

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF EDWARD H. ROSENTHAL

EDWARD H. ROSENTHAL hereby declares as follows:

1. I am a member of Frankfurt Kurnit Klein & Selz, P.C., attorneys for the Plaintiffs in the above-captioned action.

2. I submit this declaration in support of Plaintiffs' motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.

Deposition Transcripts

Depositions of Plaintiffs

3. Attached hereto as Exhibit 1 is a true and correct copy of the transcript from the deposition of T.J. Stiles dated May 31, 2012.

4. Attached hereto as Exhibit 2 is a true and correct copy of the transcript from the deposition of Helge Rønning dated May 29, 2012.

5. Attached hereto as Exhibit 3 is a true and correct copy of the transcript from the deposition of Pat Cummings dated May 22, 2012.

6. Attached hereto as Exhibit 4 is a true and correct copy of the transcript from the deposition of John White, literary agent for Plaintiff J.R. Salamanca, dated June 8, 2012.

Depositions of Defendants

7. Attached hereto as Exhibit 5 is a true and correct copy of the transcript from the deposition of Heather Christenson (University of California) dated April 11, 2012.

8. Attached hereto as Exhibit 6 is a true and correct copy of the transcript from the deposition of Paul Courant (HathiTrust/University of Michigan) dated April 24, 2012.

9. Attached hereto as Exhibit 7 is a true and correct copy of the transcript from the deposition of Laine Farley (University of California) dated April 12, 2012.

10. Attached hereto as Exhibit 8 is a true and correct copy of the transcript from the deposition of Peter Hirtle (C`ornell University) dated April 18, 2012.

11. Attached hereto as Exhibit 9 is a true and correct copy of the transcript from the deposition of John Wilkin (HathiTrust/University of Michigan) dated April 25, 2012.

Depositions of Non-Parties

12. Attached hereto as Exhibit 10 is a true and correct copy of the transcript from the deposition of Dan Clancy (Google) dated June 1, 2012.

Written Discovery Responses

Responses from Individual Plaintiffs

13. Attached hereto as Exhibit 11 is a true and correct copy of the Objections and Responses of Plaintiff Trond Andreassen to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012.

14. Attached hereto as Exhibit 12 is a true and correct copy of the Objections and Responses of Plaintiff Trond Andreassen to Defendants' First Set of Requests for Admission dated January 6, 2012.

15. Attached hereto as Exhibit 13 is a true and correct copy of the Objections and Responses of Plaintiff Trond Andreassen to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

16. "Attached hereto as Exhibit 14 is a true and correct copy of the Objections and Responses of Plaintiff Pat Cummings to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Objections and Responses of Plaintiff Pat Cummings to Defendants' First Set of Requests for Admission dated January 6, 2012.

18. Attached hereto as Exhibit 16 is a true and correct copy of the Objections and Responses of Plaintiff Pat Cummings to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

19. Attached hereto as Exhibit 17 is a true and correct copy of the Objections and Responses of Plaintiff Erik Grundstrom to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012.

20. Attached hereto as Exhibit 18 is a true and correct copy of the Objections and Responses of Plaintiff Erik Grundstrom to Defendants' First Set of Requests for Admission dated January 13, 2012.

21. Attached hereto as Exhibit 19 is a true and correct copy of the Objections and Responses of Plaintiff Erik Grundstrom to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

22. Attached hereto as Exhibit 20 is a true and correct copy of the Objections and Responses of Plaintiff Angelo Loukakis to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012.

23. Attached hereto as Exhibit 21 is a true and correct copy of the Objections and Responses of Plaintiff Angelo Loukakis to Defendants' First Set of Requests for Admission dated January 12, 2012.

24. Attached hereto as Exhibit 22 is a true and correct copy of the Objections and Responses of Plaintiff Angelo Loukakis to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

25. Attached hereto as Exhibit 23 is a true and correct copy of the Objections and Responses of Plaintiff Roxana Robinson to Defendants' First Set of Interrogatories and Requests for the Production of Documents with Amended Schedule A dated January 9, 2012.

26. Attached hereto as Exhibit 24 is a true and correct copy of the Objections and Responses of Plaintiff Roxana Robinson to Defendants' First Set of Requests for Admission dated January 9, 2012.

27. Attached hereto as Exhibit 25 is a true and correct copy of the Objections and Responses of Plaintiff Roxana Robinson to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated March 28, 2012.

28. Attached hereto as Exhibit 26 is a true and correct copy of the Objections and Responses of Plaintiff Helge Ronning to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 12, 2012.

29. Attached hereto as Exhibit 27 is a true and correct copy of the Objections and Responses of Plaintiff Helge Ronning to Defendants' First Set of Requests for Admission dated January 12, 2012.

30. Attached hereto as Exhibit 28 is a true and correct copy of the Objections and Responses of Plaintiff Helge Ronning to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

31. Attached hereto as Exhibit 29 is a true and correct copy of the Objections and Responses of Plaintiff Andre Roy to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012.

32. Attached hereto as Exhibit 30 is a true and correct copy of the Objections and Responses of Plaintiff Andre Roy to Defendants' First Set of Requests for Admission dated January 13, 2012.

33. Attached hereto as Exhibit 31 is a true and correct copy of the Objections and Responses of Plaintiff Andre Roy to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

34. Attached hereto as Exhibit 32 is a true and correct copy of the Amended Objections and Responses of Plaintiff Jack R. Salamanca to Defendants' First Set of Interrogatories and Requests for the Production of Documents with Second Amended Schedule A dated April 10, 2012.

35. Attached hereto as Exhibit 33 is a true and correct copy of the Objections and Responses of Plaintiff Jack R. Salamanca to Defendants' First Set of Requests for Admission dated January 12, 2012.

36. Attached hereto as Exhibit 34 is a true and correct copy of the Objections and Responses of Plaintiff Jack R. Salamanca to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

37. Attached hereto as Exhibit 35 is a true and correct copy of the Amended Objections and Responses of Plaintiff James Shapiro to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated March 26, 2012.

38. Attached hereto as Exhibit 36 is a true and correct copy of the Amended Objections and Responses of Plaintiff James Shapiro to Defendants' First Set of Requests for Admission dated April 3, 2012.

39. Attached hereto as Exhibit 37 is a true and correct copy of the Objections and Responses of Plaintiff James Shapiro to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

40. Attached hereto as Exhibit 38 is a true and correct copy of the Objections and Responses of Plaintiff Daniele Simpson to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012.

41. Attached hereto as Exhibit 39 is a true and correct copy of the Amended Objections and Responses of Plaintiff Daniele Simpson to Defendants' First Set of Requests for Admission dated April 3, 2012.

42. Attached hereto as Exhibit 40 is a true and correct copy of the Objections and Responses of Plaintiff James Shapiro to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

43. Attached hereto as Exhibit 41 is a true and correct copy of the Objections and Responses of Plaintiff T.J. Stiles to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012.

44. Attached hereto as Exhibit 42 is a true and correct copy of the Objections and Responses of Plaintiff T.J. Stiles to Defendants' First Set of Requests for Admission dated January 6, 2012.

45. Attached hereto as Exhibit 43 is a true and correct copy of the Objections and Responses of Plaintiff T.J. Stiles to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

46. Attached hereto as Exhibit 44 is a true and correct copy of the Objections and Responses of Plaintiff Fay Weldon to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 12, 2012.

47. Attached hereto as Exhibit 45 is a true and correct copy of the Objections and Responses of Plaintiff Fay Weldon to Defendants' First Set of Requests for Admission dated January 12, 2012.

48. Attached hereto as Exhibit 46 is a true and correct copy of the Objections and Responses of Plaintiff Fay Weldon to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012.

Responses from Associational Plaintiffs

49. Attached hereto as Exhibit 47 is a true and correct copy of the Amended Objections and Responses of Plaintiff The Authors Guild to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated April 3, 2012.

50. Attached hereto as Exhibit 48 is a true and correct copy of the Amended Objections and Responses of Plaintiff The Authors Guild to Defendants' First Set of Requests for Admission dated April 3, 2012.

51. Attached hereto as Exhibit 49 is a true and correct copy of the Objections and Responses of Plaintiff The Authors Guild to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

52. Attached hereto as Exhibit 50 is a true and correct copy of the Objections and Responses of Plaintiff The Authors' Licensing and Collecting Society to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated February 4, 2012.

53. Attached hereto as Exhibit 51 is a true and correct copy of the Objections and Responses of Plaintiff The Authors' Licensing and Collecting Society to Defendants' First Set of Requests for Admission dated February 4, 2012.

54. Attached hereto as Exhibit 52 is a true and correct copy of the Objections and Responses of Plaintiff The Authors' Licensing and Collecting Society to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

55. Attached hereto as Exhibit 53 is a true and correct copy of the Objections and Responses of Plaintiff The Authors League Fund to Defendants' First Set of Interrogatories and Requests for the Production of Documents with Amended Schedule A dated January 25, 2012.

56. Attached hereto as Exhibit 54 is a true and correct copy of the Objections and Responses of Plaintiff The Authors League Fund to Defendants' First Set of Requests for Admission dated January 25, 2012.

57. Attached hereto as Exhibit 55 is a true and correct copy of the Objections and Responses of Plaintiff The Authors League Fund to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

58. Attached hereto as Exhibit 56 is a true and correct copy of the Objections and Responses of Plaintiff The Australian Society of Authors to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated February 10, 2012.

59. Attached hereto as Exhibit 57 is a true and correct copy of the Objections and Responses of Plaintiff The Australian Society of Authors to Defendants' First Set of Requests for Admission dated February 10, 2012.

60. Attached hereto as Exhibit 58 is a true and correct copy of the Objections and Responses of Plaintiff The Australian Society of Authors to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

61. Attached hereto as Exhibit 59 is a true and correct copy of the Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers' Union) to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 23, 2012.

62. Attached hereto as Exhibit 60 is a true and correct copy of the Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers' Union) to Defendants' First Set of Requests for Admission dated January 23, 2012.

63. Attached hereto as Exhibit 61 is a true and correct copy of the Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers' Union) to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

64. Attached hereto as Exhibit 62 is a true and correct copy of the Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 26, 2012.

65. Attached hereto as Exhibit 63 is a true and correct copy of the Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants' First Set of Requests for Admission dated January 26, 2012.

66. Attached hereto as Exhibit 64 is a true and correct copy of the Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

67. Attached hereto as Exhibit 65 is a true and correct copy of the Objections and Responses of Plaintiff The Writers' Union of Canada to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 30, 2012.

68. Attached hereto as Exhibit 66 is a true and correct copy of the Objections and Responses of Plaintiff The Writers' Union of Canada to Defendants' First Set of Requests for Admission dated January 30, 2012.

69. Attached hereto as Exhibit 67 is a true and correct copy of the Objections and Responses of Plaintiff The Writers' Union of Canada to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

70. Attached hereto as Exhibit 68 is a true and correct copy of the Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants' First Set of Interrogatories and Requests for the Production of Documents dated January 26, 2012.

71. Attached hereto as Exhibit 69 is a true and correct copy of the Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants' First Set of Requests for Admission dated January 26, 2012.

72. Attached hereto as Exhibit 70 is a true and correct copy of the Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants' Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012.

Responses from Defendants

73. Attached hereto as Exhibit 71 is a true and correct copy of the Responses to Plaintiffs' First Set of Interrogatories to Defendant HathiTrust dated February 8, 2012.

74. Attached hereto as Exhibit 72 is a true and correct copy of the Supplemental Responses to Plaintiffs' First Set of Interrogatories to Defendant HathiTrust dated April 9, 2012.

75. Attached hereto as Exhibit 73 is a true and correct copy of the Responses to Plaintiffs' First Set of Interrogatories to Defendant Mark G. Yudof (University of California) dated February 8, 2012.

76. Attached hereto as Exhibit 74 is a true and correct copy of the Responses to Plaintiffs' First Requests for Admission to Defendant Mark G. Yudof (University of California) dated February 8, 2012.

77. Attached hereto as Exhibit 75 is a true and correct copy of the Responses to Plaintiffs' First Set of Interrogatories to Defendant Mary Sue Coleman (University of Michigan) dated February 8, 2012.

78. Attached hereto as Exhibit 76 is a true and correct copy of the Supplemental Responses to Plaintiffs' First Set of Interrogatories to Defendant Mary Sue Coleman (University of Michigan) dated April 9, 2012.

79. Attached hereto as Exhibit 77 is a true and correct copy of the Responses to Plaintiffs' First Requests for Admission to Defendant Mary Sue Coleman (University of Michigan) dated February 8, 2012.

80. Attached hereto as Exhibit 78 is a true and correct copy of the Responses to Plaintiffs' First Set of Interrogatories to Defendant Kevin Reilly (University of Wisconsin) dated February 8, 2012.

81. Attached hereto as Exhibit 79 is a true and correct copy of the Responses to Plaintiffs' First Requests for Admission to Defendant Kevin Reilly (University of Wisconsin) dated February 8, 2012.

Google Cooperative Agreements

82. Attached hereto as Exhibit 80 is a document entitled "Cooperative Agreement" that was purportedly entered into by Google Inc. and the University of Michigan on or about June 19, 2005. The attached copy was produced by Google Inc. as GOOG05000355-366.

83. Attached hereto as Exhibit 81 is a document entitled "Amendment To Cooperative Agreement" that was purportedly entered into by Google Inc. and the University of Michigan on or about May 19, 2009. The attached copy was produced by Google Inc. as GOOG05000319-354.

84. Attached hereto as Exhibit 82 is a document entitled "Cooperative Agreement" that was purportedly entered into by Google Inc. and the University of California on or about August 3, 2006. The attached copy was produced by Google Inc. as GOOG05000306-318.

85. Attached hereto as Exhibit 83 is a document entitled "Cooperative Agreement" that was purportedly entered into by Google Inc. and the Indiana University on or about June 1, 2007. The attached copy was produced by Google Inc. as GOOG05000028-044.

86. Attached hereto as Exhibit 84 is a document entitled "Cooperative Agreement" that was purportedly entered into by Google Inc. and Cornell University on or about August 6, 2007. The attached copy was produced by Google Inc. as GOOG05000472-483.

87. Attached hereto as Exhibit 85 is a document entitled "Cooperative Agreement" that was purportedly entered into by Google Inc. and the University of Wisconsin on or about September 22, 2007. The attached copy was produced by Google Inc. as GOOG05000428-438.

Other Documents

88. On June 28, 2012, I conducted a search for the phrase "secure cheap advertising" on the website <http://books.google.com>. Attached hereto as Exhibit 86 is a true and correct copy of a printout of the results page from that search.

89. Attached hereto as Exhibit 87 is a true and correct copy of a document entitled [REDACTED] The attached copy was produced by Defendants as UM004243-4266.

90. Attached hereto as Exhibit 88 is a true and correct copy of a document entitled

[REDACTED]
The attached copy was produced by Defendants as UM004267-81.

91. Attached hereto as Exhibit 89 is a true and correct copy of a document entitled

[REDACTED]
The attached copy was produced by Defendants as UM004282-86.

92. Attached hereto as Exhibit 90 is a true and correct copy of a printout showing Amazon.com's "Look Inside!" feature for the book *Clean Your Room, Harvey Moon!* by Pat Cummings. This document was marked as Exhibit No. "PC 14" during the deposition of Pat Cummings on May 22, 2012.

93. Attached hereto as Exhibit 91 is a true and correct copy of the *Curriculum Vitae* of Paul N. Courant. This document was marked as Exhibit No. "PC 1" during the deposition of Paul Courant on April 24, 2012.

94. Attached hereto as Exhibit 92 is a true and correct copy of [REDACTED]
[REDACTED] This document was produced by Defendants as UM001798-1798.01 and was marked as Exhibit No. "PC 4" during the deposition of Paul Courant on April 24, 2012.

95. Attached hereto as Exhibit 93 is a true and correct copy of a [REDACTED]
[REDACTED] This document was produced by Defendants as UM001716-1717 and was marked as Exhibit No. "PC 8" during the deposition of Paul Courant on April 24, 2012.

96. Attached hereto as Exhibit 94 is a true and correct copy of a news article from the UM website entitled "U-M Library Statement on the Orphan Works Project" dated September

16, 2011. This document was marked as Exhibit No. "PC 9" during the deposition of Paul Courant on April 24, 2012.

97. Attached hereto as Exhibit 95 is a true and correct copy of the *Curriculum Vitae* of John Wilkin. This document was marked as Exhibit No. "JW 1" during the deposition of John Wilkin on April 25, 2012.

98. Attached hereto as Exhibit 96 is a true and correct copy of a press release entitled "Google Checks Out Library Books" dated December 14, 2004. This document was marked as Exhibit No. "JW 2" during the deposition of John Wilkin on April 25, 2012.

99. Attached hereto as Exhibit 97 is a true and correct copy of a blog article entitled "John Wilkin talks Google Print & Digitization." The document was marked as Exhibit No. "JW 4" during the deposition of John Wilkin on April 25, 2012.

100. Attached hereto as Exhibit 98 is a true and correct copy of a newsletter dated April 13, 2012 from the HathiTrust website entitled "Update on March Activities." This document was marked as Exhibit No. "PH 9" during the deposition of Peter Hirtle on April 18, 2012.

101. Attached hereto as Exhibit 99 is a true and correct copy of the Declaration of Daniel Clancy in Support of Motion for Final Approval of Amended Settlement Agreement. This document was marked as Exhibit No. "3" during the deposition of Daniel Clancy on June 1, 2012.

102. Attached hereto as Exhibit 100 is a true and correct copy of a presentation entitled "University of California Mass Digitization Projects Update" dated May 8, 2008. This document was marked as Exhibit No. "HC 3" during the deposition of Heather Christenson on April 11, 2012.

103. Attached hereto as Exhibit 101 is a true and correct copy of a presentation entitled “HathiTrust: Sharing a Federal Print Repository: Issues and Opportunities” dated May 25, 2011. This document was marked as Exhibit No. “HC 4” during the deposition of Heather Christenson on April 11, 2012.

104. Attached hereto as Exhibit 102 is a true and correct copy of an article entitled “HathiTrust: A Research Library at Web Scale” by Heather Christenson. This document was marked as Exhibit No. “HC 5” during the deposition of Heather Christenson on April 11, 2012.

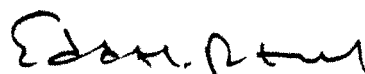
105. Attached hereto as Exhibit 103 is a true and correct copy of a printout showing Amazon.com’s “Look Inside!” feature for the book *Jesse James* by T.J. Stiles. This document was marked as Exhibit No. “10” during the deposition of T.J. Stiles on May 31, 2012.

106. Attached hereto as Exhibit 104 is a true and correct copy of a printout showing Amazon.com’s Search Inside! License dated June 18, 2012.

107. Attached hereto as Exhibit 105 is a true and correct copy of a printout of a screenshot from the HathiTrust website dated June 28, 2012.

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

Dated: New York, New York
June 29, 2012



EDWARD H. ROSENTHAL