century in the aftermath of the disastrous Danish alliance with Napoleon and the subsequent national bankruptcy in 1814. As with many other European countries, folklore collection was closely tied to national Romantic movements, and this is perhaps best exemplified in the writings of Svend Grundtvig (1824-1883), the son of Denmark's most famous national Romantic theologian. Grundtvig's entreaties to Danish schoolteachers and local historians to collect the "national treasure" of ballads as a reflection of the unique poetic creativity of the Danish folk motivated a young schoolteacher, Evald Tang Kristensen, to begin his collecting in 1864 (Grundtvig 1843). Over the course of the next six decades, Tang Kristensen crisscrossed the Danish countryside, amassing a folklore collection of more than 24,000 manuscript pages.

As Tang Kristensen became increasingly well-known among his fellow schoolteachers and local historians, his collection became both a model for other collections of largely local storytelling and an inspiration for the burgeoning interest among the small yet active rural intelligentsia in the study of dialects and everyday life in the countryside. This group spearheaded a distinctive and important development in Danish literary history that has been coined the “Folk Breakthrough”, a clear response to the pendulum swing toward Symbolism that followed in the aftermath of the Modern Breakthrough, yet one that resisted the pessimism of the Modern Breakthrough and the decadence of the fin-de-siècle Danish novel. The Folk Breakthrough was characterized by its emphasis on region over nation, the rural over the urban; authors of this movement have often been characterized as members of the turn toward “*Hjemstavnslitteratur*” [Regional literature], a genre that became increasingly popular in the early decades of the twentieth century.

Unlike the Modern Breakthrough that looked to Brandes as a unifying, theoretical voice, the Folk Breakthrough had no main intellectual anchor figure. Jeppe Aakjær, who learned about folklore and Jutlandic dialects directly from Tang Kristensen, was perhaps one of the most articulate and best recognized of these emerging authors (Tangherlini 1999). He traced many of his thematic influences not only to Tang Kristensen and the Jutlandic peasantry, but also to Steen Steensen Blicher. Somewhat confusingly, Blicher is generally considered to be among Denmark’s foremost Romantic poets while, at the same time, one of Denmark’s earliest Naturalists (Aakjær 1903-1904; Brix 1916). This shifting interpretation of Blicher’s position in Danish literary history is not only representative of the unsteady ground that marks the late nineteenth century in Danish literature but also of the inadequacy of models that insist on a single assignation for an authorship. STM helps reveal that not all engagements with folklore, the countryside and everyday rural life were nostalgic examples

of Biedermeier literature (a rural idyllic representation of country life resting on a bed of Romanticism), unapologetic Romantic peons to the Nation, or realistic engagements with the natural. Indeed, in later years, Johannes V. Jensen (1873-1950) with his influential *Himmerlandshistorier* (1898-1910) was held up as the leading figure of the *Hjemstavnsliteratur*, thereby again revealing the profoundly fractured nature of the Folk Breakthrough.

Rural motifs are remarkably common in Danish literature from the nineteenth and early to mid twentieth centuries. While passages from major works, such as Herman Bang's *Ved Vejen* and J.P. Jacobsen's *Marie Grubbe*, are easy enough to discover, largely because they form part of the canon, discovering lesser known works, or discovering the intersection of folkloric topics with the broader corpus of Danish literature, is considerably more difficult. Despite this difficulty, discovering a broad range of passages depicting everyday rural life may allow us to better understand the complex and at times contradictory reliance on the rural in Danish fiction. Importantly, the goal is not to discover retellings of fairy tales or legends.[11] Rather, the underlying idea is that by modeling a comprehensive collection of folklore, the general "feel" of rural life embedded in the folklore can be used to discover literary works that attempt to capture that same "feel." An ideal series of results would capture not only other collections of folklore but also literary works that engage the rural, from the conservative and Romantic Biedermeier literature of the mid-1800s, to the Naturalist engagement with the rural in the Modern Breakthrough, to the emergence of rural regional literature from the Folk Breakthrough.

To devise our folklore trawl line, we modeled ~34,000 legends from Tang Kristensen's collections (Tang Kristensen 1892-1901; 1928-1939), deriving 100 topics from the collection. Not surprisingly, when we set out on the Sea of the Great Unread with this line, we caught passages from several other collections of folklore, including printed versions

of Tang Kristensen's folklore collections, other volumes of collected folklore, and literary reworkings of fairy tales. More importantly, we discovered a very large number of passages from literary works, known and unknown, that were closely related to these folkloric topics.

An interesting find that illustrates the intersection between the folkloric and the literary is a passage from Herman Bang's *Haabløse Slægter* (1880). For a topic we labeled "death and churchyards," the following passage from Bang appears:

Yesterday, when I saw him, I came to think—God knows how—about a starving dog, no, not starving, but a miserable, tired, emaciated dog that lies still, eyes heavy and dies on his master's grave. And I don't know, but now I find this picture striking: thought, the controlling, the dominant forces in him have died, and now he spiritually starves to death on his dead master's grave (Bang 1880, 319).

While considerably more poetic and certainly more overtly pessimistic than most legends about cemeteries, Bang captures well the uncanny, perhaps supernatural, connection in folk belief between dogs and their masters after death. Another topic that we labeled "Shooting and Witches," generated by words such as *skyde* [shoot], *jagt* [hunt], *bossen* [rifle], *hare* [hare], captures passages from works as disparate as a chorographic work on Vendsyssel (a northern Jutlandic region) and passages from Blicher's collected short stories (Blicher 1907). Other passages that appeared on the line included ones from works by Holger Drachman, J.P. Jacobsen, the Norwegian Bjørnstjerne Bjørnson, and several other well-known authors. Similarly, a topic on horses and wagons—a rural topic if ever there was one, confirmed by its capture of passages from Jeppe Aakjær's *Vadmels folk* (1919)—discovered several passages by an interesting, yet somewhat obscure, *hjemstavns* author, Jakob Nielsen (1830-1901). Finally, another typical rural topic which we labeled "the minister," defined by words such as

præst [minister], *præstegården* [parsonage], *kjole* [robes], *krave* [collar] and *genganger* [revenant], not only discovers passages from Aakjær's biographical work on Blicher (1904), but also passages from one of the most important (and therefore most spectacularly forgotten) neo-Biedermeier short-story writers, Sophus Bauditz (1850-1915). Bauditz's fiction sold tens of thousands of copies at a time when most Danish literature only sold in the low thousands, and his audience was comprised largely of the emerging urban middle classes. Bauditz, in the discovered passage from this novel, masterfully captures the urban middle class nostalgia for an idyllic rural past that had never actually existed. In contrast to the reactionary Bauditz, the topic also captured passages from Carl Ewald's starkly realistic historical novel, *Den største i landet* (1905). Ewald, whose ideological orientation was diametrically opposed to that of Bauditz, was no stranger to folklore and the rural, having translated Grimm's fairy tales and rewritten Danish fairy tales and legends, in the belief that these stories could teach children Darwin's ideas about nature and evolutionary forces.

In a series of explorations focused on a twenty-year period that effectively covers the main period of the Folk Breakthrough (1890-1910), the trawl discovers a remarkable series of passages and works from largely unknown authors. So, for example, the topic, "Wild Hunt," identifies a passage from Gustav Wied's *Barnlige Sjæle* (1893) in which Wied writes: "I samme øjeblik, han vendte sig om, gik der en Gysen igennem mig, en Gysen af Uhygge og Medfølelse!" [At the same moment that he turned around, a shiver went up my spine, a shiver of horror and compassion], capturing the eerie response that witnesses report in legend's about encountering the wild hunt. Wied is often considered to be a marginal figure in the Modern Breakthrough, his authorship marked both by social critique and an emphasis on rural motifs; it is thus fitting that even his relatively unknown works are caught on the trawl line. The topic of reading the Danish black book, *Cyprianus*, provides a series of equally

interesting results, retrieving not only passages from Alfred Lehman's historical work, *Overtro og Trolddom fra de ældste Tider til vore Dage* (1896), but also from Bang's *Udvalgte Fortællinger* (1899), Aakjær's short story "Hædersgaven" (1915), and Magdalene Thoresen's (1819-1903) lesser known short story, "Studenten" (1863). Perhaps most interesting is the discovery of a passage from the long forgotten work *Af Kains Slægt: En nutids fortælling* (1899) by Axel Thomsen (1875-1951), one of the most obscure writers of the Folk Breakthrough. The novel was originally positively refereed for a press by the famous Modern Breakthrough author Henrik Pontoppidan, but was essentially forgotten after its publication. Thomsen is interesting precisely because he is no longer known, absent from most standard literary histories and biographical encyclopedias, despite publishing sixteen works, most between 1919 and 1927, many of which include folkloric themes and descriptions of rural life.[12]

Modeling the folklore corpus is an excellent method for discovering literary passages that deliberately attempt to capture aspects of peasant life even if the authors come from wildly divergent ideological positions—this type of recall is difficult to reproduce in traditional searches as those searches inherit the biases of the researcher. The relative lack of bias in the topic modeling approach, conversely, produces intriguing results that include passages from authors who reflect a broad range on the ideological spectrum. So, for example, passages from *Inger*, the novel by Jacob Knudsen mentioned earlier, appear in a topic related to serving maids, while a topic related to shooting identifies a passage from Otto Rung's early novel, *Sidste Kamp*. Although Rung is more known for his detective fiction set largely in Copenhagen—and thus not a likely author to look to for descriptions of Danish rural life—the largely ignored *Sidste Kamp* does indeed include such descriptions. Similarly, a topic labeled "serpents," discovers an unusual work on the animal world of the fairy tale by yet another long forgotten schoolteacher authors of the Folk Breakthrough,

great deal of borrowing, overlap and intersection.

STM provides interesting insight—and the evidence to support that insight—into the complexities of even relatively small literatures. In the past, thematic research questions were often driven by a reading of the canon—for instance, how does Jacobsen characterize the fight for survival? Similarly, historical research questions often built outwards from a center of presumed communities of influence—how did the regional literature movement of the last years of the nineteenth century and the early twentieth century recapitulate the Naturalism of the Modern Breakthrough while incorporating aspects of nostalgia while breaking with the Symbolists? STM allows for both of these approaches, while casting a much wider net. Now, given a sub-corpus, be it the works of Darwin (hypothesized to have significant influence on the Modern Breakthrough writers), the works of Jacobsen, Schandorf and Drachman (hypothesized to be representative of the Modern Breakthrough), or a large collection of Danish folklore (hypothesized to be inspirational for the Folk Breakthrough), the researcher can discover passages that can help support or broaden their understanding of these movements. Reversing the approach helps to illuminate another important aspect of STM. By curating the topics modeled on the sub corpus, the researcher becomes aware of topics that might now otherwise have informed the research. If the algorithm had never suggested a topic, would one ever derive a series keywords that link together material as disparate as criminology journals, university speeches and a novel written by a priest? This type of recall—and the intellectual value added by this recall—can only help broaden our understanding of the complexity of literary history.

Ultimately the researcher is responsible for fashioning raw bits of textual evidence into a convincing argument that can stand on its own merits. In the past, Humanities research has largely relied on arbitrary, albeit directed, methods of discovery: reading the

scholarly literature on the subject, combing through secondary sources, asking colleagues for advice, relying on past experience and serendipity. Individual authors often escaped inclusion in the canon (however defined), and as the years passed, the chances of their prose emerging from darkened library shelves grew slimmer. With the emergence of larger and increasingly comprehensive collections of machine-actionable texts, researchers can now access many more works than before. At the same time, the large number of texts speaks of the need for flexible finding aids. STM allows scholars to take advantage of their hard won domain expertise and the long history of scholarship that exists in most fields, while wedding this existing knowledge to methods for rapidly discovering potentially unknown or inadvertently overlooked passages. As we illustrate in the preliminary experiments above, the results are complicated and subject to interpretation and thus require the input of domain experts. The experiments do reveal the ability of STM to increase recall for any given corpus without sacrificing precision (indeed, the sub-corpus selection is based on the precise searches of years past). Yet unlike keyword searches, these searches are easily reproduced. Consequently, Humanities corpus discovery moves away from being a game of “gotcha” or one based on access to one that takes advantage of domain expertise and the increased accessibility of resources in a digital age.

In his 1871 essay “Menneskeslægtens Oprindelse” (The Origin of the Family of Man), J. P. Jacobsen claimed,

If one accepts the teachings of evolution... then Man will no longer regard himself as an exception from the laws of nature, but will begin notice these rules in his own actions and thoughts, and strive to place his own life in congruence with the laws of nature (Jacobsen 1871b).[14]

Jacobsen’s proposal that the laws of nature necessarily organize human behavior and society

given Man's position as an inextricable part of nature had a significant impact on the Nordic literary realm. But how far across the literary and intellectual realm did this influence reach, and how far up into the twentieth century did these ideas echo? Are there authors—such as the women identified by Dahlerup—who inflected these ideas in their authorship but for various reasons were ignored or deliberately left out of the broader canon? Similarly, in the aftermath of the Modern Breakthrough, as different literary movements took root, and the access to the literary world became democratized, is it possible to discover commonalities across the corpus related to a particular field such as folklore and normal people's descriptions of their everyday life? These questions are hardly unique to Nordic literature, but rather address substantive issues confronting Humanities scholars as access to very large corpora of digital texts becomes commonplace. STM can now be added to the fishing tackle of Humanities scholars as they head out onto the Sea of the Great Unread.

Notes

Funding for this work was provided through a generous grant from the Google Books Humanities Grant program. We would like to thank Jon Orwant at Google for his continued support of our work. We would also like to thank our colleagues David Blei and David Mimno for their comments and helpful suggestions regarding our work, particularly the implementation of LDA. Portions of this work have been presented at the annual conferences of the American Folklore Society (2011) and the Society for the Advancement of Scandinavian Study (2011 and 2012).

[1] Google's n-gram browser provides a simple version of this type of modeling—while it is fun to play with, it has very limited usefulness in the study of literature (Michel et al, 2011).

[2] “Largely arbitrary” as matters of reception, sales, publication, circulation, critical reviews and so on contribute significantly to the recognition of a literary work as exceptional. Those works that have “staying power”—that are able to engage critics for a considerable period of time—are those that enter the canon. At the same time, despite the impression of immutability, the canon often changes radically over time so that unknown works can suddenly become known (and canonical), while well known (and canonical) works can suddenly fall out of favor and disappear from the canon altogether. Methods for predicting works that are likely to enter the canon would be an intriguing addition to the tools available for Humanities scholars working with these large and dynamic digital corpora.

[3] Extending this admittedly forced fishing metaphor, one can equate earlier, canonical approaches to search as fly-fishing, where the fisherman deliberately selects lures that will only entice fish that he already knows are in the river. Conversely, nonselective search can be likened to tossing a stick of dynamite into a pond—all things that were in the pond float to the surface, to be later sorted through. Our approach intends to lie somewhere in between.

[4] As we are not applied mathematicians, we allow others to explain the statistical methods that undergird this approach (Ng, Blei and Jordan 2003).

[5] The STM trawl lines uses as hooks a measurement of topic saturation. The *topic saturation measurement* algorithm calculates the degree of “saturation” (or match) between a sub-corpus topic and a text chunk in the unlabeled corpus and returns a researcher-defined set of the highest ranked passages (for these experiments, this limit was set at 200).

[6] Currently, topic model curation is done via a different interface.

[7] The Danish reads, “Vi ombytte Underets gamle Poesi med Lovbestemthedens nye Poesi, vi byte en vilkårlig, overnaturlig personlig Styrelse med en klar Naturordning.”

[8] Using paragraphs as text chunks may not be optimal. Yet, it does recognize that, for most writers, paragraphs tend to focus on a single topic.

[9] These are Darwin's original English, the Danish translation rendered by JP Jacobsen in 1875 read: "Selskabelige Dyr blive tildels drevne af et Ønske om at hjælpe Medlemmerne af samme Selskab i al Alminde lighed, men hyppigere til at udføre visse bestemte Hand linger. Mennesket ledes af det samme almindelige Ønske om at hjælpe sine Medmennesker, men har få eller ingen særegne Instinkter." Jacobsen's 1874 translation of the second quote reads, "Jeg veed vel at Nogle hævde, at Handlinger, der udføres ifølge en øjeblikkelig Drift, således som i det ovenfor nævnte Tilfælde, ikke have Noget med den moralske Følelse at gjøre og ikke kunne kaldes moralske... Men det synes neppe muligt at drage nogen skarp Grændselinie her, omendskjøndt der jo i Virkeligheden nok er nogen Forskjel. Hvad disse ophøjede Motiver angår, så har man mange Exempler på, at Vilde, der mangle enhver Følelse af almen Menneskekjærlighed og som ikke ledes af nogen religiøs Bevæggrund, at de, når de ere blevne tagne tilfange, med Overlæg have offret deres Liv hellere end at forråde deres Kammerater; og denne deres Opførsel må ganske vist ansees for moralsk."

[10] The Danish reads, "Ja, Ditlev, det er jeg nødt til. Og at det er æreløst, det vil I desværre få stærkere og tydeligere at mærke med hver Dag, der går. Thi det er Samfundet, der alene bestemmer, hvad der er Ære, og hvad der er Skam. I har krænket Samfundets Moral og Love, sådan som de nu er; og det er det afgjørende, og må være det, med Hensyn til Ære og Skam, — i hvor god en Samvittighed I end måske i jeres Uvidenhed kan have haft."

[11] In other work, we show how a multi-modal network model can be used to discover improperly classified documents in a large folklore collection (Abello, Broadwell, Tangherlini 2012).

[12] He is included in Th. Lind's *Gyldendals forfatterleksikon* (1914) and the membership rolls of the *Dansk forfatterforening* [Association of Danish Authors] (1919), and in *Dansk skønlitterært forfatterleksikon 1900-1950* (Dahl and Engelstoft 1959-1964).

[13] Granted, there are some refinements that can be made to our net. Currently, the “Sea of the Great Unread” includes works from many disciplines, and is not solely a collection of unread fiction. Unfortunately, the metadata included with many “big data” collections is insufficient to make a reasonable sort on fiction and non-fiction. Consequently, in our current work, we have left the major collection unfiltered—this results in the “capture” of many works that need to be thrown back.

[14] The Danish reads: “Antager man Afstammingslæren, saa vil Mennesket... ikke længere betragte sig som en Undtagelse fra Naturlovene, men vil endog begynde at se efter det lovmæssige i sine egne Handlinger og Tanker og stræbe efter at faa sit eget Liv i Overensstemmelse med Naturlovene” (Jacobsen 1871b, 121).

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Appendix: Technical Considerations

Danish orthography was in flux from the 1870s through the spelling reform of 1948. In the closing decades of the nineteenth century, there is a gradual shift from using the double-a to the a-ring (for example from *haar* to *hår*). Doubled soft vowels are reduced to single vowels (*veed* to *ved*, *riig* to *rig*), and the letter *j* is dropped following *k* and *g* before *e*, *ø*, and *a* (*kjar* to *kar*). Though these spelling changes often affect only unimportant words (prepositions such as *paa/på*, “upon”), we have normalized these variations in order to extract as much usable information from the texts as possible. We also eliminated some texts that were improperly recognized by Google’s OCR apparatus—many books published in Denmark during this period were set in *Fraktur* (or Blackletter) type, mirroring German practice. Although some of these texts were parsed correctly with a *Fraktur*-specific OCR module, others clearly were processed by software expecting Latin letters with predictably poor results. Additional preprocessing included removing hyphens at the end of lines that divided words, and “chunking” the literary texts into rough paragraphs using a regular expression. Though imperfect, these steps were necessary to provide consistent, granular units of text.

The “STM dashboard” presented in some of the screenshots in this paper is a prototype. It visualizes output from the Mallet machine-learning toolkit (McCallum 2002). For the first and third experiments, we somewhat arbitrarily set the number of topics at one hundred; for the second experiment, we set the number of topics at fifty. Future versions of this tool will allow the researcher to generate topics at numerous levels of granularity, with a concomitant increase in the recall of searches based on those various topics.