

EXHIBIT 6

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PAUL COURANT
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., et al.,
Plaintiffs,
vs. Case No. 11 Civ. 6351
(HB)
HATHITRUST, et al.,
Defendants.

The Deposition of PAUL COURANT,
Taken at 503 Thompson Street,
Fleming Administration Building, Room 5021-503,
Ann Arbor, Michigan,
Commencing at 9:28 a.m.,
Tuesday, April 24, 2012,
Before Kathryn L. Janes, CSR-3442, RMR, RPR.
TSG Job # 48910

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1 PAUL COURANT
 2 Ann Arbor, Michigan
 3 Tuesday, April 24, 2012
 4 9:28 a.m.
 5
 6 PAUL COURANT,
 7 was thereupon called as a witness herein, and
 8 after having first been duly sworn to testify to
 9 the truth, the whole truth and nothing but the
 10 truth, was examined and testified as follows:
 11 EXAMINATION
 12 BY MR. ROSENTHAL:
 13 Q. Mr. Courant, am I pronouncing that correctly?
 14 A. Actually Courant.
 15 MR. PETERSEN: And it's doctor.
 16 BY MR. ROSENTHAL:
 17 Q. Dr. Courant. Yes, I knew the doctor part. I'm
 18 going to try to get the pronunciation.
 19 Dr. Courant, have you ever been deposed before?
 20 A. Yes.
 21 Q. How many times have you been deposed?
 22 A. Three or four or five, somewhere in that range.
 23 Q. Can you -- could you briefly describe for me the
 24 circumstances under which you were deposed?
 25 MR. PETERSEN: Objection to form.

PAUL COURANT

A. I was an expert in a -- figuring out, God, it's so long ago I can barely remember what it was. It involved a dispute about the value of child care, and trying to figure out a settlement in a divorce case, and I can't remember if I was actually deposed in this case or there were just exchanges of documents.

I was deposed as an expert in a slice of the Exxon Valdez cases, where I was an expert on behalf of the municipalities of Prince William Sound, and the circumstances there were really elegant, 51st floor office building in Seattle with a nice view, just want to point out.

BY MR. ROSENTHAL:

Q. Making a contrast.

A. Yeah.

MR. BERNARD: To the Fleming Building view.

A. Yeah.

As provost, I was deposed -- actually I was really no longer provost, but there was a case where a faculty member hadn't gotten tenure and had filed an action against the university, and I was deposed in that case and that may be it.

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room?

A. He wasn't present in the room.

MR. PETERSEN: He appears telephonically.

BY MR. ROSENTHAL:

Q. So one of the reasons I asked you those questions is just to make sure you're familiar with kind of how the deposition works, and that I'm going to ask you a series of questions. Please wait until I finish the question so that the reporter will get the full question. Your counsel can object if he so chooses. If you don't understand my question, you can ask me to clarify or rephrase it. But most importantly and I'm not sure you're going to do this, but let's try not to talk at the same time. I have a habit of doing that and many witnesses have a habit of doing that.

Can you tell me how you're currently employed?

A. I'm currently employed as University Librarian and Dean of Libraries, Professor of Economics, Harold T. Shapiro Professor of Public Policy, Professor of Information, and Arthur F. Thurnau Professor at University of Michigan.

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BY MR. ROSENTHAL:

Q. Have you been deposed --

A. I was deposed yesterday.

Q. Yeah, that's what I was going to ask you.

A. Not in this case, in the related case.

Q. Have you ever testified at trial in any of the cases you described or any other case?

A. No. Although I don't know what the status of the testimony I gave before Judge Chin at the settlement hearing was, but I don't think it was exactly a trial, but it was a court proceeding.

Q. So you testified at the settlement hearing in the case before Judge Chin?

A. Yes.

Q. If in the course of this deposition we refer to the Google case, you'll understand that what we're referring to is the case that a group of authors and publishers have brought against Google involving digitization of books?

A. Yes, okay.

Q. And in your deposition yesterday, who was deposing you?

A. Michael Boni's voice.

Q. Michael Boni's voice. He wasn't present in the

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Q. Mr. Courant, let me -- Dr. Courant, excuse me, let me show you this document.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC1
9:37 a.m.

BY MR. ROSENTHAL:

Q. I'll ask you, Dr. Courant, if you recognize this document?

A. Yes, I do.

MR. PETERSEN: Please have a moment to look at the entire document.

A. Yes, I do recognize it.

BY MR. ROSENTHAL:

Q. Is this a true and accurate copy of your curriculum vitae?

A. It's a true and accurate copy of some version of my curriculum vitae, yes.

Q. Well, I'll ask you some specific questions, if there's anything that's inaccurate, you can tell us what's missing. So under -- under the positions held on the first page, there's a list of positions described as current, and I believe that's exactly what you just testified to a moment ago. And this is a correct list of your

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current positions?

executing contracts and such on behalf of the purposes of the university, the advancement of scholarship and learning.

A. Yes.

Q. You said that you just testified that there's certain libraries that are not under your authority, could you describe those libraries?

Q. And is it correct that you've held all of these positions at least since 2007?

A. Yes, the Law School Library is under the authority of the dean of the law school. The Business School Library is -- reports to the dean of the business school. The -- there's a library called the Bentley Library, the Michigan Historical Collections, same entity that reports directly to the provost and contains the universities' archives, and there's a library called the Clements Library that also reports directly to the provost and is a special collections library of Americana, early American history.

A. Let me just think. I was appointed university librarian and dean of libraries during 2007.

Q. Okay.

A. So since -- I think I was appointed effective March 1st, 2007.

Q. And university librarian, dean of libraries, is that one position or is that two positions?

A. That's one position effectively.

Q. Briefly describe what the duties and responsibilities of the university librarian and dean of libraries are?

A. In broad form, I'm responsible to the president -- to the provost to the president, to the regents for the conduct of the set of libraries that are -- that are in my purview, that's a little self referential, but let me explain. Not all libraries at the University of Michigan are under my -- any authority of mine. The largest one is, and its subsidiaries. And then I'm responsible for balancing the budget, buying the right books,

There are also -- I won't say countless, but too many for me to have any hope of enumerating accurately, small departmental libraries around and about the university that report to their own departments or programs and that are not under my purview.

Q. When the libraries that you just described as not

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being under your purview, do they have -- you do not -- strike that.

campuses of the University of Michigan or am I asking the question incorrectly?

With respect to the libraries that are not under your purview, is it accurate to say that you do not have any control or influence over their acquisitions?

A. There are three campuses of the University of Michigan that are under the authority of the same president and the same board of regents. They are, as it happens, budgeted separately by the state. I don't know that anyone else has this arrangement.

A. We coordinate with the four libraries, large libraries, I've named. There's an entity called the Library Council, maybe it's called the Library Advisory Committee, I'm not sure which, that I share -- that I chair which consists of the directors of those four big libraries as well as the directors of the libraries of the University of Michigan Flint and the University of Michigan Dearborn, and we -- I wouldn't say I have no formal authority over their acquisitions' policies, but we do try to coordinate.

Q. Which are those three campuses?

A. Ann Arbor, Flint and Dearborn.

Q. At the University of Michigan Flint and University of Michigan Dearborn, do you have authority over those libraries?

Q. Uh-huh, and then there are other University of Michigan libraries that are outside of that realm?

A. No formal authority.

A. I don't understand the question.

Q. How many campuses -- let me strike that. Forgive my slight ignorance about how the University of Michigan is structured. Are there numerous

Q. In other words, the three -- you described the three as being three libraries all being --

MR. ROSENTHAL: Well, actually can you read back the last answer?

A. I said three campuses.

BY MR. ROSENTHAL:

Q. Three campuses, right, three campuses.

MR. ROSENTHAL: Could you read back the last answer? I apologize.

(The following record was read by

PAUL COURANT
the reporter at 9:44 a.m.:
"QUESTION: There are three
campuses of the University of
Michigan that are under the
authority of the same president and
the same board of regents. They
are as it happens budgeted
separately by the state. I don't
know that anyone else has this
arrangement.")

BY MR. ROSENTHAL:

Q. Are there other campuses of the University of Michigan apart from those three?

A. It will depend on how campus is defined, so there are, for example, there's a biological research station which might be construed as a campus that is part of the University of Michigan Ann Arbor that's in Pellston, Michigan. There is a geological research station and research and camp in -- I think it's in Wyoming, that again, I don't know -- it might be construed to be -- to be a campus. It's certainly an installation that's owned and operated by the University of Michigan Ann Arbor. But in the sense of providing sort of

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the full range of academic activities, those three that I named initially are it.

Q. To whom do you report?

A. I report to the provost and executive vice president for academic affairs.

Q. Is that one person?

A. Yes.

Q. And who is that?

A. Phil Hanlon.

Q. And does Mr. Hanlon, Dr. Hanlon, I presume, report to the president of the university?

A. Yes, he does.

Q. Does the president of the university report to the regents?

A. Yes, she does.

Q. Who is the president of the university?

A. Mary Sue Coleman.

Q. Now, just briefly you're also currently the Harold T. Shapiro Collegiate Professor of Public Policy, that's a chaired professorship, a -- or I'm sorry. Is that an endowed professorship?

A. No, it is not an endowed professorship.

Q. And what are your duties and responsibilities as the Harold T. Shapiro Collegiate Professor of

PAUL COURANT
Public Policy?

A. I am a member of the faculty of the School of Public Policy responsible to the dean, I teach, I do research, I advise students, I go to department meetings, I go to tenured cases, the standard range of faculty work.

Q. And with respect to your duties and responsibility as Arthur F. Thurnau Professor of Economics and of Information, do you have basically the same duties and responsibilities?

A. That is -- that is correct. I would just -- to clarify, the Arthur F. Thurnau professorship is essentially honorary. It's a title that is given for contributions to teaching at the university and isn't attached to those departments in any specific way.

Q. How -- in a typical academic year, how many courses do you teach?

A. One.

Q. And that's for a full -- a full year, one per full?

A. Yeah, as dean of the libraries, I teach one course.

Q. Okay.

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A. When I'm not dean of the libraries, three or four.

Q. What do you mean when you're not dean of the libraries, you mean, prior to being dean of the libraries?

A. That's correct.

Q. But you've been dean of the libraries since March 2007?

A. That's correct.

Q. And what course do you teach?

A. I teach a course called Systematic Thinking About Problems of the Day, Introduction to Public Policy.

Q. Prior to your current positions according to your CV, you were the director, Center For Local, State and Urban Policy, Gerald R. Ford School of the University of Michigan; is that correct?

A. Yes.

Q. And what were your duties and responsibilities?

A. The Center For Local, State and Urban Policy is a -- conducts research, runs programs, largely oriented, but not exclusively oriented towards the state of Michigan. And although my -- and so I was in charge of that fairly modest program as a practical matter, although my title was director,

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I was -- I was effectively an interim director between the time that my predecessor had left that post and the dean and I and others thought through the next round of leadership for the center.

Q. And prior to that position, you were a distinguished fellow at Council on Library and Information Resources in Washington?

A. Yes.

Q. And can you tell me your duties and responsibilities in that position?

A. My -- there were no formal duties and responsibilities other than to carry the title. I, while I was in that role and had that title, I worked on a paper that was eventually published by the Council on Library and Information Resources.

Q. Was that a full-time position during that period?

A. No, it was essentially an honorary position.

Q. What other positions did you hold at that time?

A. Professor of Harold T. Shapiro Collegiate Professor of Public Policy, Arthur F. Thurnau Professor of Economics and Professor of Information at the University of Michigan.

Q. Did you -- were you still working in Ann Arbor during the time that you were a distinguished

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fellow?

A. Yes.

Q. Prior to that, prior to that position you just described, your CV says you were provost and executive vice president for academic affairs at the University of Michigan; that's correct, right?

A. That is correct.

Q. And can you tell me your duties and responsibilities as provost and executive vice president for academic affairs?

A. The provost and executive vice president for academic affairs is the chief academic officer and the chief budget officer at the University of Michigan, and one of the principal deputies of the president. As chief academic officer, the deans -- the deans reported to me as did the library, and all of the academic units of the university. I was responsible for preparing the general fund budget of the university. All academic appointments were approved or not by me. And basically anything having to do with -- with learning, teaching, faculty affairs at the university comes through the provost.

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Q. When you say general fund budget, what do you mean?

A. The University of Michigan as a state institution uses a mechanism of budgeting called fund accounting, and the general fund mingles revenue sources from the state from tuition, from a good -- from most of indirect cost recovery popularly called overhead on grants, and then a few other sources including interest on balances and those areas. Basically it is the source of funds in the university that is not -- does not come with specific allocations to specific programs, projects, et cetera.

Q. So did your -- you testified that you were -- one of your responsibilities was with respect to the general fund budget, were you also -- did you also have responsibilities with respect to other budgeting?

A. In -- in budgeting to the academic units with general fund budgets, I took account of other sources of revenue. There were occasions where there would be accounting changes between -- things would be designated to one fund or another. I would be involved in such discussions. I had a

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role in fund raising and would occasionally be involved in raising funds that were not -- not general funds, so in a -- I think in a limited way the answer to your question is yes, but that isn't mainly what I did.

Q. When you say fund raising, are you talking about raising money from private individuals, organizations, and the like?

A. Private individuals, foundations, et cetera, yes.

Q. And did the funds from those individuals and institutions, did those funds tend to be earmarked for particular purposes?

A. Typically they would be.

Q. And as part of your duties as provost and executive vice president with respect to budgeting, were you responsible for budgeting for the libraries of the University of Michigan?

A. Let me be careful.

Q. Okay.

A. I was responsible for budgeting for the libraries that were -- that are under the leadership of the university librarian, dean of libraries and also responsible budgeting for the Clements Library and the Bentley Library, only indirectly for the other

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libraries.

Q. So the libraries you were generally responsible for are the libraries you're responsible for now in your current position as university librarian and dean of libraries?

MR. PETERSEN: Objection to form.

BY MR. ROSENTHAL:

Q. Is that essentially correct?

A. Let me state it more precisely.

Q. Okay.

A. Yes, and also for two of the other libraries --

Q. Right.

A. -- that I'm not currently responsible for.

Q. Do -- at the time you were a provost and executive vice president for academic affairs, were the budget -- were the budgets for all of the libraries that you were responsible for under one line item in an overall budget?

A. So almost certainly, no. Let's try another version of the question.

Q. What I'm getting to, just to cut through it, to the extent you know, do you know what percentage of the overall University of Michigan general fund budget went to the libraries at the time you

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time?

BY MR. ROSENTHAL:

Q. Well, did you know it at that time?

A. I'm so -- let me be careful again, when you say the libraries, what set of organizations are you referring to?

Q. I'm talking about the libraries for which you were responsible in the position of provost and executive vice president?

A. So including the Bentley and the Clements?

Q. Including the Bentley and Clements.

A. As provost, budgeting the general fund, I budgeted to the entities that I budgeted to, so I treated separately in my mind the Clements, the Bentley and the University Library, and indeed the Clements and the Bentley were under the approximate oversight of an associate provost because they're relatively small. So I -- I do not recall with any -- anything, with even speculative provision what the general fund budgets of those two --

Q. How about for the University Library?

A. I can make an approximate framing of what those numbers would have been.

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were a provost and executive vice president?

MR. PETERSEN: Would he have known at the time or does he know as he sits here today?

BY MR. ROSENTHAL:

Q. Well, I can ask, did you know at the time?

A. I would have had both those numbers handy and been able to accomplish the arithmetic operation to make that calculation. I'm not sure I ever looked at it that way.

Q. Do you today have a recollection of what that arithmetic calculation would be?

A. Not with any precision.

Q. Even -- even roughly?

A. So I -- I -- I could try to make a guess at what the calculation would have been, but I didn't -- the budgeting was not in essence done with -- with the percentage as an interesting number, so it's not a number I kept track of.

Q. Do you know in terms of the budget for the general -- the general fund budget for the libraries as a whole what that number was at the time you were provost and executive vice president for academic affairs?

MR. PETERSEN: Did he know it at that

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Q. Please do.

A. The general fund budget of the University Library at the time that I was provost would have ranged from the low 40 millions to the either high 40 millions or low 50s.

Q. And that range -- that range would encompass the period that you were provost and executive vice president for academic affairs?

A. Yes.

Q. And do you know what the budget for the University libraries is today for 2011 let's say?

A. I do approximately, but the units that are in the purview of the library have changed.

Q. Okay.

A. And in particular the -- an entity that is called the Digital Media Commons was added to the library several years ago and that addition came with it several million dollars a year and so the figures are not strictly comparable.

Q. So what is the current budget of the University Library?

A. Again, I'm going to be -- cover a range here, it's -- it's more than \$50 million a year and less than \$55 million a year.

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- 1 Q. What is the Digital Media Commons?
- 2 A. The Digital Media Commons is a set of activities
- 3 that are housed in the Duderstadt Center on North
- 4 Campus involving teaching and research labs around
- 5 information technology, audio and visual studios,
- 6 places to do work, learning technologies, the
- 7 orientation being the use of information
- 8 technology in academic work.
- 9 Q. Who is John Wilkin?
- 10 A. He's the associate university librarian for
- 11 information -- the library information technology
- 12 and the executive director of the HathiTrust,
- 13 H-A-T-H-I-T-R-U-S-T.
- 14 Q. And are those two separation positions?
- 15 A. Yes.
- 16 Q. And do you know how long he's held those two
- 17 positions, either or both?
- 18 A. I do not know how long he has been associate
- 19 university librarian. He was in that role when I
- 20 came to the library. He's been executive director
- 21 of the HathiTrust since there was such a person,
- 22 which is a little less than four years.
- 23 Q. Does Mr. -- is he Dr. Wilkin?
- 24 A. No, I don't think so.
- 25

PAUL COURANT

- 1 Q. Yes.
- 2 A. Not with any precision.
- 3 Q. Did you know then?
- 4 A. Yes.
- 5 Q. But you don't recall what it was?
- 6 A. Not with any precision.
- 7 Q. What about generally?
- 8 A. I'm trying to remember. I was in that position
- 9 for four years and it changed. Somewhat more than
- 10 a billion dollars, less than two, but I don't want
- 11 to speculate with any precision.
- 12 Q. And what is the size of the University of
- 13 Michigan general fund budget today for say 2011?
- 14 A. Somewhat more than it was when I left the job.
- 15 Q. More than \$2 billion?
- 16 A. No, I don't think so, but I would have to check to
- 17 be sure.
- 18 MR. ROSENTHAL: Could we just take a
- 19 break for a minute?
- 20 MR. PETERSEN: Sure.
- 21 (Recess taken at 10:04 a.m.)
- 22 (Back on the record at 10:11 a.m.)
- 23 BY MR. ROSENTHAL:
- 24 Q. Dr. Courant, did there come a time when you
- 25

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- 1 Q. Does Mr. Wilkin report to you?
- 2 A. Yes.
- 3 Q. Directly to you?
- 4 A. In his role as associate university librarian,
- 5 yes.
- 6 Q. As the executive director of the HathiTrust, no,
- 7 he does not?
- 8 A. I do not give him orders in that role.
- 9 Q. Do you supervise his work in that role?
- 10 MR. PETERSEN: Objection to form.
- 11 A. I'm broadly aware of his work in that role. We
- 12 talk about it.
- 13 BY MR. ROSENTHAL:
- 14 Q. I'll get back to Mr. Wilkin.
- 15 Do you know what the size of the
- 16 general fund budget overall for the University of
- 17 Michigan was at the time you were provost?
- 18 MR. PETERSEN: I believe wasn't this
- 19 asked and answered?
- 20 MR. ROSENTHAL: I covered this, I asked
- 21 about the library budget, but not the overall
- 22 budget.
- 23 A. Do I know now?
- 24 BY MR. ROSENTHAL:
- 25

PAUL COURANT

- 1 became aware of any digitization programs taking
- 2 place at the University of Michigan with respect
- 3 to books?
- 4 MR. PETERSEN: Objection to form,
- 5 objection to no definition for programs.
- 6 A. Yes, and just that passive form became aware of.
- 7 BY MR. ROSENTHAL:
- 8 Q. When did you become aware of any digitization of
- 9 books by University of Michigan?
- 10 A. Probably sometime in the 1980s. Certainly by the
- 11 early 1990s.
- 12 Q. And do you recall the positions you held at the
- 13 time you became aware of digitization of books at
- 14 the University of Michigan?
- 15 A. I was -- not specifically, throughout all of these
- 16 times I was a professor. As chair of the
- 17 economics department, and I can't -- I could look
- 18 up on my CV and find out when I was that, I was
- 19 responsible for a small departmental library. One
- 20 of those libraries that the University Library is
- 21 not responsible for, and we had some conversations
- 22 about, you know, how to manage that collection
- 23 which include digitization of some old works and
- 24 public domain works.
- 25

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Q. Did there come a time when the University of Michigan and Google entered into an agreement with respect to digitization of certain works in the University of Michigan Library?

A. Yes.

Q. And prior to that moment, so I'm going to use that as a baseline, did -- are you aware of whether University of Michigan engaged in any other programs to digitize works?

MR. PETERSEN: Objection to form, objection, asked and answered. He just testified on that subject.

A. The moment is the moment of --

BY MR. ROSENTHAL:

Q. Of an agreement with Google, let's put it that way.

A. So was I aware of --

Q. Prior to that.

A. -- digitization prior to the execution --

Q. Yes, yes.

A. -- of the agreement that I know about --

Q. With --

A. -- that we haven't put a date on?

Q. Right.

PAUL COURANT

BY MR. ROSENTHAL:

Q. Did the University of Michigan ever have an agreement or arrangement with Microsoft with respect to the digitization of books?

A. I don't know.

Q. You were not personally involved in any agreement or project with Microsoft in respect to digitization of books?

A. That's correct.

Q. Have you -- and you never heard of a program with Microsoft with respect to digitization of books?

MR. PETERSEN: Objection to form.

BY MR. ROSENTHAL:

Q. At the University of Michigan?

A. Microsoft had such a program and I -- it was something I knew about. We do a lot of business with Microsoft at the university, so it wouldn't surprise me if somewhere along the way we digitized some books, but I recall no direct involvement in such a program.

Q. You mentioned print disabilities, did -- are you aware of whether the University of Michigan had a -- had a program or practice of making copyrighted works available to students with

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A. Yes.

Q. Okay, sorry, yes. You answered that very well.

And in addition, would the digitization you just described in the economics department, were there other digitization projects prior to the Google agreement?

MR. PETERSEN: Objection to form.

A. There were. I know that now. Did I know that then? I don't know if I knew that then.

BY MR. ROSENTHAL:

Q. And do you know whether prior to the agreement with Google, the University of Michigan digitized any works that were still protected by copyright?

MR. PETERSEN: Objection to form, objection, calls for a legal conclusion.

A. I -- do I know, if I -- if I understand the policy with respect to making works accessible to people with prints disabilities, we almost surely did.

BY MR. ROSENTHAL:

Q. Any other situations other than making works accessible to people with print disabilities?

MR. PETERSEN: Same objection.

A. I do not know of any specific instances. It would not surprise me if there were some.

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print disabilities prior to the agreement with Google?

A. I believe that we did.

Q. Do you know how that program worked?

A. No, not in any detail.

Q. In any general sense?

A. The -- in the general sense, students who were certified as having print disabilities would make some application to the library for access to materials and we would -- well, it's not we, I wasn't in it, and there were then procedures for responding to such requests, so that's the level at which I have any understanding.

Q. Do you know what the procedures to respond to such requests were?

A. No.

Q. Do you know who would know that?

A. Depending on when it was, it would be different people. John Wilkin would probably at least either know or know who would know. And probably whoever was running the Students With Disabilities Office would know, but I don't know who that is.

Q. Do you know who's running the Students With Disabilities Office today?

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1
2 A. No.
3 Q. That is outside of the -- of the University
4 Library systems?
5 A. That's correct.
6 MR. PETERSEN: Object to form.
7 BY MR. ROSENTHAL:
8 Q. Prior to the agreement with Google, do you know
9 whether the University of Michigan digitized
10 books for purposes of preservation of works in
11 the University of Michigan libraries?
12 MR. PETERSEN: Objection to form.
13 A. Yes. I do know, and the university did.
14 BY MR. ROSENTHAL:
15 Q. And do you know the procedures the University of
16 Michigan used for determining which books would
17 be digitized under those circumstances?
18 A. Not in any detail.
19 Q. How about as a general matter?
20 A. There were many programs that involved
21 digitization for many purposes including
22 preservation, but I am -- I have no -- that's it.
23 Q. How about for replacement of damaged or
24 deteriorating books, same answer?
25 MR. PETERSEN: Objection to form.

PAUL COURANT

1
2 Q. Do you know whether, to the extent you know about
3 digitization of books that were deteriorating or
4 damaged, do you know whether University of
5 Michigan digitized books that were still in
6 copyright for those purposes?
7 MR. PETERSEN: Objection to form,
8 objection to the extent it calls for a legal
9 conclusion.
10 A. I do not specifically know.
11 BY MR. ROSENTHAL:
12 Q. Do you have a general idea?
13 A. I do not, no.
14 Q. Do you know who determined whether a book was
15 damaged or deteriorating?
16 MR. PETERSEN: Objection to form.
17 BY MR. ROSENTHAL:
18 Q. For purposes of whether that particular book
19 would be digitized?
20 MR. PETERSEN: Do you mean a
21 department?
22 BY MR. ROSENTHAL:
23 Q. A person.
24 A. The time period we're talking about?
25 Q. Prior to the Google agreement.

PAUL COURANT

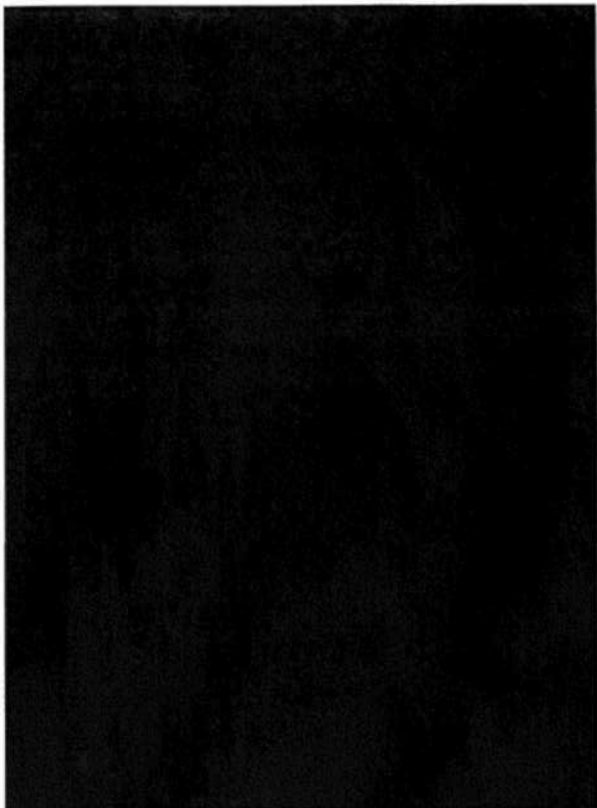
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2 A. Yes.
3 BY MR. ROSENTHAL:
4 Q. So you have no detailed knowledge of how that --
5 if that took place or how that took place?
6 A. No detailed knowledge, that's correct.
7 Q. General knowledge?
8 MR. PETERSEN: Objection to form.
9 A. Could you repeat the question? Not the last
10 little bit, any general knowledge about the
11 content.
12 MR. ROSENTHAL: Could you read that
13 back?
14 (The following record was read by
15 the reporter at 10:40 a.m.:
16 "QUESTION: So you have no detailed
17 knowledge of how that -- if that
18 took place or how that took
19 place?")
20 BY MR. ROSENTHAL:
21 Q. Does that help you?
22 MR. PETERSEN: Just put it together as
23 a new question because it's in pieces.
24 A. Now I need the antecedent of that.
25 BY MR. ROSENTHAL:

PAUL COURANT

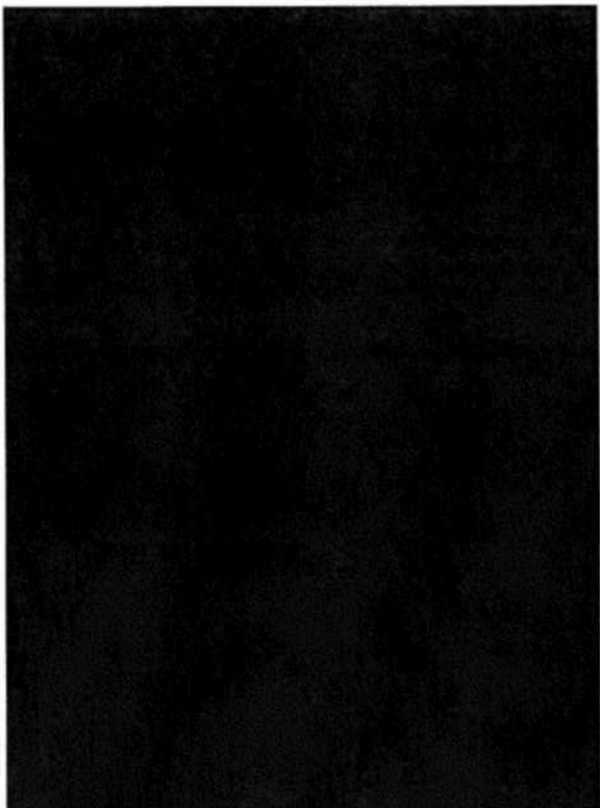
A. No.



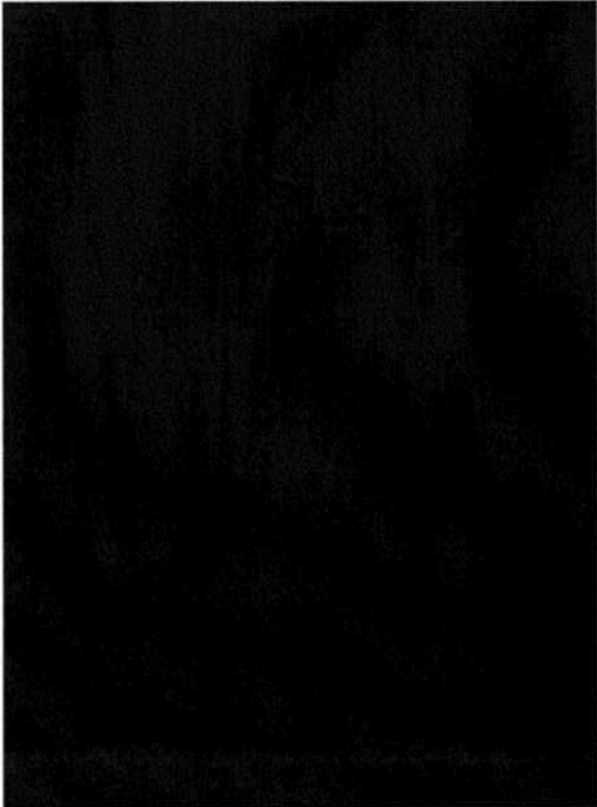
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Q. I believe you testified University of Michigan already made works available to persons with print disabilities, how was this going to be different?

MR. PETERSEN: Objection to form.

A. The key difference would be that we would have most or lots of the works that such students might want already digitized able to be used on relatively short notice whereas in the old system, there was a lengthy procedure that had to be gone through.

BY MR. ROSENTHAL:

Q. Do you know what that lengthy procedure was?

A. No, it was just characterized to me as lengthy.

Q. Do you know whether a student had to request a particular work, a visually disabled student had to request a specific work in order to have that work digitized and made available?

A. I don't know the details of the program.

Q. Is that essentially correct, as far as you know?

PAUL COURANT

MR. PETERSEN: Objection to form.

A. I can't answer that.

BY MR. ROSENTHAL:

Q. And with respect to preservation, I believe your testimony was that University of Michigan already took steps to preserve certain works; is that correct?

MR. PETERSEN: Objection to form, vague.

A. It is certainly the case that the university took steps to preserve certain works, however the scope of the preservation problem is enormous. Millions of works in the University of Michigan libraries are printed on acid paper and therefore have within them the seeds of their own destruction, and -- and it is certain, not hypothetical, that indeed that destruction will take place. The acid paper eventually deteriorates, crumbles.

one has the experience of pulling old books off the shelf and they sort of shatter into corn flakes. And so we were -- we and the university, they and the library at that time, were greatly concerned about the ability to preserve the collection for use in the future, and to be able

PAUL COURANT

to make copies available of works that were deteriorated or deteriorating or destroyed and for which it was impossible to purchase a new copy in the marketplace. The scope of this concern was in the hundreds of thousands to millions of works, so there was absolutely no way under the University's practices prior to this agreement with Google to cover anything like the whole sweep of the affected works.

BY MR. ROSENTHAL:

Q. Why was it not possible for University of Michigan to take the steps necessary to preserve these deteriorating works?

A. Because there are millions of them, and if you think about what has to be done there, you have to take each one of them and scan it -- each one of them, determine its condition, scan it, and that was -- would have cost us, I think the estimate at the time was hundreds of millions of dollars.

Q. Do you have a sense of the cost per book to digitize -- the cost to digitize a particular book, an average cost?

MR. PETERSEN: Objection to form.

A. There are very widely varying estimates of such

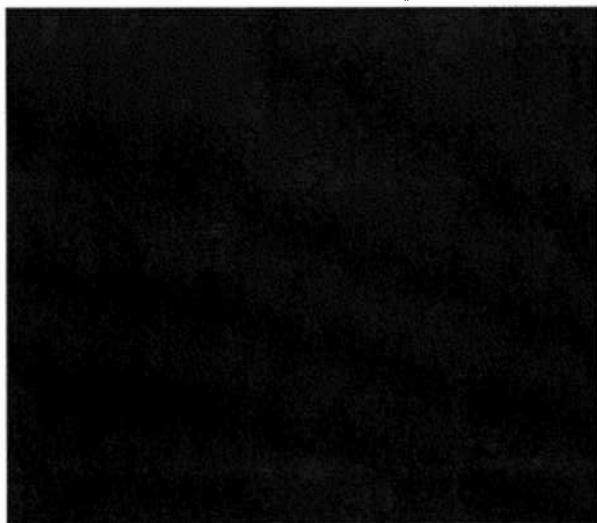
PAUL COURANT

costs.

BY MR. ROSENTHAL:

Q. What estimates have you heard?

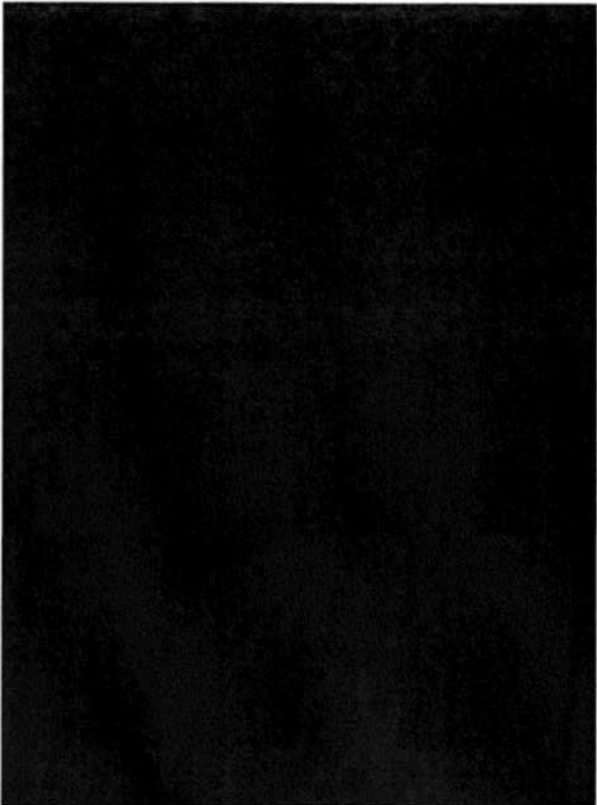
A. I have heard people say that it can be done for as little as something in the 5 to \$10 range, the methods that the University of Michigan was employing prior to the arrangement with Google were much closer to the \$100 range.



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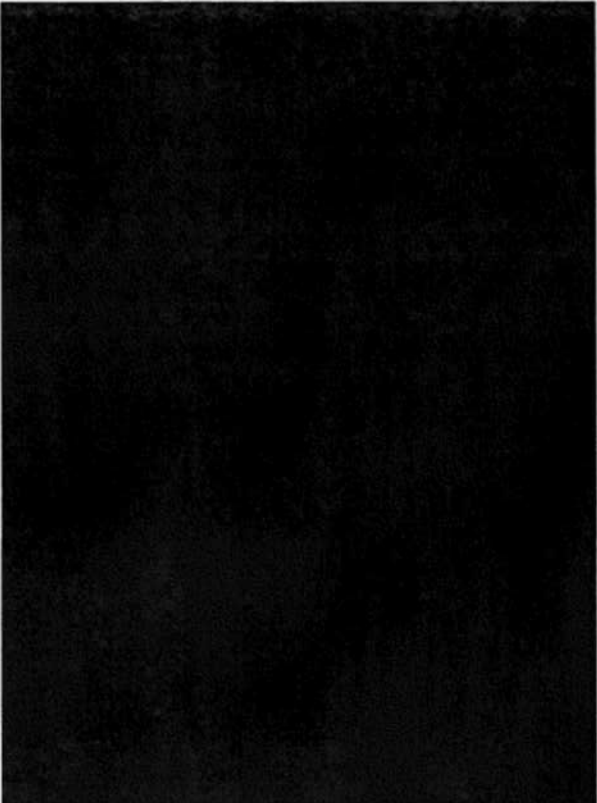
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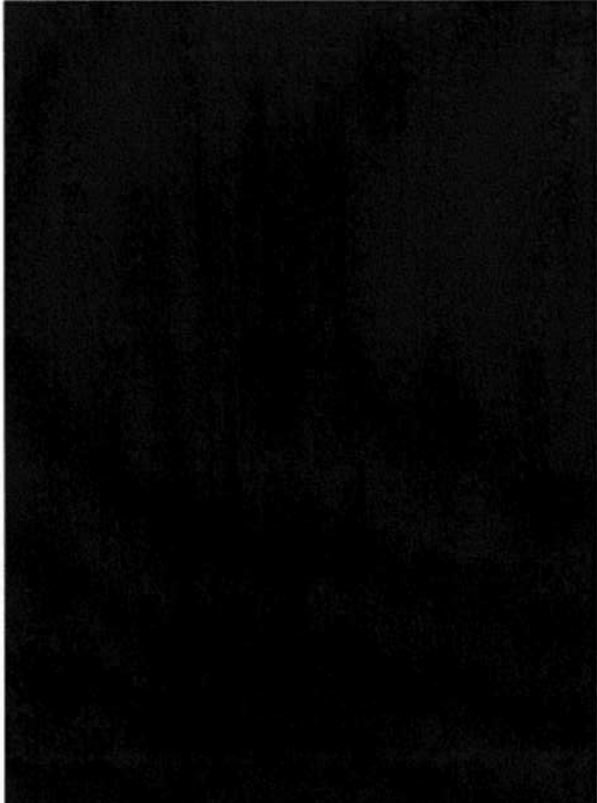
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PAUL COURANT

BY MR. ROSENTHAL:

Q. Apart from what you've described as the -- strike that.

Did there come a time when University of Michigan entered into an agreement with Google?

A. Yes.

Q. Were you involved in negotiations leading up to that agreement?

MR. PETERSEN: Objection to form, objection, vague.

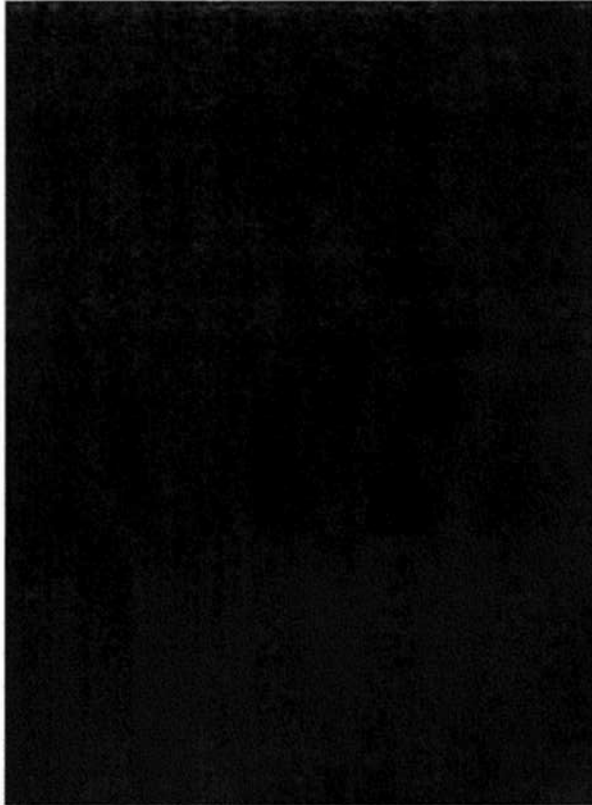
BY MR. ROSENTHAL:

Q. Did you participate in discussions leading up to the agreement with Google?

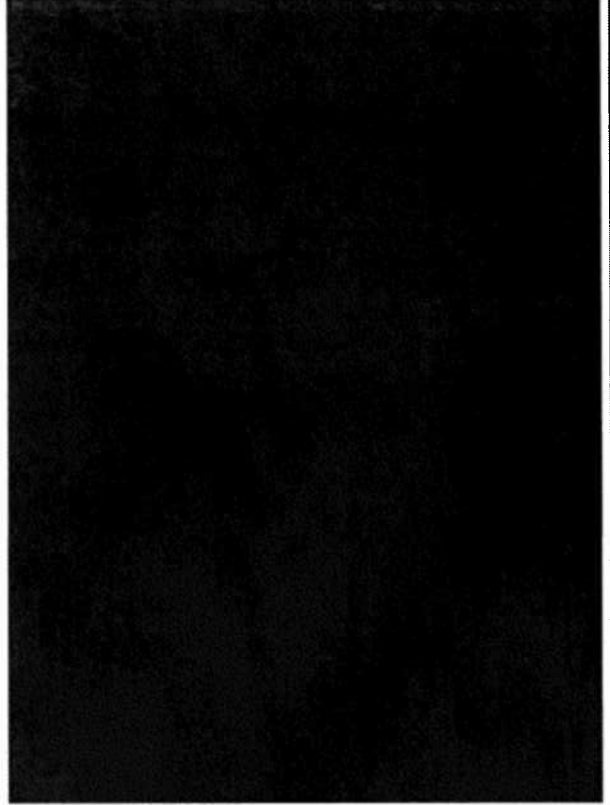
MR. PETERSEN: You mean take place, actually discuss?

A. So I did not participate in discussions with Google leading up to those negotiations -- those agreements, that agreement.

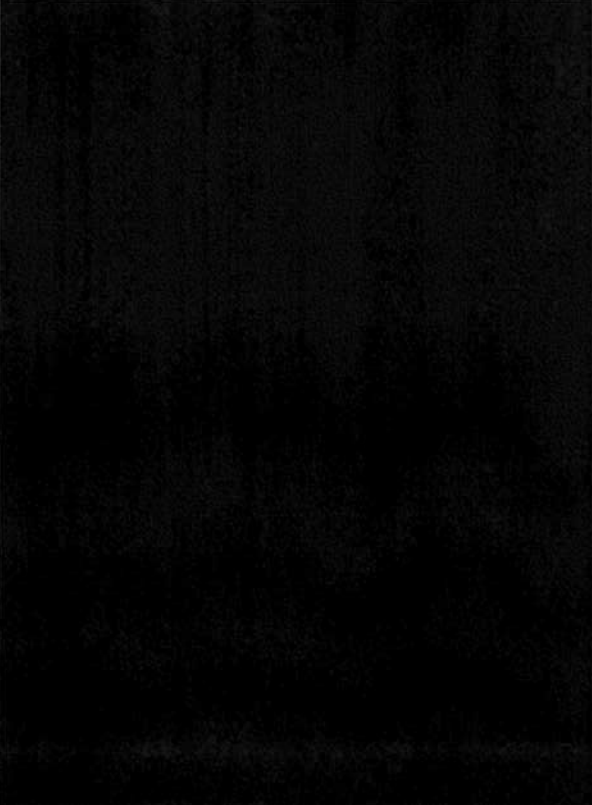
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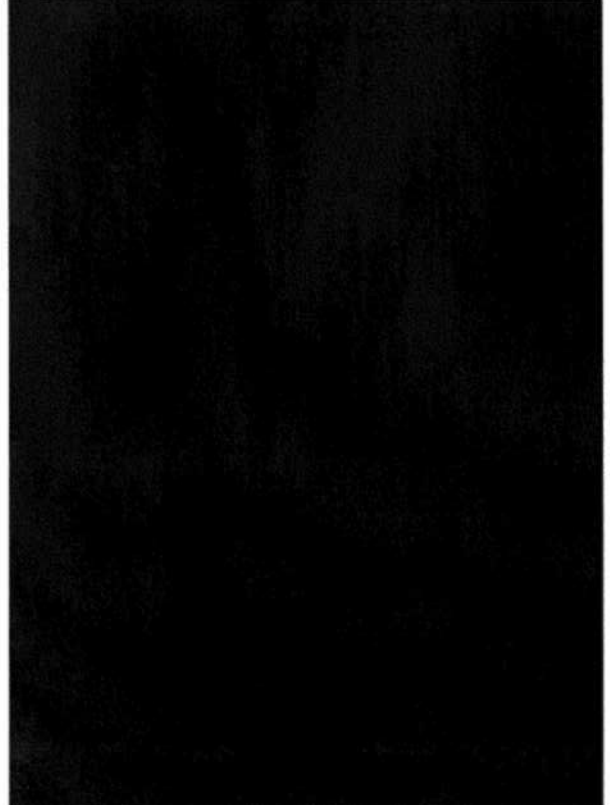
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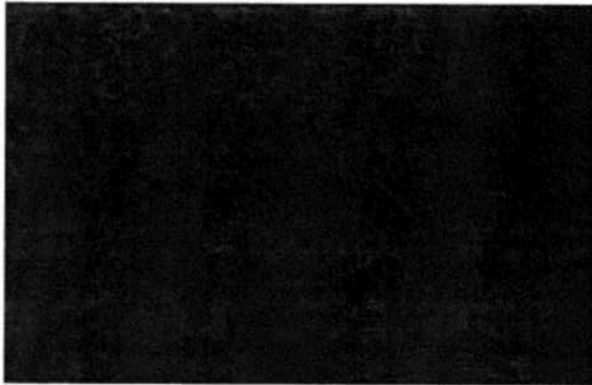


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BY MR. ROSENTHAL:

Q. Let's mark as PC2 a --

MR. PETERSEN: Before we do that, is this a good time to take a break?

A. Yeah, actually it is a good time.

MR. ROSENTHAL: Yeah, okay, that's fine.

MR. PETERSEN: Thanks.

(Recess taken at 10:48 a.m.)

(Back on the record at 10:58 a.m.)

BY MR. ROSENTHAL:

Q. I was about to mark as PC2 an 11-page document entitled Cooperative Agreement.

PAUL COURANT
MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC2
10:59 a.m.

BY MR. ROSENTHAL:

Q. And, Dr. Courant, I'll ask you if you would look through this and tell me if you recognize this document?

A. Yes, I do.

Q. Can you tell me what it is, if you know?

A. I'm just going to read from the caption, it's an agreement, Cooperative Agreement between Google and the University of Michigan that under which the digitization project undertaken by Google at the University of Michigan libraries was authorized.

Q. Do you know when this agreement was reached, if, in fact, it was reached?

MR. PETERSEN: Objection to form.

BY MR. ROSENTHAL:

Q. I'll just note that I don't believe there's a date on it, so that's why I'm asking the question.

A. So did we reach the agreement before the announcement? I'm not sure. So I don't know

PAUL COURANT
exactly when it was reached.

Q. When you say the announcement, what are you referring to?

A. We announced this project in public, I believe, in December of 2004.

MR. ROSENTHAL: Let's mark it as PC3, this three-page document.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC3

11:02 a.m.

BY MR. ROSENTHAL:

Q. Dr. Courant, do you recognize what I've shown you as Exhibit PC3?

MR. PETERSEN: If you could just give Dr. Courant a moment.

BY MR. ROSENTHAL:

Q. Sure. Take your time.

A. I'm not sure that I recognize this document, but I know what it is, and...

Q. What is it?

A. It's essentially a press release. It's describing the U of M Library/Google digitization project at the time that that went public.

Q. Were you involved in preparing this press

PAUL COURANT
release?

A. I don't have any specific recollection.

Q. Any general recollection?

A. I was involved in conversations about how we would take this thing public.

Q. Note in the second paragraph of Exhibit PC3, there's a series of three bullet points and the second bullet point says: Although we have engaged in large-scale (preservation-based) conversion of parts of the library's collection for several years, we know that only through partnerships of this sort can something of this scale be achieved. Do you know what was being referred to there with the use of the terms large-scale (preservation-based) conservation (sic)?

MR. PETERSEN: Objection to form.

MR. GOLDMAN: Conversion.

BY MR. ROSENTHAL:

Q. Conversion, sorry.

A. The projects that were in train prior to this agreement were digitizing at the rate of approximately 10,000 volumes per year. That's relative to the size of the collection at risk.

PAUL COURANT

actually not large scale. Relative to doing nothing at all, 10,000 is a much bigger number than zero.

Q. Do you know what these large-scale (preservation-based) conversions of parts of the library's collections were?

MR. PETERSEN: You mean at the time?

BY MR. ROSENTHAL:

Q. At the time that are referred to in Exhibit PC3?

MR. PETERSEN: Objection, foundation.

A. Not in any -- I mean, not specifically, no.

BY MR. ROSENTHAL:

Q. Are these the type of preservation based digitization projects that you testified about earlier this morning?

MR. PETERSEN: Objection to form.

A. You'd have to -- we have to go back then and ask which specific testimony you're referring to.

BY MR. ROSENTHAL:

Q. Do you know of any -- any projects or programs that had taken place at the University of Michigan for the several years prior to December 13th, 2004, that would meet the definition of large-scale (preservation-based)

PAUL COURANT

to convert materials at the University of Michigan. Nevertheless, because of scaling and engineering issues, it will be many months before materials begin to appear in Google's services, and approximately six years until the collections at the UM University Library have been converted in their entirety. Was the goal to convert the UM, university library in its entirety?

MR. PETERSEN: Objection to form, objection to meaning, are you tying it to this particular piece, what this person had in mind who wrote it?

BY MR. ROSENTHAL:

Q. I'm asking you what your understanding was of the goals of the University of Michigan Library?

A. It was our intent, the University's library and the University's intent to digitize essentially all of the collections of the library. All is too strong.

Q. The exceptions to all would be what?

A. Works that were fragile, works that were not of the size that would fit the digitization process, works that were unable to be copied or difficult to copy for one reason or another.

PAUL COURANT

conversion of parts of the library's collection?

MR. PETERSEN: Objection to form, objection, calls for speculation as to the individual that wrote this, what they were thinking and objection to the extent it was asked and answered earlier.

A. I surmised that the large-scale that is being referred to here is the approximately 10,000 works a year that were being processed.

BY MR. ROSENTHAL:

Q. Do you know how the works, those 10,000 works a year were selected?

MR. PETERSEN: Objection to form.

A. No.

BY MR. ROSENTHAL:

Q. Do you know who selected them?

A. No.

Q. Do you know who prepared Exhibit PC3?

A. It looks like a press release, so I would speculate that it was prepared by the vice president of communications office, but I don't specifically know.

Q. That note in the fourth paragraph, I'll just read it just so the record is clear: Work has begun

PAUL COURANT

Q. So looking back at what's been marked as Exhibit PC2, the Cooperative Agreement, does looking at PC3 refresh your recollection as to when PC2 was entered into?

A. I actually don't remember whether PC2 happened before or after PC3. It would have been somewhere in the same, you know, nobody was born and got old and died during the interval between the two.

Q. I could probably ask you an hour's worth of questions about that, but I don't --

A. I was hoping you would.

Q. Do you know who was primarily responsible for negotiating the Cooperative Agreement from the University of Michigan's perspective?

MR. PETERSEN: Objection to form.

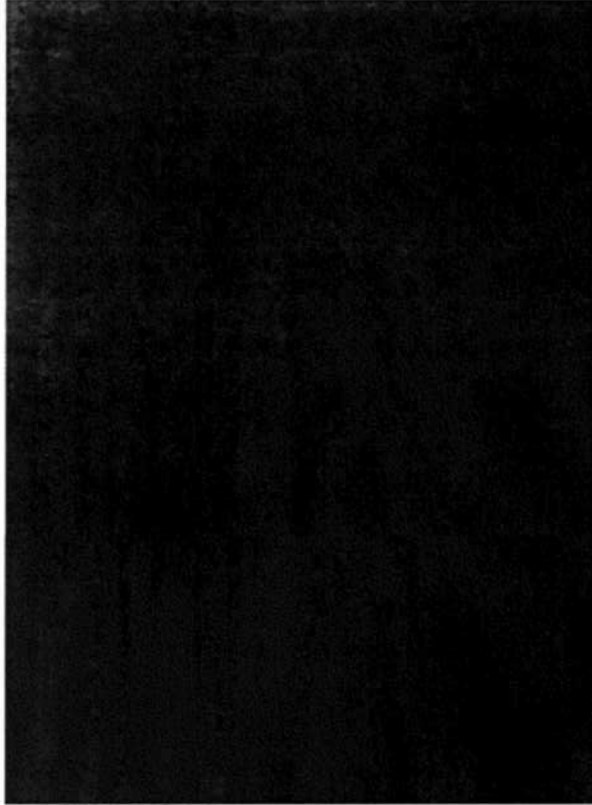
A. I really don't know.

BY MR. ROSENTHAL:

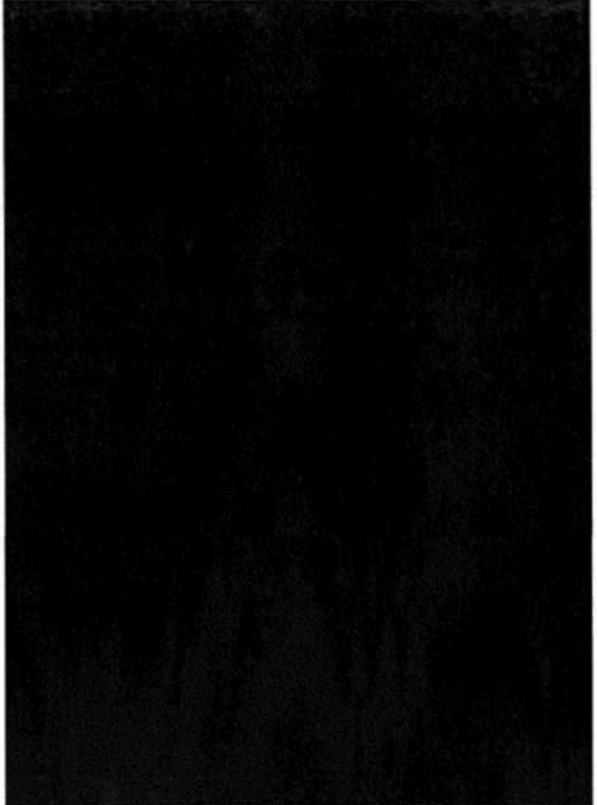
Q. Do you know whether Mr. Wilkin was involved in negotiating the Cooperative Agreement?

A. I do not know if he was involved with negotiations with Google or not.

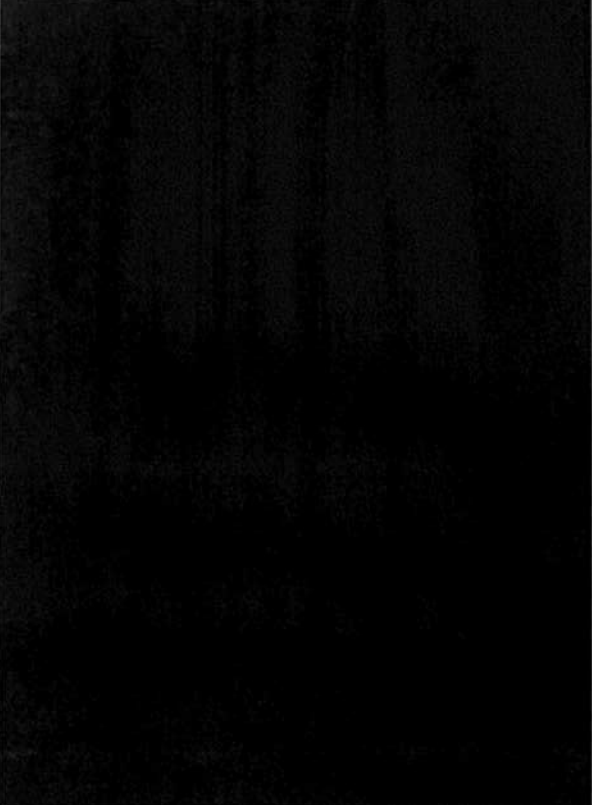
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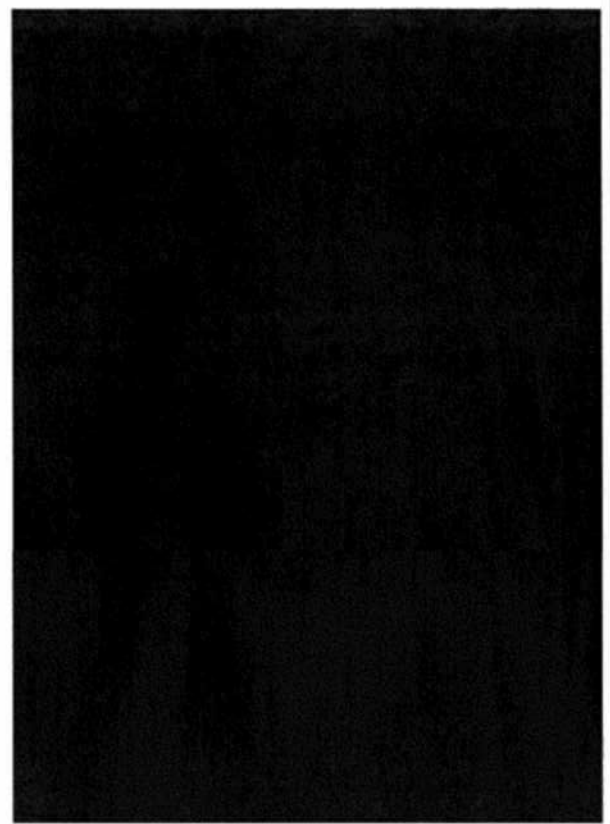
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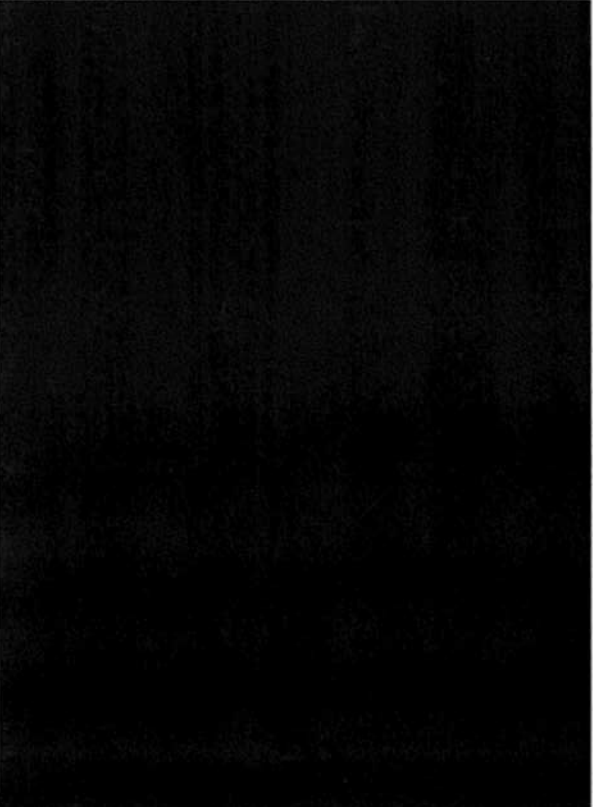
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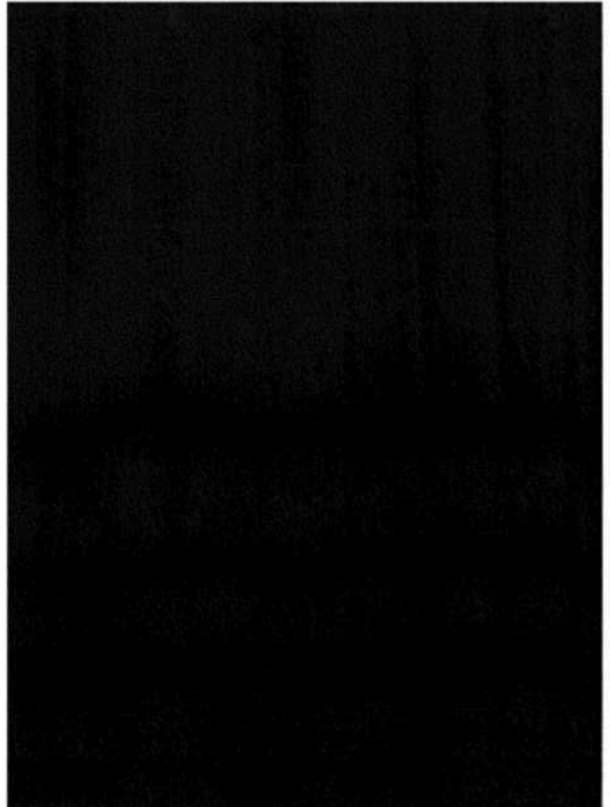
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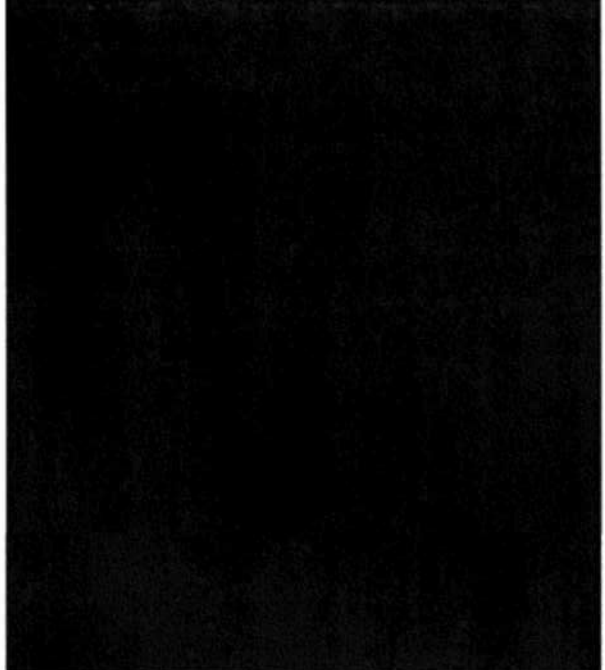
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Q. Is there a main University of Michigan Library, if that word makes any sense?

A. My -- when people say I'm going to meet you at the library --

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PAUL COURANT

Q. Okay.

A. -- they would mean the Harlan Hatcher Graduate Library.

Q. The Harlan Hatcher Graduate Library?

A. Yes.

Q. What is in the Harlan Hatcher Graduate Library?

MR. PETERSEN: Objection to form.

A. I can't resist, books.

BY MR. ROSENTHAL:

Q. Is that a general collection, a broad-based collection?

MR. PETERSEN: Objection to form.

A. It is most of the humanities collections are in the Harlan Hatcher Graduate Library, a great many foreign language works, so it's certainly a highly diverse collection and, yeah.



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MR. ROSENTHAL: I need to take a break again.

MR. PETERSEN: Sure.

(Recess taken at 11:24 a.m.)

1 PAUL COURANT
2 (Back on the record at 11:30 a.m.)



11 BY MR. ROSENTHAL:

12 Q. Looking back at Exhibit PC3 on the last page,
13 there's a reference to the leadership of the
14 executive council, it's in the long paragraph on
15 the third page, the second line.

16 A. Yes.

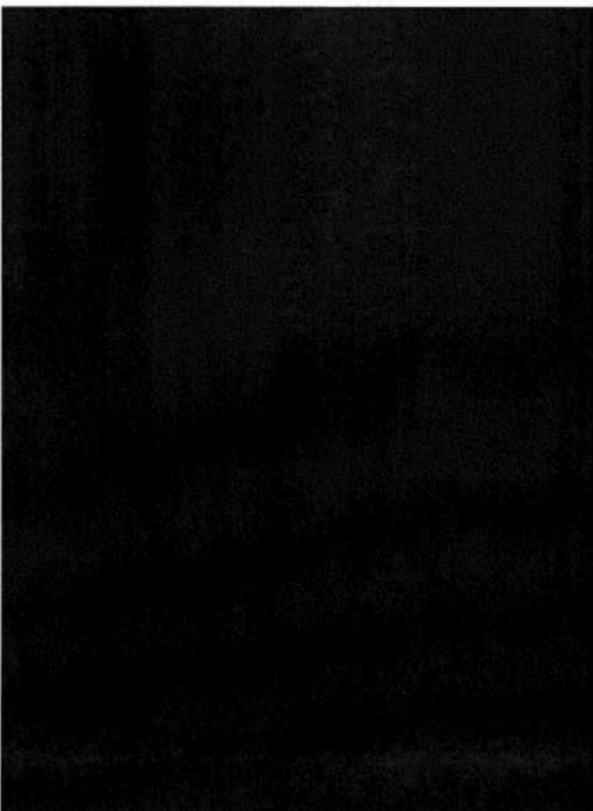
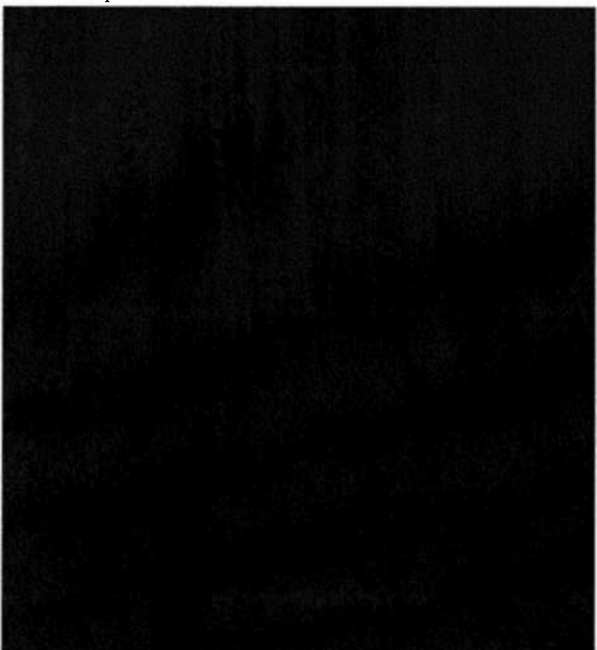
17 Q. What is the executive council?

18 A. The only executive council of which I'm aware is
19 the -- is within the library, so it would be the
20 director and the associate directors of the
21 library. If it refers to anything else, I don't
22 know what it is.

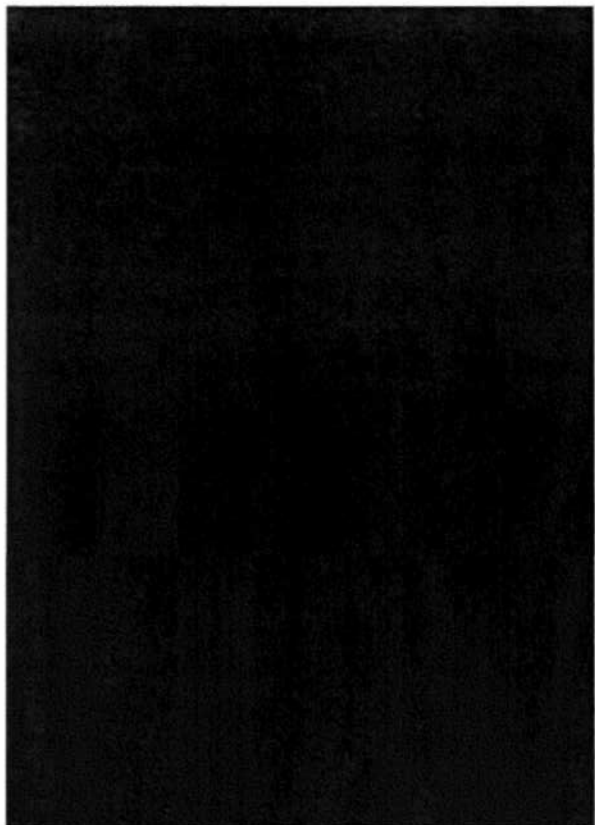
23 Q. Are you part of the executive council?

24 MR. PETERSEN: Do you mean now or at
25 the time of?

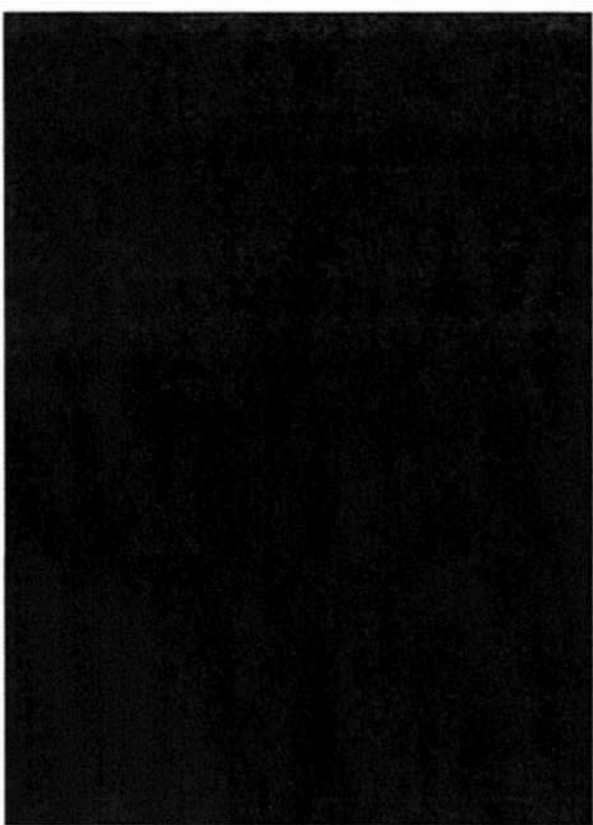
1 PAUL COURANT
2 BY MR. ROSENTHAL:
3 Q. At the time of the press release?
4 A. No, certainly not. I was provost at the time of
5 this press release.



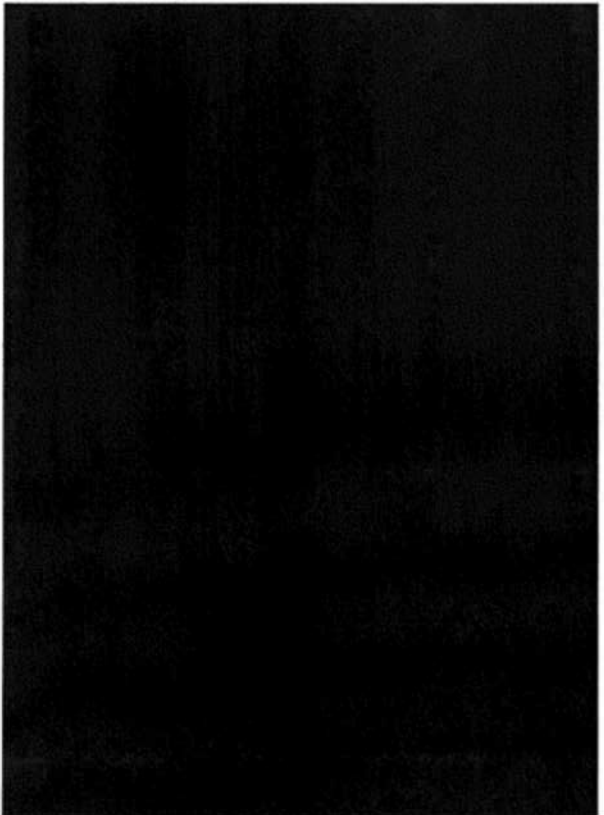
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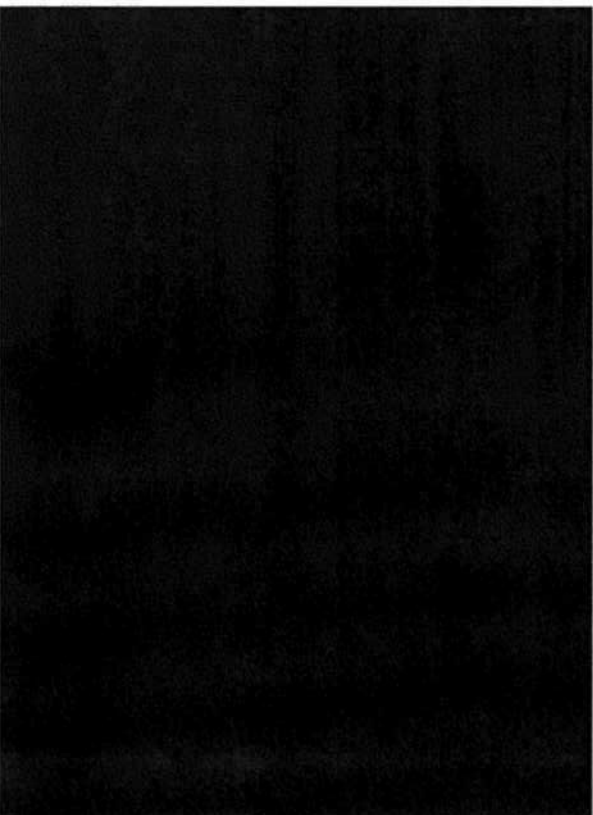
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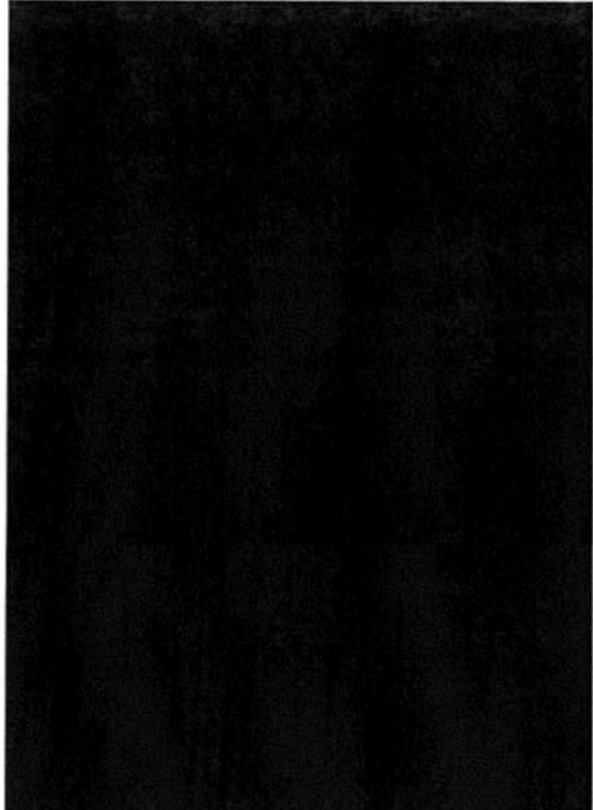
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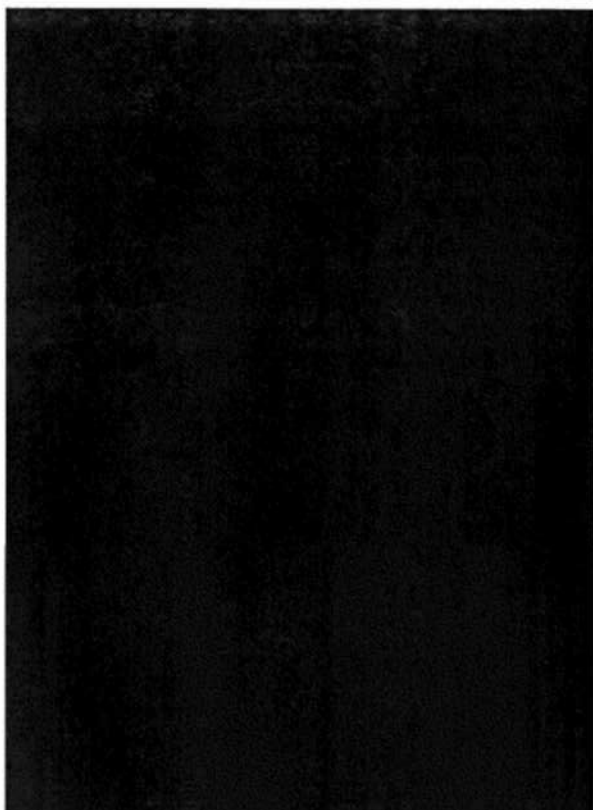
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Q. What is the HathiTrust?

MR. PETERSEN: Objection to form, vague.

MR. ROSENTHAL: I don't think that's vague. Maybe hard to answer, but it's not really vague.

MR. PETERSEN: It's a vague question. It calls for a narrative, but the witness can answer.

BY MR. ROSENTHAL:

Q. I'm asking for a narrative.

A. The HathiTrust is -- it is, it's very difficult here. It's a -- it's a digital library that maintains a growing collection of digitized works that have been deposited by libraries mostly in

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the United States, although a couple not in the United States, academic libraries, but not all of them associated with universities, currently comprising somewhat over 10 million volumes. It is the -- provides the collection that we use when we search University of Michigan's collections and similarly other -- other people can search the works that are in the HathiTrust, that's freely available, that search function. It also provides the source files for works that are in the public domain that can be read, again, by anybody with an Internet connection in the United States.

it is a formal matter as a -- not just formal matter, as a legal entity, I guess, although I hate to opine on the law, it is -- it is a series, a set of contracts between other participants and the University of Michigan libraries, the University of Michigan -- actually at the University of Michigan. I shouldn't say University of Michigan libraries. So the University of Michigan operates the HathiTrust and I'm going to stop and you can start asking specific questions.

BY MR. ROSENTHAL:

PAUL COURANT

through the Google project and other projects. There was a lot of interest around in the libraries working together to -- to get maximum advantage out of the fact that we were all -- we were all working in this area, and I was one of the people who helped crystallize those -- those trends into creating the HathiTrust.

BY MR. ROSENTHAL:

Q. When you say -- were the people you mentioned, John Wilkin, John King, your colleagues at Indiana University, were they also parents of the HathiTrust?

A. I would say so, yeah.

Q. Who is John King?

A. John King was at that time the associate provost working on information technology areas.

Q. At the University of Michigan?

A. At the University of Michigan.

Q. Was there some sort of initial organizational meeting at the HathiTrust?

MR. PETERSEN: Objection to form.

A. There was a meeting that took place in Indianapolis where we invented the name and drew in broad outlines what the thing might be.

PAUL COURANT

Q. Okay. When was the HathiTrust created?

MR. PETERSEN: Objection to form.

A. I was director already, so I think 2008, it might have been 2007, but I think 2008.

BY MR. ROSENTHAL:

Q. Did you participate in the creation of the HathiTrust?

MR. PETERSEN: Objection to form, vague.

A. I participated in the discussions that led to its creation, yes.

BY MR. ROSENTHAL:

Q. Was the creation of the HathiTrust your idea?

MR. PETERSEN: Objection to form.

A. I was one of the people who -- so I was one of its parents.

BY MR. ROSENTHAL:

Q. Okay. What do you mean by parents?

A. Several people, John Wilkin, myself, John King, colleagues at Indiana University, and then there was also a set of parallel discussions amongst libraries in the CIC about what kind of cooperative ventures could we engage in with the growing digital content we were all developing

PAUL COURANT

BY MR. ROSENTHAL:

Q. How did you invent the name?

A. I had been reading Kipling lately and Hathi is an elephant in Kipling in The Jungle Book and it occurred to us that this entity would -- had very nice elephant like properties. It was big, long lived and would never forget.

Q. And at that meeting in Indianapolis where you came up with the name, among other things, what else was discussed?

A. Well, that basic idea was that if we had one structure into which people deposited their digital works, we could use those works -- there would be economies of scale in the computing architecture and in the organizational architecture so that we could provide a higher level of service than would happen if each individual campus had its own smaller scale structure, so that was the basic idea.

And then the second idea which developed more over time was once we had this, we would actually have a mechanism for engaging in other collaborative activities across the libraries, again with an eye to improving our ability to

PAUL COURANT

serve the academic world and our students and to save money so that we could buy more books.

Q. So the economies of scale were designed to save money so you could buy more books?

A. No, that was obviously being -- forgive me, I was being --

Q. Tell me what you mean by economies of scale.

A. Well, economies of scale are enormous because when things are in digital form, they are very easy, as a technical matter, to share. And so having one structure under which all of these works would be held would make it very easy for each individual depositor or user to get at things while taking advantage of classic scale economies which means average costs fall as output increases, associated with running the servers and having metadata structures to help find things and all of the other things that libraries do.

Q. And when you refer to the higher level of service, are you referring to the elements you spoke about earlier about the advantages of digitization?

A. Yes, generally.

Q. Are there other things as well?

PAUL COURANT

a corpus, and you can see how that changes over time and that then leads to other richer research questions.

There's a field called natural language processing which you actually have machine reading of text to try to extract meaning, that's mostly done in the sciences, but that's again an important area, area of research. All of this works better with a larger corpus.

Q. And do you discuss this at the initial meeting of the --

A. It was in the air. I don't recall if we discussed it specifically at that meeting.

Q. You also testified a few moments ago that you discussed the possibility you could engage in future collaborative efforts, did you discuss specifically what that would mean, what types of efforts were contemplated?

A. At that meeting the collaborative efforts would have been around the digitized texts. I certainly -- I don't know, you know, it's very hard for me to know when I had particular things in mind, but no, I had spoken earlier than that about the advantages of having a structure where

PAUL COURANT

A. Well, there also begins to be the possibility of us sharing our legacy -- how do I put this? So I'm not sure I included linguistic and bibliographic research as one of the areas before, and that is again a higher level of service when one has a larger -- a larger collection. But in addition we are -- the HathiTrust leads to a deeper understanding than we've ever had of who has what books and what resources, and so we can act in better knowledge of where other things are kept, whether they be in print or digitally, that improved the ability of the library to deliver services to its communities.

Q. What do you mean by linguistic and bibliographic research?

A. You might be interested in the ratio of adverbs to adjectives, you could write code that would allow you from the context of how sentences are structured or how strings of words are structured, about whether things are adjectives or adjectives. I'm here way out of my own field of expertise, by the way, but I'm told you can do those sorts of research. Google has a very nice product called Ngrams where it looks at frequency of words within

PAUL COURANT

we could share copies of works where -- we're sure the archiving of copies of works where there were many, many copies existing across the libraries and the works were only very rarely used. So that was another -- I was hopeful that the HathiTrust would lead to the ability -- an increased ability to do that sort of thing.

Q. At this initial meeting that we've been discussing, was there -- was there discussion about issues relating to digitizing works that were still protected by copyright?

MR. PETERSEN: Objection to form, objection to the extent it calls for legal conclusions and objection to the extent it calls for divulging privileged information.

A. The discussion about building a structure to store consistent with law the digital files that we had and were -- and were creating.

BY MR. ROSENTHAL:

Q. Which other universities were represented at this initial meeting in addition to University of Michigan and University of Indiana?

A. There was nobody else there.

Q. Had University of Indiana, to the best of your

PAUL COURANT

knowledge, digitized works that were protected by copyright at that point?

A. It's Indiana University and I don't know.

Q. I apologize to you. Were there any -- was counsel at this initial meeting?

A. I don't believe so.

Q. And was there a discussion at this initial meeting about how you would structure the HathiTrust going forward?

MR. PETERSEN: Objection to form, vague.

A. Structure which?

BY MR. ROSENTHAL:

Q. In other words, how it would be run, whether you would have an executive committee or some other formal structure of governance?

A. We all agreed that those were questions to be answered.

Q. But you didn't make initial -- you didn't make decisions about that at this first meeting?

A. My recollection is that we basically charged ourselves to take care of things while we figured that out.

Q. And what happened following this initial meeting

PAUL COURANT

with respect to the creation of the HathiTrust?

MR. PETERSEN: Objection to form, vague.

A. There was discussion with other libraries who were plausible members. There was discussion with the general counsel as to how to structure the agreements. We spent a lot of time on the phone recruiting the first group of participants, and that all took a while.

BY MR. ROSENTHAL:

Q. How long did it take?

A. I don't know.

Q. Months or years?

A. Months or a year, but not months or years.

Q. And which other libraries were you -- did you discuss within the first year after your initial meeting?

MR. ROSENTHAL: That was a terrible question, you should object.

A. And actually, let me just -- let me back up. It's possible that Paula -- that there was a representative of the CIC at that first meeting, if not the first meeting, there was very shortly thereafter.

PAUL COURANT

BY MR. ROSENTHAL:

Q. Can I ask you, just interrupt you to ask you what the CIC is?

A. The CIC is an acronym for the Committee on Institutional Cooperation, which is basically the Big Ten universities plus the University of Chicago, which had been involved in discussions. The CIC libraries had been involved in discussions of a shared digital library, and the HathiTrust was an obvious candidate to be that entity. And so I know very early on we got CIC involvement beyond Indiana and Michigan, both of whom are members of CIC.

MR. ROSENTHAL: Let me -- let's mark as a document --

MR. BERNARD: Before we dive in, let me just mention it's noon, and I don't know if people are feeling hungry or not, but it's just worth noting.

MR. ROSENTHAL: What do you think?

THE WITNESS: How long do you think this line's going to take?

MR. ROSENTHAL: This line of questioning, just a few minutes.

PAUL COURANT

Let's mark as PC5 a document that's been stamped UM004022 through UM004028.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC5
12:02 p.m.

BY MR. ROSENTHAL:

Q. Okay. Do you recognize this document?

A. Yes.

Q. Can you tell me what it is?

A. It's an agreement between the University of Michigan and the CIC for establishing a shared digital repository. That's what it is.

Q. What is a shared digital repository?

A. Well, it is an entity that allows to deposit in this instance the digital library materials into this one entity, the shared digital repository, and so with materials coming from many institutions and being usable by many institutions, but the infrastructure under which the works are held, processed and such is uniform.

Q. And was this shared Digital Repository Collaborative Effort Agreement a precursor to the HathiTrust?

MR. PETERSEN: Objection to form.

1 PAUL COURANT
 2 A. You know, I'm fuzzy enough on the timing, it's
 3 development and the development of the Hathitrust
 4 happened approximately together.
 5 BY MR. ROSENTHAL:
 6 Q. Is this shared digital repository collaborative
 7 effort ongoing today?
 8 MR. PETERSEN: Objection to form.
 9 A. We certainly have a set of agreements with the CIC
 10 that are plainly -- to plainly follow from this --
 11 from this initial discussion.
 12 BY MR. ROSENTHAL:
 13 Q. Are those agreements part of the HathiTrust
 14 arrangement or is it separate from the
 15 HathiTrust?
 16 A. You know, I'd have to ask my lawyer.
 17 Q. I see on the -- were you involved in the
 18 negotiating the terms of the Shared Digital
 19 Repository Collaborative Effort Agreement that's
 20 been marked as PC5?
 21 MR. PETERSEN: Objection, form,
 22 objection, vague, lacks foundation.
 23 A. I was certainly involved in discussions that led
 24 to this document. I don't recall specific
 25 negotiations.

1 PAUL COURANT
 2 BY MR. ROSENTHAL:
 3 Q. There's a reference in the first page to an
 4 Operational Advisory Board?
 5 A. Right.
 6 Q. Does that exist today?
 7 A. Does it exist today? I don't think it exists as
 8 such today.
 9 Q. Does it exist in some other form today?
 10 MR. PETERSEN: Objection to form.
 11 A. The HathiTrust executive committee grew out of
 12 that structure.
 13 BY MR. ROSENTHAL:
 14 Q. And there's a reference to a Strategic Advisory
 15 Board on that same page, does that exist today?
 16 A. That exists today and for a few more days, but
 17 then will be reconfigured probably next week.
 18 Q. What's happening next week?
 19 A. The advisory structures to the HathiTrust are
 20 being changed per a number of agreements that were
 21 made at the meeting in Washington several months
 22 ago, and that happens to be happening next week,
 23 maybe it's the week after. But there will be a
 24 successor -- this entity has operated much the way
 25 contemplated here since this --

1 PAUL COURANT
 2 Q. And there will be a successor entity?
 3 A. Uh-huh, there will.
 4 Q. Will it be apart from the HathiTrust?
 5 MR. PETERSEN: Objection to form.
 6 A. It will be part of the HathiTrust advisory
 7 structure and will, as it does now, include
 8 representatives from beyond the CIC; in other
 9 words, these two boards grew as the HathiTrust
 10 matured.
 11 BY MR. ROSENTHAL:
 12 Q. On the second page of this document, there is
 13 a -- the last -- the last sentence -- well, let
 14 me say, in the first paragraph on the second page
 15 of this document, I'm going to read the following
 16 into the record: The University of Michigan
 17 explicitly states that current and future
 18 litigation regarding the Google digitization
 19 effort and the content in the repository may
 20 affect the services and cost to the repository in
 21 significant ways. (Clarifying note: Our concern
 22 here is not that the CIC or the repository will
 23 become involved in litigation. Rather, it may be
 24 the case that some of the services contemplated
 25 in this document will be precluded or materially

1 PAUL COURANT
 2 amended as the result of litigation.) Do you
 3 know what that -- those sentences mean?
 4 MR. PETERSEN: Objection to form,
 5 objection to the extent it calls for a legal
 6 conclusion or have him interpret provisions of an
 7 agreement.
 8 A. At the time that this document was written,
 9 Google, and I forget their name, the Authors --
 10 BY MR. ROSENTHAL:
 11 Q. Authors Guild?
 12 A. The Authors Guild, yeah, and the American
 13 Association of Publishers were engaged in
 14 settlement talks of which a number of people were
 15 aware, including me, and we were very hopeful that
 16 that settlement would lead to an arrangement in
 17 which the most efficient way of getting -- of
 18 dealing with some of these materials would happen
 19 as a result of the -- of the settlements. So that
 20 reference here is to the possible settlement of
 21 that pending litigation, that litigation as I
 22 understand it is still being pending.
 23 Q. And when you say that some of the services would
 24 be precluded, when the document says some of the
 25 services would be precluded, do you know what

1 PAUL COURANT
 2 that means?
 3 MR. PETERSEN: Objection to form,
 4 objection to the extent it calls for a legal
 5 conclusion, objection that it calls for
 6 speculation.
 7 A. In the context of the settlement discussions,
 8 there was further discussions of -- yeah,
 9 everything's privileged here, though.
 10 MR. PETERSEN: Objection to the extent
 11 it calls for privileged information.
 12 A. Okay, yeah.
 13 MR. PETERSEN: Ed, I think you said
 14 you're wrapping up. Do you want to just --
 15 MR. ROSENTHAL: Yeah, I promise it will
 16 be less than three minutes.
 17 MR. PETERSEN: That was 15 minutes ago.
 18 MR. ROSENTHAL: But the witness took a
 19 long time to review the document, which is
 20 appropriate.
 21 BY MR. ROSENTHAL:
 22 Q. If you look at page 3 of this document under
 23 paragraph 5, ingest, the -- under subparagraph A,
 24 there's the phrase: The SDRCE, which is defined
 25 as the shared digital repository collaborative

1 PAUL COURANT
 2 MR. ROSENTHAL: Okay.
 3 THE WITNESS: Let's break.
 4 (Recess taken at 12:15 p.m.)
 5 (Back on the record at 1:24 p.m.)
 6 MR. ROSENTHAL: Let's mark as the next
 7 exhibit --
 8 MR. PETERSEN: 6.
 9 MR. ROSENTHAL: -- PC6, a document
 10 titled A User's Guide to HathiTrust Digital
 11 Library, and it's Bates stamped UM003963 to
 12 003984.
 13 BY MR. ROSENTHAL:
 14 Q. And, Dr. Courant, I'll ask you to look at this
 15 document and leaf through it. If there comes a
 16 time when you feel you need to read the entire
 17 document, we'll certainly give you time to do it,
 18 but we may not need to get to that point.
 19 MARKED FOR IDENTIFICATION:
 20 DEPOSITION EXHIBIT PC6
 21 1:26 p.m.
 22 A. I've glanced at this, depending on what sort of
 23 questions you ask, I may need to look at it in
 24 more detail.
 25 BY MR. ROSENTHAL:

1 PAUL COURANT
 2 effort, supports ingest of content from Google.
 3 Ingest from Google takes place through automated
 4 processes managed by Michigan; do you know what
 5 that means?
 6 A. So I don't know in detail what those automated
 7 processes are, I know that we had a mechanism for
 8 ingesting content from Google effectively, and
 9 that was the -- at the time that this was written,
 10 that was the ingest mechanism that worked under
 11 the shared repository.
 12 Q. Was that the GRIN mechanism?
 13 A. I believe it was the GRIN mechanism.
 14 Q. And if you look at page 4 under paragraph 6C,
 15 there is a reference to the University of
 16 Michigan has developed and is testing a mechanism
 17 to support access for users with print
 18 disabilities.
 19 A. Uh-huh.
 20 Q. Do you know what that refers to?
 21 A. I think that refers to the plain text meaning of
 22 what it says.
 23 Q. Do you know what mechanism was developed or was
 24 being tested?
 25 A. No.

1 PAUL COURANT
 2 Q. Do you recognize this document?
 3 A. Actually I don't.
 4 Q. That may help to not have to go forward. So I
 5 take it, you did not participate in the drafting
 6 or the creation of this document?
 7 A. I did not.
 8 Q. And to the best of your knowledge, you have not
 9 seen this before?
 10 A. I'm familiar with many of its elements, but I
 11 don't think I've seen it in the form of this
 12 document.
 13 Q. Do you have any idea who did create this
 14 document?
 15 A. There are a number of people who could have done
 16 it, obviously one of the people who's working on
 17 the HathiTrust a lot, probably under the general
 18 direction of John Wilkin, although I doubt he
 19 would have written it.
 20 Q. You doubt that John Wilkin would have written it
 21 or the person under the direction of John Wilkin?
 22 A. No, I doubt that John Wilkin would have gotten
 23 this deep in the drafting.
 24 Q. That's just not what he does? He's --
 25 MR. PETERSEN: Objection to form.

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1 PAUL COURANT
2 A. Yeah, I don't -- so --
3 BY MR. ROSENTHAL:
4 Q. You can withdraw your answer.
5 A. Okay.
6 Q. I won't quiz you, but we'll ask him about what he
7 does.
8 A. Okay.
9 MR. ROSENTHAL: Was that 6?
10 MR. GOLDMAN: 6.
11 BY MR. ROSENTHAL:
12 Q. Have you ever heard of the University, of an
13 entity called University Microfilm International
14 or UMI?
15 MR. PETERSEN: Objection to the form.
16 A. I believe that that's the outfit that has -- is
17 usually referred to as University Microfilms.
18 BY MR. ROSENTHAL:
19 Q. Okay.
20 A. But if it's not, then --
21 Q. What is University Microfilms?
22 A. It is -- was/is a company that was founded, I
23 think, in Ann Arbor, although it has nothing to do
24 with the University of Michigan, that produced
25 microfilm of many, many things, notably including

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1 PAUL COURANT
2 or otherwise with University Microfilms?
3 A. If --
4 MR. PETERSEN: Objection, vague.
5 A. If University Microfilms is the entity that I
6 believe it to be --
7 BY MR. ROSENTHAL:
8 Q. Okay.
9 A. -- but I'm not sure, then certainly, yes, around
10 the positive dissertations, perhaps among other
11 things.
12 Q. Is that -- do you know when those arrangements
13 occurred?
14 A. They have been in place at least from time to time
15 for a very long time.
16 Q. Since -- since prior to the time you were
17 provost?
18 A. Oh, yes.
19 Q. Going back 30 or 40 years?
20 A. Again, I believe at the graduate school's deposit
21 of a copy of a dissertation with University
22 Microfilm as part of the conventional arrangement
23 for dissertation production goes back for as far
24 as I have paid attention to such matters.
25 Q. I won't ask you how far back that is.

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1 PAUL COURANT
2 dissertations, so it's been one of the principal
3 sources for dissertations and became, I believe --
4 so if it is the entity I'm thinking of, it became
5 part of ProQuest and then ProQuest has also --
6 there have been various corporate separations and
7 joinings there that I do not keep track of.
8 Q. What is ProQuest?
9 A. ProQuest is a company also that's located in Ann
10 Arbor that also produces microfilms, pulls
11 together library databases, does various kinds of
12 work in the publishing database library sphere.
13 Q. Do you know whether University of Michigan was --
14 ever had contractual arrangements with University
15 Microfilms?
16 MR. PETERSEN: Objection to the form,
17 objection to the extent it calls for a legal
18 conclusion.
19 A. I do not know of any specific, so again, I don't
20 know the corporate form of the various entities
21 with which we have had contracts and so I'm
22 hesitant to answer yes or no.
23 BY MR. ROSENTHAL:
24 Q. Do you know whether University of Michigan has
25 had arrangements of any sort, whether contracts

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1 PAUL COURANT
2 A. I wouldn't know.
3 Q. Do you know whether University Microfilms is
4 involved in anything other than dissertations --
5 MR. PETERSEN: Objection to form.
6 BY MR. ROSENTHAL:
7 Q. -- with respect to any arrangements with the
8 University of Michigan?
9 MR. PETERSEN: Objection to form.
10 A. I don't know what the specific relationships
11 between University Microfilms and University of
12 Michigan currently are.
13 BY MR. ROSENTHAL:
14 Q. Do you know whether University Microfilms ever
15 has participated in copying or reproducing
16 copyrighted material without the permission of
17 the author?
18 A. I do not know.
19 MR. PETERSEN: Objection to form.
20 A. Excuse me, I'm sorry, I do not know.
21 BY MR. ROSENTHAL:
22 Q. Do you know whether University Microfilms ever
23 was engaged in any copying or reproduction of
24 out-of-print works?
25 MR. PETERSEN: Objection to form.

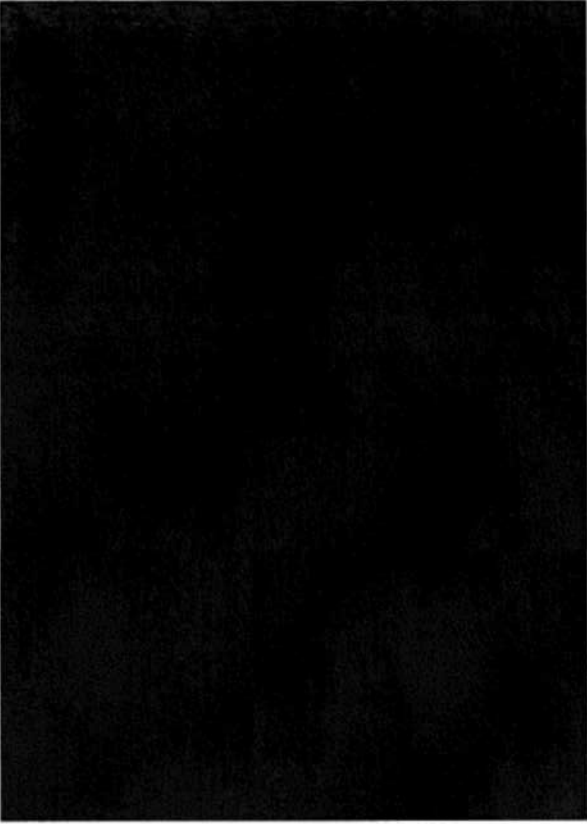
1 PAUL COURANT
 2 A. Again, still stipulating it's the University
 3 Microfilms I'm thinking of, yes.
 4 BY MR. ROSENTHAL:
 5 Q. What were the circumstances of that, if you know?
 6 A. I don't know anything like the full range of
 7 circumstances, but they were involved back shortly
 8 after World War II with copying and producing
 9 microform records of English manuscripts from what
 10 was then called Great Britain.
 11 Q. Were they English manuscripts that were still
 12 protected by copyright, if you know?
 13 MR. PETERSEN: Objection to the form,
 14 objection to the extent it calls for a legal
 15 conclusion.
 16 A. I don't know English copyright law, but the works
 17 that I have in mind were from the 16th and 17th
 18 centuries.
 19 BY MR. ROSENTHAL:
 20 Q. Do you know whether University Microfilms copied
 21 or reproduced any out-of-print works that were
 22 from the 20th century?
 23 MR. PETERSEN: Objection to form.
 24 A. I do not know.
 25 BY MR. ROSENTHAL:

1 PAUL COURANT
 2 Q. Do you know whether University Microfilms
 3 obtained permission or licenses from the authors
 4 or copyright owners of any of the works that it
 5 copied or reproduced?
 6 MR. PETERSEN: Objection to form.
 7 A. Since I don't know if there were any works that
 8 were copied or reproduced, no.
 9 MR. ROSENTHAL: Let's mark as the next
 10 exhibit which would be PC7 a document entitled
 11 Amendment to Cooperative Agreement, and this
 12 document is -- appears to be 36 pages long.
 13 MARKED FOR IDENTIFICATION:
 14 DEPOSITION EXHIBIT PC7
 15 1:34 p.m.
 16 BY MR. ROSENTHAL:
 17 Q. Again, Dr. Courant, you can take as much time as
 18 you want to review it, but I'm going to ask that
 19 you review it rather quickly and then if you need
 20 to, you may take as much time as you need, but
 21 I'm not sure you will need to. And also I'll
 22 just note there appear to be -- it appears that
 23 there -- the first 22 pages of this document
 24 are -- I suppose we could characterize as
 25 Amendment to Cooperative Agreement and then the

1 PAUL COURANT
 2 remaining pages are under the heading Attachment
 3 A.
 4 A. Okay.
 5 Q. Do you recognize this document?
 6 A. Yes.
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[REDACTED]
BY MR. ROSENTHAL:
Q. We won't have you do that.
Turning back to the HathiTrust, can you tell me what sources of revenue there are for the HathiTrust, if any?
MR. PETERSEN: Objection to form, objection, vague as to what you mean by revenue.
A. Participating libraries are -- contribute to the HathiTrust. The CIC, I think their contribution is as the CIC rather than as the individual participating libraries. Similarly the California Digital Library acts consorcially on behalf of the various individual libraries. The University of California, they -- you just indicated to me that HathiTrust mugs are available for sale on Amazon, so it's possible that there are some minor sources of retail revenue, but the overwhelming source of revenue is contributions from academic libraries.
BY MR. ROSENTHAL:
Q. How were the contributions from academic libraries determined?
A. The -- the original founding members, Michigan, Indiana, and the CIC and maybe Virginia, but the

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PAUL COURANT
original founding members had specific amounts levied and agreed to. Since then, the payments have been based on levels of deposit and there is now a change in the formula where there are also payments based on overlap of individual libraries' collections with the corpus as a whole.
Q. Let's start with payments based on levels of deposit, can you tell me what you mean by that?
A. A library that contributed 50,000 volumes would pay a certain amount per volume per year, and a library that contributed 100,000 volumes would pay twice as much per, I mean, the same amount per volume per year, but twice as much.
Q. So to the extent the payments based on the levels of deposit varied on the number of works deposited --
A. Right.
Q. -- the price per work remained constant?
MR. PETERSEN: Objection, form.
A. I -- there's -- it is -- the price per some things is constant, but that would depend, so there have been continuing discussions and some changes in pricing vis-a-vis works, volumes, bytes, and other relevant matters that would lead to cost of -- of

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preserving -- of maintaining the archive.
BY MR. ROSENTHAL:
Q. So have there been changes over time as to how you calculate the amount each participating academic library has to contribute for the book -- for the number of copies it deposits?
MR. PETERSEN: Objection to form.
A. I think the answer to that is yes. There have been changes in the formula. You said number of copies, I'm not quite sure what that means.
BY MR. ROSENTHAL:
Q. Number of volumes.
A. Okay.
MR. PETERSEN: Objection to form.
A. Not everything in the HathiTrust is a volume or is in a volume, and so there are surely -- there are issues there where I don't know the details.
BY MR. ROSENTHAL:
Q. Well, let's go on to the second basis of payment you identified which you said depended on the overlap of the holdings of the overall entity, can you tell me what you mean by that?
A. The -- if a -- everybody pays the same for public domain holdings because each entity holds the same

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number of public domain holdings, so it's just divided by -- no, have I got that right? Hold on.

I'm actually having trouble remembering the details of the formula. The basic setup is if there's a work in the HathiTrust that is in the individual collections of many libraries, each of those libraries contributes to the cost of holding that work proportionally to how many libraries there are. So if there's a work that's held by ten libraries, everybody pays a tenth of something, if held by 20, each of those pays a 20th. That's the --

Q. And what is the something that is the part of that formula?

A. It's the cost, it's the payment for volume for that year.

Q. So if a member library had the only copy of a work that was ingested into the HathiTrust, that library would pay more than a situation where ten different member libraries had the same -- had a copy of that same work?

MR. PETERSEN: Objection to form.

A. As a -- yes, for works not known to be in the public domain. Yes, for works not known to be in

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the public domain.

BY MR. ROSENTHAL:

Q. Works in the public domain are just on a -- you said everybody pays the same amount, the same amount, does that mean that you just in any given year, every participant library pays the exact same total amount as every other member participating library irrespective of how many works from that entity's libraries were ingested into the HathiTrust?

MR. PETERSEN: Objection to form.

A. The same amount for the public domain works?

BY MR. ROSENTHAL:

Q. Yes, for public domain.

A. That's my recollection, yes.

Q. And why is it that with respect to public domain works each entity would pay the same amount irrespective of how many works it contributed to the HathiTrust?

MR. PETERSEN: Objection, lacks foundation.

A. Because it -- each entity -- each library has the same access to all of those works because they're public domain works.

PAUL COURANT

BY MR. ROSENTHAL:

Q. And what sources of -- what expenses does the HathiTrust have?

MR. PETERSEN: Objection to form.

A. I can't give you an exhaustive list of expenses. It pays for storage space, electricity, staff.

MR. PETERSEN: Just to note my continuing objection, when you're using the word HathiTrust, as you know, HathiTrust is not an entity, it's a service of the University of Michigan, so I want to have a continuing -- I just want to note my continuing objection to the terminology to suggest it's a separate entity. Things like what kind of expenses it has, I'll note that for the record, so I don't need to belabor the record each time you use it in that fashion.

BY MR. ROSENTHAL:

Q. Okay. Does HathiTrust have budgets, are there budgets for HathiTrust?

A. Yes, there are.

Q. And those budgets show income and expenses, correct?

A. Income, expenses, encumbrances, the things that

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budgets show, yes.

Q. Okay. And so you mentioned storage space, are you talking about electronic storage space?

A. Yes.

Q. Any other kind of storage space?

A. Well, there's also payments for tape backup storage like if tape is considered electronic. I believe that -- I'm not sure how space rent is handled at the University of Michigan site, but or whether that's just folded into the rate for, you know, storage by the byte, but there's no -- but that's what I meant by storage.

Q. Does the HathiTrust pay the University of Michigan for any storage space?

MR. PETERSEN: Objection to form.

A. So there's an entity at the University of Michigan, the name of which I forget, Michigan -- the MAC, it's on South State Street or near South State Street and it's basically a server for them, and it provides electronic storage services to entities at the University of Michigan which it charges, and entities elsewhere, which it charges. And so the HathiTrust as an entity of the University of Michigan pays the operation at the

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University of Michigan that operates on a research -- recharge basis. So yes, in this case the University of Michigan -- the HathiTrust as the University of Michigan pays a different entity at the University of Michigan.

BY MR. ROSENTHAL:

Q. And that MAC entity, which I think is the term you used, that's part of the University of Michigan?

A. It is.

Q. And you mentioned staff expense, can you tell me what kind of staff expenses the HathiTrust has?

A. It has an executive director, some office staff, some -- a number of programmers, it -- and then contract workers who do again, development projects and such.

Q. Is the executive director John Wilkin?

A. That's correct.

Q. And does he receive a salary from the HathiTrust?

A. He receives a salary from the University of Michigan.

Q. Okay. And is that salary charged to the budget of the HathiTrust?

A. His salary as executive director is charged to the

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years in which -- and building up assets to -- balances to pay for equipment renewal, over the period of its existence it has taken in more money than it has spent.

BY MR. ROSENTHAL:

Q. Do you know -- do you know how much it has taken in over the history of its existence?

MR. PETERSEN: Objection to form.

A. Not with any precision.

BY MR. ROSENTHAL:

Q. Generally?

A. You know, the number would be so vague that as to be useless.

Q. Do you know the extent of the excess of what the HathiTrust has taken in over what it has --

A. I do not.

Q. -- spent?

A. Specifically, no.

Q. In any general amount?

A. Sufficient to cover encumbrance, the expectation of future equipment upgrades.

Q. Is that the intended purpose of the overage is to -- is for equipment upgrades?

MR. PETERSEN: Objection to form.

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budget of the HathiTrust.

Q. And the other office staff that you mentioned, are those also people paid by the University of Michigan?

A. They are either paid by the University of Michigan or by -- there's actually labor donated -- donated is the wrong word -- there's in kind staff at other universities as well that provide services to the HathiTrust, and they are paid -- they are, I'm sure, knowing the university world, paid in various ways and accounted for as part of the HathiTrust operation.

Q. And so they would be listed as an expense on the HathiTrust budget?

A. Yeah.

Q. Does the HathiTrust operate at a -- does it bring in more income than it -- is there -- let's strike that.

Is the income of the HathiTrust higher than its expenses?

MR. PETERSEN: Objection to form.

A. Income, I would interpret as being sort of annual flow, and there are years in which the HathiTrust has brought in more than it spent. There are

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A. There's also an intention to be able to develop new projects and such, and so there are balances sufficient for that as well.

BY MR. ROSENTHAL:

Q. Are you paid by the HathiTrust?

A. No.

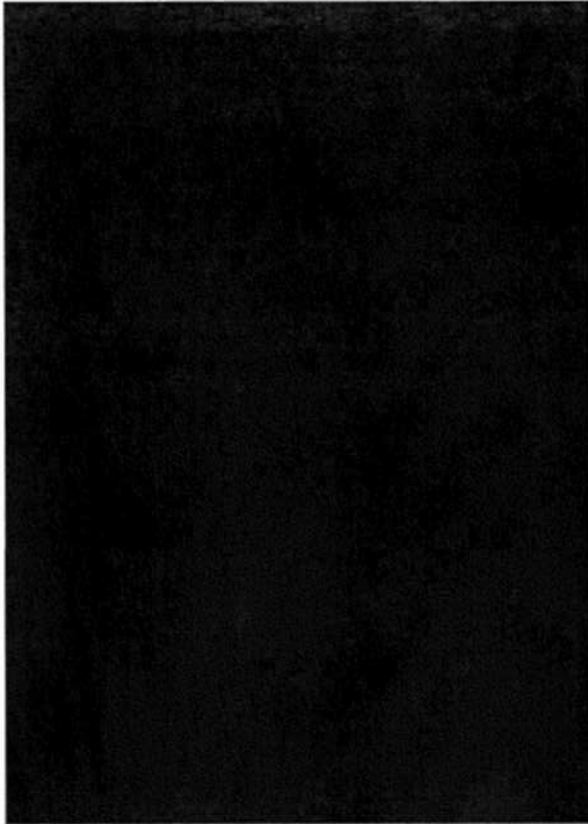
MR. ROSENTHAL: Excuse us for one second.

MR. PETERSEN: Sure.

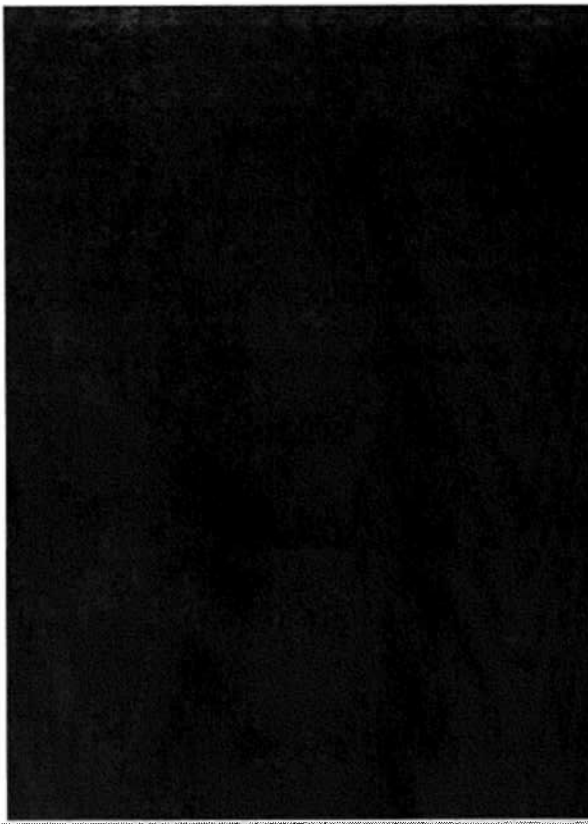
(Off the record at 1:55 p.m.)

(Back on the record at 1:55 p.m.)

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BY MR. ROSENTHAL:

Q. Going back for a moment to the Cooperation Agreement with Google which is document 2, and you can look at the document if you want, but may not need to. I'm not trying to stop you from looking at it, but do you know who owns the digital copies created as part of the Google digitization project?

MR. PETERSEN: Objection to form, objection to the extent it calls for a legal conclusion, objection, foundation.

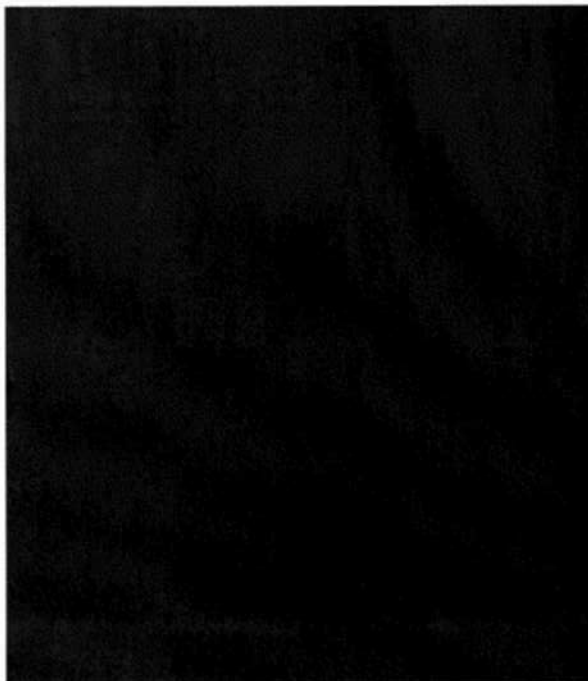
A. The copy that is made by Google I believe is owned by Google.

BY MR. ROSENTHAL:

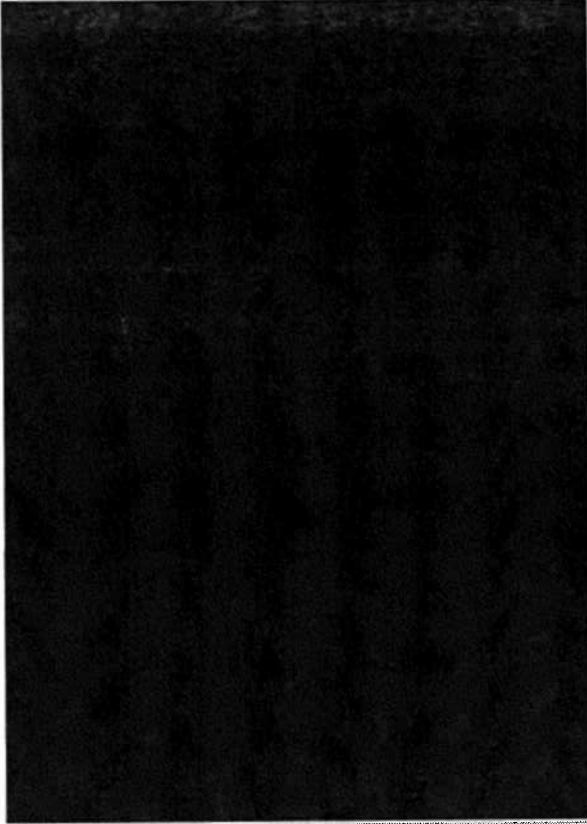
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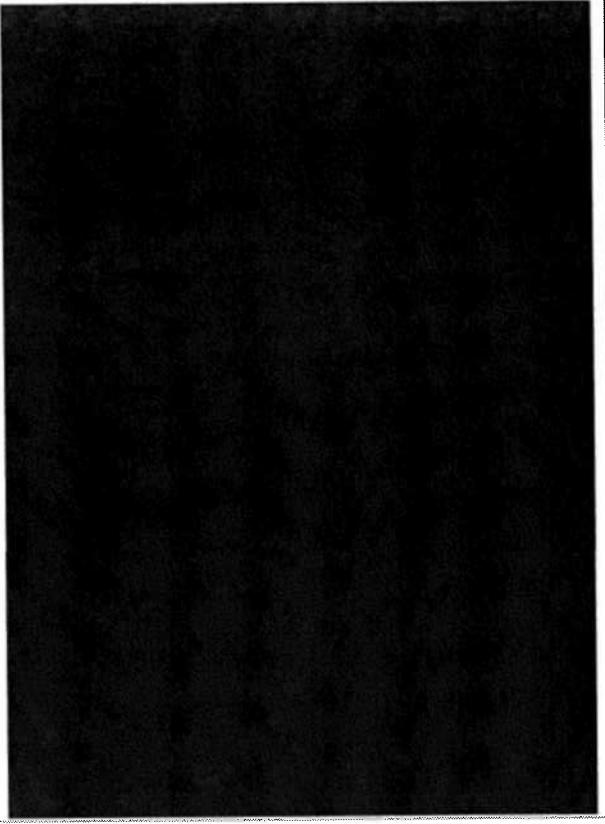
Q. And you've testified earlier that a copy was given back, I'll use that phrase, to the University of Michigan?



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Q. Is the HathiTrust paying for your defense in the litigation that you're -- is the HathiTrust paying for the University of Michigan's defense in the case that you're testifying about today?

MR. PETERSEN: Objection to form.

A. Not -- no.

BY MR. ROSENTHAL:

Q. Not in any way?

A. It has not appeared in any HathiTrust budget. The sources, at least my understanding is, it's coming from other sources in the various university budgets.

Q. So the universities -- in the various universities, you mean, the various universities that are defendants in the litigation?

A. That's my belief, yeah.

Q. Are any of the universities that are not defendants -- are any of the members -- universities that are members of the HathiTrust that are not defendants in this litigation paying for any part of the cost in this litigation?

MR. PETERSEN: Objection to form. I don't understand the basic rudiments of the question.

1 PAUL COURANT
 2 MR. ROSENTHAL: Okay, I apologize, let
 3 me try again.
 4 BY MR. ROSENTHAL:
 5 Q. The various universities that comprise the
 6 Hathitrust, it's hard to come up with a word
 7 since it's not clear what the entity is, but are
 8 any of those universities that are not defendants
 9 in the litigation that you are -- that you're
 10 testifying about today paying any of the costs of
 11 this litigation?
 12 MR. PETERSEN: Objection to form.
 13 BY MR. ROSENTHAL:
 14 Q. If you know?
 15 A. I don't know. Not to my knowledge.
 16 Q. Okay. And did -- do you know whether the
 17 University of Michigan has indemnified any of the
 18 other universities that are part of the
 19 HathiTrust with respect to any costs or expenses
 20 of this litigation?
 21 MR. PETERSEN: Objection to form,
 22 objection, lacks foundation and objection, vague.
 23 A. And I don't know.
 24 MR. ROSENTHAL: Let's take a few
 25 minutes.

1 PAUL COURANT
 2 MR. PETERSEN: Sure.
 3 MR. ROSENTHAL: And then I can switch
 4 topics.
 5 (Recess taken at 2:08 p.m.)
 6 (Back on the record at 2:21 p.m.)
 7 BY MR. ROSENTHAL:
 8 Q. What is the Orphan Works Program?
 9 MR. PETERSEN: Objection to form.
 10 A. I always refer to it as the Orphan Works Project,
 11 it may be the Orphan Works Program.
 12 BY MR. ROSENTHAL:
 13 Q. Okay. Well, let's call it the Orphan Works
 14 Project.
 15 A. It's an effort within the University of Michigan
 16 Library to identify the orphan works and make
 17 orphan works that are in the University of
 18 Michigan's collections available in a highly
 19 limited way to members of the university
 20 community.
 21 Q. Is this effort -- is the Orphan Works Project
 22 that you've described an effort solely by the
 23 University of Michigan?
 24 MR. PETERSEN: Objection to form.
 25 BY MR. ROSENTHAL:

1 PAUL COURANT
 2 Q. Or does it involve other entities?
 3 MR. PETERSEN: Same objection.
 4 A. Other universities have indicated an interest in
 5 participating. The Orphan Works Project that I'm
 6 familiar with is at the University of Michigan.
 7 BY MR. ROSENTHAL:
 8 Q. And when you testified that the effort was to
 9 identify orphan works in the University of
 10 Michigan collection, do you mean works where
 11 there's a physical copy in the University of
 12 Michigan collection?
 13 MR. PETERSEN: Objection to form.
 14 A. Yes.
 15 BY MR. ROSENTHAL:
 16 Q. And can you briefly tell me what an orphan work
 17 is?
 18 MR. PETERSEN: Objection to form.
 19 A. It's a term of some discussion, but in simple
 20 form, these are works that are in copyright or at
 21 least unable to be identified as not being in
 22 copyright, and where a right's holder cannot be
 23 found and where there's not an active market for
 24 new copies of the work.
 25 BY MR. ROSENTHAL:

1 PAUL COURANT
 2 Q. And what's the basis of your description of what
 3 an orphan work is?
 4 MR. PETERSEN: Objection to form. And
 5 objection to the extent it calls for divulging
 6 privileged information.
 7 So if you can answer without divulging
 8 attorney-client privileged information, you may do
 9 so, but only in that case.
 10 A. So the simpler, the part that doesn't implicate
 11 any attorney-client privilege or legal
 12 interpretation is a work that is again -- that is
 13 not established as being in the public domain and
 14 which therefore could be in copyright, that is,
 15 where a right's owner cannot be found. And
 16 that's, I think, most definitions will say
 17 approximately that.
 18 BY MR. ROSENTHAL:
 19 Q. Most definitions from where?
 20 A. The community of people who talk about such things
 21 as orphan works.
 22 Q. When did the University of Michigan decide to
 23 engage in the Orphan Works Project?
 24 MR. PETERSEN: Objection to form.
 25 A. In the months following Judge Chin's rejection of

PAUL COURANT

the amended settlement.

BY MR. ROSENTHAL:

Q. And why -- what impact did Judge Chin's refusal to accept the amended settlement have on the University of Michigan's decision to proceed on the Orphan Works Project?

MR. PETERSEN: Objection to form, objection, mischaracterizes testimony.

A. The failure of the settlement to go through involved per force the failure of what would have been a very effective solution to the orphan works problem, and the orphan works problem is that there are many works, plausibly millions, that are in this status where they are not known not to be in copyright and the right's holder can't be found and therefore the works are not available to be used electronically, even though there would be -- could be no harm to a right's holder, if a right's holder really can't be found associated with making uses of the works.

And the orphaned -- the amended settlement and its predecessor, the unamended settlement, would have made it possible for Google to develop with the Book Rights Registry and the

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Authors Guild and the Association -- American Association of Publishers, a mechanism whereby orphan works could be used without -- without negative consequences arising were they found to be in copyright with a -- with a right's holder. That would have greatly enhanced the ability of the University of Michigan's collections to be used by our faculty and students and in the case of that project, that Google product that was being contemplated would have enabled others to use it as well, and thereby get the, you know, the benefit of being able to read works that otherwise are harder to find, harder to use than either very old works, which are in the public domain or current works which typically have digital licenses that make them easy to use licenses for which, of course, universities and other users pay.

And when settlement didn't go through, that avenue for making these works useable was blocked off and we asked ourselves the question, is there some way we can get some benefit out of the -- out of these works for digital uses.

BY MR. ROSENTHAL:

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Q. You described in that answer, you described under the settlement and I'm paraphrasing, but under the settlement, the amended settlement, orphan works could be used without the negative consequences that otherwise would occur, what did you mean by negative?

A. Otherwise might occur, so --

Q. What did you mean by negative consequences?

A. Well --

MR. PETERSEN: Let me just note my objection to form on that question, please.

A. What I meant was that as things stand now, were an entity -- were Google, for example, to create a project in which they made available orphan works on the web, they would be subject, if somebody happened to -- if they made a mistake in coding, to potentially severe monetary penalties, so that is a risk that neither they nor anyone else would take.

BY MR. ROSENTHAL:

Q. But University of Michigan has developed its own Orphan Works Program, correct?

MR. PETERSEN: Objection to form.

A. The University -- yes, the University of Michigan

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has developed its own Orphan Works Program.

BY MR. ROSENTHAL:

Q. And how does that program differ than the program that was contemplated by the amended settlement?

MR. PETERSEN: Objection to form.

A. It was produced by an academic nonprofit for entirely noncommercial purposes and the only entities that would have had the works available under the Michigan project would have been authorized authenticated users of University of Michigan Library services, exactly the same population that has access to the underlying print work.

MR. ROSENTHAL: Could you just read that back, the last answer back. Thank you.

(The following record was read by the reporter at 2:21 p.m.:

"ANSWER: It was produced by an academic nonprofit for entirely noncommercial purposes and the only entities that would have had the works available under the Michigan project would have been authorized authenticated users of University

1 PAUL COURANT
 2 of Michigan Library services,
 3 exactly the same population that
 4 has access to the underlying print
 5 work.")
 6 BY MR. ROSENTHAL:
 7 Q. Who -- who are authorized users of the University
 8 of Michigan services?
 9 MR. PETERSEN: Objection to form.
 10 A. It's a very long list of people, there's
 11 probably -- there's tens of thousands of them.
 12 BY MR. ROSENTHAL:
 13 Q. Well, I wasn't asking for their names.
 14 A. Oh, okay.
 15 Q. Unless you know them?
 16 A. I know some of them.
 17 Q. Well, let's do it through categories.
 18 A. Students, currently registered students, faculty,
 19 staff, and people who walk into library
 20 facilities.
 21 Q. With respect to the last group, people who walk
 22 into library facilities, are -- can anyone walk
 23 into a University of Michigan library and use
 24 that library's facilities?
 25 MR. PETERSEN: Objection to form.

1 PAUL COURANT
 2 A. Anyone who is of adult age or accompanied by an
 3 adult and who behaves him or herself, yes.
 4 BY MR. ROSENTHAL:
 5 Q. Are there any University of Michigan library
 6 facilities outside of the state of Michigan that
 7 would meet -- that would -- I'll leave it at
 8 that. I mean, I won't add to the question.
 9 A. I don't believe so, although it is possible that
 10 there is a small library in Florence, Italy, but
 11 that's covered by a whole different bunch of
 12 rules, if there is a library there, and I don't
 13 know if there's a library in the chief geological
 14 camp or not.
 15 Q. Where is the chief geological camp?
 16 A. The geological -- I didn't mean chief, I just
 17 stuttered. The geological camp is in Wyoming.
 18 Q. Now, you may not know this, you described -- you
 19 said the entity in Florence to the extent it
 20 exists was under a different bunch of rules, do
 21 you know whether people with -- who walk into
 22 the -- that facility in Florence, Italy would be
 23 able to access -- strike that whole thing, let me
 24 back up.
 25 Again, to the extent you know,

1 PAUL COURANT
 2 would -- in your list of various authorized users
 3 of University of Michigan services, would that
 4 include people who walked into a facility in
 5 Florence, Italy?
 6 MR. PETERSEN: Objection to form,
 7 objection, lacks foundation. You haven't --
 8 A. I would be very surprised if it did include such
 9 people.
 10 BY MR. ROSENTHAL:
 11 Q. If it did?
 12 A. If it did include.
 13 Q. Okay. Do you know whether Judge Chin addressed
 14 the issue of orphan works in his rejection of the
 15 amended settlement?
 16 MR. PETERSEN: Objection, lacks
 17 foundation, objection, calls for a legal
 18 conclusion.
 19 A. I don't know, he called for an opt in scheme which
 20 pretty much makes the orphan works problem not go
 21 away, but I don't know that he specifically
 22 addressed orphan works by name.
 23 BY MR. ROSENTHAL:
 24 Q. Or by substance?
 25 MR. PETERSEN: Objection to form.

1 PAUL COURANT
 2 A. I don't know specifically.
 3 BY MR. ROSENTHAL:
 4 Q. Have you read the Judge Chin's decision rejecting
 5 the amended settlement agreement?
 6 A. I have, but some time ago.
 7 Q. You just don't remember?
 8 A. Yeah.
 9 Q. Do you know whether, do you recall whether Judge
 10 Chin mentioned that the -- in that decision that
 11 the question of orphan works is best left to
 12 Congress?
 13 MR. PETERSEN: Objection to form,
 14 objection, calls for a legal conclusion, objection
 15 to the extent it would call for the witness to
 16 testify based upon privileged conversations and
 17 discussions with counsel.
 18 A. What you say sounds familiar, but I don't recall
 19 in detail.
 20 BY MR. ROSENTHAL:
 21 Q. Do you recall any discussions with anyone other
 22 than counsel on the substance of which was that
 23 since the amended settlement agreement was not
 24 going to go forward, the University of Michigan
 25 would take matters into its own hands and come up

1 PAUL COURANT
 2 with its own Orphan Works Program?
 3 MR. PETERSEN: Objection to form,
 4 objection, lacks foundation.
 5 A. So I don't recall ever saying that the University
 6 of Michigan would take matters into its own hands.
 7 BY MR. ROSENTHAL:
 8 Q. How about the substance of that?
 9 MR. PETERSEN: Objection to form.
 10 That's not a question.
 11 A. The substance of that cannot be induced
 12 independently of the tone of it.
 13 BY MR. ROSENTHAL:
 14 Q. Were you frustrated that Judge Chin rejected the
 15 amended settlement agreement?
 16 MR. PETERSEN: Objection to form.
 17 A. I was disappointed that Judge Chin rejected the
 18 amended settlement agreement.
 19 BY MR. ROSENTHAL:
 20 Q. Did you feel that an opportunity to address the
 21 issues of orphan works had been missed by Judge
 22 Chin's rejection of the amended settlement
 23 agreement?
 24 MR. PETERSEN: Objection to form.
 25 A. I had hoped that the issue of orphan works would

1 PAUL COURANT
 2 be addressed in the settlement and was sorry that
 3 that didn't happen.
 4 BY MR. ROSENTHAL:
 5 Q. Now, apart from who would have access to orphan
 6 works, were there other differences between the
 7 Orphan Works Project developed by University of
 8 Michigan and the way that orphan works were to be
 9 dealt with in the Google settlement agreement?
 10 MR. PETERSEN: Objection to form,
 11 objection, lacks foundation. Objection if you're
 12 talking about an inchoate process where there had
 13 been no testimony about what that process is, but
 14 if the witness can understand the question and
 15 respond, he certainly may do so.
 16 A. They're -- they're very different, so they're
 17 different in many ways.
 18 BY MR. ROSENTHAL:
 19 Q. Tell me the differences.
 20 A. I don't know if I can enumerate all the
 21 differences.
 22 Q. Tell me the most significant differences.
 23 A. I'm not sure I'll even get the most significant
 24 ones, but some obvious ones are that the Google
 25 one was within the context of a commercial project

1 PAUL COURANT
 2 and product that included many works that were not
 3 orphan works. And that was a very rich set of
 4 offerings of digitized materials to be licensed in
 5 a set of marketplaces involving millions of works,
 6 tens of millions of works -- well, millions of
 7 works anyhow, that involved arrangements with Book
 8 Rights Registry which was, of course, never
 9 established because the settlement didn't go
 10 through which involved a host of commercial
 11 arrangements of various kinds, and which involved
 12 the possibility that if the project -- product
 13 were successful, lots of people would have access
 14 to many copies of these works.
 15 The University of Michigan project
 16 applied to a very small number of people, would
 17 have certainly in the first instance applied to a
 18 very small number of works, and would not have
 19 increased the number of copies of works available
 20 for reading in any large amount at all. It's a
 21 very different looking project and was, of course,
 22 completely noncommercial.
 23 Q. When you say it involved a very small number of
 24 people, are you referring to the number of people
 25 with access to the University of Michigan Library

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 2 holdings?
 3 A. The number of people with simultaneous access to
 4 any work would be very small.
 5 Q. Under the Orphan Works Project as developed by
 6 the University of Michigan, if a -- if a library
 7 user had access -- strike that.
 8 No, I'm going to come back to that.
 9 When you say that there were -- that
 10 the Michigan Orphan Works Project involved a very
 11 small number of works, at least initially, what
 12 do you mean by that?
 13 A. We were contemplating starting out with dozens of
 14 works rather than millions.
 15 Q. Why?
 16 MR. PETERSEN: Objection to form.
 17 A. Because it's -- we were learning how to identify
 18 orphan works reliably and we wanted to take time
 19 to and care to do the job well.
 20 BY MR. ROSENTHAL:
 21 Q. And how did you go about identifying orphan
 22 works?
 23 MR. PETERSEN: Objection to form. At
 24 what point in time?
 25 BY MR. ROSENTHAL:

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1 Q. Yeah, I was just going to put a time frame on it.
 2 At the outset of the Michigan Orphan Works
 3 Project.
 4
 5 A. So I was responsible for sort of the overall
 6 architecture, but not for details. This is not an
 7 area in which I have either expertise, or
 8 candidly, time to do their kind of detailed work
 9 involved. But the basic idea was to -- for works
 10 published between 1923 and 1960 something, the
 11 something being important in copyright law, but I
 12 forget the date, but the people who are doing the
 13 project did know the right date, to -- that
 14 were -- that were not established to be already in
 15 the public domain or authorized for use by the
 16 University of Michigan by a right's holder, for
 17 digital use by a right's holder, the project would
 18 first go and see if the work were for sale new in
 19 a variety of places where you might find such, and
 20 if so, that's that, it's not an orphan. And then
 21 go to the publisher to see if the publisher is
 22 still in business. If the publisher is still in
 23 business, actually the work would go -- and list
 24 of works that were published by publishers that
 25 were still in business, those might or might not

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1 architecture, but not the details?
 2
 3 A. That's right.
 4 Q. Is what you just described, what you would call
 5 the overall architecture?
 6 A. It has some details in it.
 7 Q. Who was responsible for the details?
 8 A. The project was undertaken under the supervision
 9 of John Wilkin. The person who was most directly
 10 responsible was Melissa Levine.
 11 Q. Who is Melissa Levine?
 12 A. She's a member of the library's staff. She is the
 13 head of the copyright office.
 14 Q. Head of the copyright office?
 15 A. We have an office in the library that provides
 16 information about -- about copyright issues,
 17 not -- does not practice law, does not give
 18 specific advice to faculty, to people in the
 19 library, so.
 20 Q. Is Melissa Levine a lawyer?
 21 A. She is. She actually used to work for the
 22 Register of Copyrights and the Library of
 23 Congress.
 24 Q. You described that if both reviewers found a work
 25 to be a prospective orphan, the bibliographic

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1 be orphans because the publisher doesn't always
 2 hold -- proven to hold rights, however, we
 3 would -- the system then jumped to looking at
 4 information about authors to establish if an
 5 author could be found and also to look at
 6 information from the copyright -- a copyright
 7 database about renewers because during that
 8 period, copyrights, as I understand it, had to be
 9 renewed.
 10
 11 And then a second reviewer would go
 12 through the same set of steps and if both found
 13 that a work was not found or kicked out through
 14 one of these processes, that work would be deemed
 15 to be a prospective orphan and would be -- its
 16 bibliographic information would be posted on a
 17 website, that information trumpeted around on the
 18 web in the literature, and after a period of 90
 19 days in the design version, the work would be
 20 deemed to be an orphan, and made available, one
 21 digital copy per copy that we had bought in print
 22 form to authorize the authenticated users of the
 23 University of Michigan Library. That last stage
 24 never happened, so there we are.
 25 Q. You said you were responsible for the overall

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1 information with respect to that work would be
 2 published on a website, what website would that
 3 be?
 4
 5 A. We're now into the details that I don't know.
 6 Q. And you also used the phrase, and I believe I
 7 have this correct, trumpeted around on the web
 8 and in the literature, what did you mean by that?
 9 A. What I meant was we had, as an integral part of
 10 the project the idea that we would be public,
 11 transparent, try to get as many people looking at
 12 these works as possible in order to -- in order to
 13 find out as much as we could find out.
 14 Q. Did you know how that was going to be done?
 15 A. Did I know in detail how that was going to be
 16 done?
 17 Q. Yeah.
 18 A. No.
 19 Q. How about generally?
 20 A. As I think I just said, trumpeted about on the web
 21 in relevant places.
 22 Q. Was there going to be a public relations or press
 23 agency retained in order to trumpet this
 24 information around on the web?
 25 MR. PETERSEN: Object, note my

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2 objection to form on that question, please.

3 A. This was widely known. We made efforts to make
4 this widely known.

5 BY MR. ROSENTHAL:

6 Q. What efforts did you take to make it widely
7 known?

8 A. We trumpeted about on the web and other relevant
9 places, we went to library meetings, we talked to
10 people, we talked to publishers, we actually
11 talked to the Authors Guild. We talked to lots of
12 people about this.

13 Q. Did you engage in any paid advertising or
14 promotion of the Orphan Works Project?

15 MR. PETERSEN: Objection to form.

16 A. I don't believe we did, however we -- it is
17 something we have certainly considered as we go
18 forward.

19 BY MR. ROSENTHAL:

20 Q. Does the University of Michigan intend to go
21 forward with the Orphan Works Project?

22 MR. PETERSEN: Objection to form.

23 A. The University of Michigan intends to go forward
24 identifying prospective orphan works and trying to
25 make that a reliable process.

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2 BY MR. ROSENTHAL:

3 Q. Are there any specific plans to identify
4 additional works as prospective orphan works?

5 MR. PETERSEN: Objection to form.

6 A. I don't understand the question.

7 BY MR. ROSENTHAL:

8 Q. All right. Is -- let's step back for a moment.

9 So University of Michigan at some point stopped
10 proceeding with the Orphan Work Project, correct?

11 A. We suspended work in the project, that's right.

12 Q. And why did you suspend work in the Orphan Works
13 Project?

14 A. Because we had learned that a number of the
15 prospective works, two or three, were not orphan
16 works and we made the judgment that -- that our
17 process in not finding those works as being out of
18 the project was clearly not working as well as our
19 standards would require.

20 Q. Have you implemented changes in the process since
21 then?

22 A. We have been experimenting with changes in the
23 process since then, yes.

24 Q. What changes in the process have you experimented
25 with?

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2 A. Bringing in more people to look, more experienced
3 librarians or people from other places, other
4 universities taking independent looks at the same
5 works in an effort to get really reliable
6 agreement.

7 Q. Is that what you described, something that you've
8 contemplated doing or that you're actually doing
9 now?

10 A. Oh, we're working on that now.

11 Q. You're actually having people from other
12 universities involved in evaluating works to
13 determine whether they're orphan works or orphan
14 work candidates?

15 A. Orphan work candidates.

16 Q. Which other university?

17 A. UCLA. I don't know if there are others.

18 Q. And does the University of Michigan have any
19 current specific plans to reinstate the Orphan
20 Works Project?

21 MR. PETERSEN: Objection to form,
22 vague.

23 A. I don't know what --

24 BY MR. ROSENTHAL:

25 Q. In other words, is there --

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2 A. Not only objection, vague, but vague.

3 Q. So in other words, it's not only your lawyer
4 saying it, it's actually --

5 A. I actually don't understand the question.

6 Q. Are there any -- are there any current plans to
7 list additional works as orphan works candidates
8 on the -- on a website or in some other location?

9 A. I expect that we will list candidate orphan works
10 on a website and plausibly other locations.

11 Q. Do you have any specific timetable for doing
12 that?

13 A. No.

14 Q. Do you have any sense as to when you might start
15 doing that?

16 MR. PETERSEN: Objection to form,
17 objection, asked and answered.

18 A. Really no.

19 BY MR. ROSENTHAL:

20 Q. And are there any -- do you contemplate any
21 changes in the -- in the categories of works that
22 you will consider for inclusion as orphan works
23 candidates?

24 MR. PETERSEN: Objection to form.

25 BY MR. ROSENTHAL:

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Q. In other words, beyond the -- you described earlier that you were looking at works between 1923 and 1964 that were not obviously in the public domain?

MR. PETERSEN: Objection, form, objection, mischaracterizes testimony, objection, vague.

BY MR. ROSENTHAL:

Q. And you said between 1923 and 1960 something?

A. Yes.

Q. I gave away the year, sorry.

A. So I would expect that that would continue to be the broad class from which we would -- we would -- where we would look.

Q. Do you know which two to three prospective works that were listed as orphan works candidates turned out not to be orphan works?

A. You know, there was one by somebody named Salamanca, and I can't remember the other.

Q. How did you learn that there were situations where works listed as orphan works candidates were not actually orphan works?

MR. PETERSEN: Objection to form, and objection to the extent it calls for privileged

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listed as an orphan work candidate posted on the website and no owner came forward, then that particular work would be made available to the limited group of users you described earlier; is that correct?

MR. PETERSEN: Same objection and same question about the timing issues that you're referring to.

BY MR. ROSENTHAL:

Q. Made available after -- would be made available --

MR. PETERSEN: I guess my objection goes to what point, contemplated when, contemplated at the time, the summer when the list was --

BY MR. ROSENTHAL:

Q. Contemplated at the time that you were -- at the time that the University of Michigan posted certain works on the website as orphan works candidates, at that point it was -- I believe your testimony -- am I correct that your testimony is that if no owner came forward, then that particular -- after a certain period of time, that particular work would be made

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information, and instruct the witness not to answer.

But if the witness can answer without divulging privileged information, you certainly may do so.

A. It was trumpeted about on the web widely.

BY MR. ROSENTHAL:

Q. Trumpeted about?

A. Trumpeted about.

Q. So and your recollection is there were only two or three such works?

A. That is my recollection, yes.

Q. Now, under the Orphan Works Project, as you contemplated implementing it once -- once a work was listed as an orphan works candidate and if no copyright owner came forward, that work I believe you testified would be made available in the limited sense that you described to the limited universe of users that you described?

MR. PETERSEN: Objection to form, objection -- at what point in time, contemplated at what point in time?

BY MR. ROSENTHAL:

Q. Like in other words, once if a given work was

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available to a limited set of users under the limited conditions that you described?

MR. PETERSEN: As the Orphan Works Project was contemplated --

MR. ROSENTHAL: Yes.

MR. PETERSEN: -- at that time?

MR. ROSENTHAL: Yes.

A. The answer to the question is no. It would absolutely not require that a right's holder come forward. Any persuasive information to the effect that rights were held by somebody would have been sufficient to strike the work from the list.

BY MR. ROSENTHAL:

Q. But if nobody came forward to strike the work from the list, then that work would be made available to the limited universe of users under the conditions you described?

A. That was the original plan.

Q. Right. And if, let's say one of the categories of users was a person who walked into a University of Michigan library, correct, that person could then access one of the works that had been listed as an orphan works candidate?

A. So we're in the sort of triple subjunctive here.

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2 Q. Yes, I know, it's hard to ask this question.
3 A. Well, I'm going to stay in triple subjunctive, if
4 I can.
5 Q. Okay. I'm not sure what triple subjunctive is.
6 A. It's a lot of -- lot of ifs.
7 Q. Okay.
8 A. Of course, I'm not trying a legal conclusion here.
9 Let me describe the circumstances of a person who
10 walks into the University of Michigan Library.
11 Q. Right, that's a good way to do it.
12 A. And what that person may or may not do.
13 Q. Okay, that's very helpful.
14 A. So if you who were not a member of our
15 community --
16 Q. Right.
17 A. -- walked in our library now, someone would smile
18 at you, if you asked to find a particular book,
19 someone would help you, or you could go to the
20 computer terminals, the public computer terminals
21 and get the call number of the book, and go into
22 the stacks and you could read that book. You
23 couldn't take it out because you're not a member
24 of our community. If you paid me \$280, I'd let
25 you take it out, but if you don't --

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2 Q. There would be restrictions on what you could do
3 with that copy?
4 A. Uh-huh.
5 Q. Are those restrictions, with respect to
6 electronic works, are those restrictions
7 contractual restrictions in the sense that I have
8 agreed not to do certain things or are there
9 limits on what I can actually do with the file
10 that I am looking at?
11 MR. PETERSEN: Objection to form,
12 objection to the extent it calls for a legal
13 conclusion.
14 A. Depending on the resource, there are -- there are
15 resources for which the access to someone who
16 walks into the library is physically and
17 technically different than someone who can
18 authenticate as a user of the University of
19 Michigan. In a particular case of the Orphan
20 Works Project, had it gone through, because the
21 way that project was designed, users could only
22 look at one page at a time on a page turner. In
23 fact, you would have exactly the same access as
24 authenticated users in the library, you could turn
25 one page at a time and read the book

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2 Q. The \$280 makes you a member?
3 A. No, it just gets you a library card.
4 Q. Okay.
5 A. You can take books out, but you can't look at
6 electronic sources.
7 Q. Let me -- let me -- wait, you were going too
8 fast. So I'm sorry to get off the topic, but
9 what does the \$280 buy me?
10 A. It buys you a library card that allows you to
11 check books out.
12 Q. Okay. And electronic -- it does not allow me to
13 have electronic access?
14 A. Not from off site.
15 Q. Not from off site. While you're in the facility,
16 you do have electronic access?
17 A. That's right.
18 Q. And that's true generally whether I have a
19 library card or not?
20 A. Generally with or without a library card you can
21 go to public terminals and have access to
22 electronic works licensed by the University of
23 Michigan on site. There are often restrictions
24 on -- and so you can have -- you can have that
25 access.

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2 electronically. But that would be all you could
3 do with it, or you could go to the stacks and find
4 the book and sit down in a comfortable place, buy
5 yourself a cup of coffee. we have a coffee place
6 within the library and you can read it there.
7 BY MR. ROSENTHAL:
8 Q. And you allow coffee in the library at the place?
9 A. We do.
10 Q. Now, if I was looking page by page, would I be
11 able to download those files page by page or
12 otherwise to a flash drive or other device if I
13 brought one into the library?
14 MR. PETERSEN: Objection to form,
15 objection, lacks foundation.
16 A. And here I really -- I really don't know what you
17 can do with the public machines without
18 authenticating. A user on campus under the
19 protocols that we were exploring but never
20 implemented would have been able to download page
21 by page. A user, of course, on campus in a
22 library could have gone to one of the public
23 photocopying machines and photocopied page by
24 page.
25 BY MR. ROSENTHAL:

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Q. Of the physical copy?

A. Of the physical copy.

MR. PETERSEN: You want to take a break?

MR. ROSENTHAL: Yeah.

(Recess taken at 3:01 p.m.)

(Back on the record at 3:20 p.m.)

(Whereupon Ms. Roach left the room.)

BY MR. ROSENTHAL:

Q. Did you discuss with any person at any other university whether any other university would participate in the Orphan Works Project?

MR. PETERSEN: I'm going to object to form on that. And to the extent it calls for a yes or no answer, it wouldn't seem to be appropriate, but I just caution the witness not to divulge attorney-client privileged information.

A. We had conversation -- I certainly had conversations, I'm sure others did, with personnel in other universities saying that we thought that this was -- this was something that we wanted to do and that we'd be pleased if others would think about it too.

BY MR. ROSENTHAL:

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Q. Almost certainly people told you, and without disclosing any attorney-client information, did any of them tell you why they did not want to engage in an orphan works project?

MR. PETERSEN: I'm going to object and instruction is to the extent it calls for divulging attorney-client privileged information, instruct the witness not to respond to that.

But, certainly, Dr. Courant, if you can answer without divulging attorney-client privileged information, please do so.

A. You know, I just don't have any -- I don't have any specific instances in mind, so no.

MR. ROSENTHAL: Let's mark as PC9 a one-page document that has a title U-M Library Statement on the Orphan Works Project and it's dated September 16, 2011.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC9
3:23 p.m.

A. Yes.

BY MR. ROSENTHAL:

Q. Are you familiar with this document?

A. I am.

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Q. And the we you meant was University of Michigan?

A. University of Michigan.

Q. But none of the others decided to participate?

A. I'm actually not -- not sure about that, the other projects of the same form would have been independent since the project in its construction would only apply to works that were purchased by, in physical form, the individual library.

Q. Are you aware of any other library that had contemplated an orphan works project similar to the University of Michigan's Orphan Works Project?

MR. PETERSEN: Objection to form.

A. Not by name.

BY MR. ROSENTHAL:

Q. But you believe there were some contemplating it?

A. I believe people were thinking about it, yes.

Q. Did any of the people you spoke with at any of the other universities tell you that they did not wish to engage in an orphan works project?

MR. PETERSEN: Objection to form.

A. Almost certainly, but I have no specific recollection.

BY MR. ROSENTHAL:

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Q. Were you involved in creating it?

A. Yes.

Q. Did you write it?

A. I certainly am responsible for some words and phrases in it. I don't know that I authored it from top to bottom.

Q. Reading the first sentence which is: The close and welcome scrutiny of the list of potential orphan works has revealed a number of errors, some of them serious, what errors are you referring to?

A. Errors in that we classified as prospective orphans works that really shouldn't have gotten that far in the process.

Q. And are any of those errors something other than the three instances that you described previously?

A. They are -- I don't believe so, maybe there were four, but it's a small number, but ones -- there were a couple where it, you know, it should have been -- should have been easier to tell that that work was not an orphan.

Q. And when you say a number of errors, some of them serious, what do you mean by the phrase some of

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 2 them serious?
 3 MR. PETERSEN: Just objection to form.
 4 There's no testimony that he, in fact, wrote those
 5 words, he said he was responsible for some of the
 6 words, but...
 7 BY MR. ROSENTHAL:
 8 Q. Okay. Do you have any understanding of what the
 9 phrase some of them serious means in the context
 10 of this document?
 11 A. I believe that I do. So serious in this case, it
 12 was again a misclassifying as an orphan -- as a --
 13 not as an orphan, as a prospective orphan, a work
 14 where it would have been relatively easy to
 15 establish that it wasn't. Then there were also
 16 small errors.
 17 Q. Do you know, do you have any recollection as to
 18 which works -- with respect to which works it
 19 would have been relatively easy to establish that
 20 they were not orphan works?
 21 A. You know, I really, again, there's this one by
 22 Salamanca that everybody keeps remembering, but I
 23 don't specifically remember the others.
 24 Q. Do you know what wasn't done that should have --
 25 that should have or could have been done easily?

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 2 MR. PETERSEN: Objection to form.
 3 A. What should have been done easily was establishing
 4 that this couldn't have been an orphan work.
 5 BY MR. ROSENTHAL:
 6 Q. But you don't know the specifics beyond that?
 7 A. That's correct.
 8 Q. Will John Wilkin know the specifics of that?
 9 A. He might.
 10 Q. Or Melissa Devine -- Levine, sorry?
 11 A. Levine, she might.
 12 Q. When -- in the final paragraph this document
 13 reads: It was always our belief that we would be
 14 more likely to succeed with the cooperation and
 15 assistance of authors and publishers. This turns
 16 out to be correct. Do you know what that phrase
 17 means?
 18 A. Well, yes, the Authors Guild constructively found
 19 errors and that was helpful. And I'm not sure
 20 when we wrote this. Well, and we had -- having
 21 lots of people, people who were expert in the
 22 matters of concern, help implement the process
 23 which was to say in this instance look at the
 24 works that had been listed, and also helped design
 25 the process which we had been discussing with both

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 2 the Authors Guild and the couple of publishers'
 3 organizations was something we always wanted.
 4 Q. When you say discussing with the Authors Guild
 5 and a couple of publishing organizations, can you
 6 tell me what you mean by that?
 7 A. Yeah, we had scheduled a meeting in Ann Arbor for
 8 approximately a couple of weeks after the date of
 9 this set of events in which we had invited and
 10 indeed have had positive responses from the
 11 American Association of Publishers, the American
 12 Association of University Presses and the Authors
 13 Guild Council, to come down to Ann Arbor and talk
 14 about how to organize a project like this so it
 15 would work well, we were looking forward to that
 16 meeting.
 17 Q. By the time you had scheduled this meeting, you
 18 already had published a list of -- at least one
 19 list of prospective orphan works, correct?
 20 A. That's correct.
 21 Q. And do you recall when those works were going to
 22 be made available if no one stepped forward to
 23 object to their status as orphan works?
 24 MR. PETERSEN: Objection to form.
 25 A. If no one stepped forward or other amendments in

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 2 the program weren't made, sometime in mid October,
 3 I think.
 4 BY MR. ROSENTHAL:
 5 Q. And did, in fact, the meeting that you described
 6 ever take place?
 7 A. Without the participation of the Authors Guild,
 8 yes.
 9 Q. So the American Association of Publishers and the
 10 American Association of University Presses met
 11 with the University of Michigan or met with whom?
 12 A. Met with staff in the University of Michigan
 13 Library who were involved with -- interested in
 14 the Orphans Work Project, and also -- the room was
 15 full of lawyers, so ours was probably there too.
 16 Q. In this case it's not -- presumably not a
 17 privileged meeting, so were you at that meeting?
 18 A. Yes.
 19 Q. Can you --
 20 A. I was there for part of that meeting, not the
 21 whole meeting.
 22 Q. Can you describe what happened at the part of the
 23 meeting that you attended?
 24 A. A full and frank exchange of ideas. We talked
 25 about what we were trying to accomplish and we

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talked about possible -- possible procedures and were there things we could do together and it was exploratory, nothing definitive resulted from it.

Q. Was that meeting before or after the suspension of the Orphan Works Program?

A. After.

Q. Did you have any follow-up meetings with either of the organizations that you described as attending that meeting?

MR. PETERSEN: I'm going to object to form on that. Meetings for what purpose?

MR. ROSENTHAL: For any purpose.

A. And what's the antecedent of you?

BY MR. ROSENTHAL:

Q. University of Michigan.

A. So it's certainly true that members of the University of Michigan staff have met with from time to time Alan Adler and Peter Givler and I forget the name of Peter Givler's lawyer, and a rep on many topics.

Q. On the topic --

A. We used to do a lot of business together.

Q. On the topic of orphan works, were there subsequent meetings with University of Michigan

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relative to the meeting that's described in Exhibit PC9?

A. I don't know that there's a meeting described in PC9.

Q. Excuse me, the meeting that you -- you're right. I apologize. You discussed a fact that a meeting had been scheduled subsequent to this suspension of the orphan works in which the AAP, American Association of University Presses, and Authors Guild were invited, that was one meeting you talked about in some detail.

A. Yes.

Q. Do you have any sense of how long after that you had the meeting that you just described where you talked about possible legislation?

A. That would have been some months later, some time later certainly. Is it months, yeah, probably months.

Q. Do you think it was in calendar year 2012?

A. I do not specifically recall, we're in April, September.

Q. It's not terribly significant.

A. Yeah.

Q. Did you -- have you ever testified at any

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and one or both of those organizations?

MR. PETERSEN: If you know.

BY MR. ROSENTHAL:

Q. If you know?

A. Yes.

Q. Okay.

A. I think there -- I mean, again, the University -- the University of Michigan personnel and members of those organizations talking about orphan works, it's a topic that comes to mind quickly.

Q. Have you been at any such meetings?

A. Yes.

Q. Do you recall the substance of any of those meetings?

MR. PETERSEN: Objection to form.

A. Again, so actually some discussion of a possibility of future legislation and then I think maybe that was the main topic of the last discussion I had with those folks.

BY MR. ROSENTHAL:

Q. The last discussion you had with those folks, do you know when that was?

A. No.

Q. Do you have any recollection of when that was

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Congressional hearing on the topic of orphan works?

A. No.

Q. Have you ever testified at any Congressional hearing on anything?

A. A Congressional hearing?

Q. I mean, House or Senate when I say Congressional hearing?

A. No.

Q. Have you ever met with the Register of Copyrights with respect to orphan works --

A. Yes.

Q. -- issues?

A. Yeah.

Q. And when, when did that happen?

A. There was a meeting at the Register of Copyrights indeed at which those other parties were also present where some of these conversations took place.

Q. Was the topic there also primarily about legislation?

MR. PETERSEN: Objection to form.

A. I can't characterize what the topic was primarily. There was certainly an interest in possible

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2 legislation evinced by parties at that meeting.
3 BY MR. ROSENTHAL:
4 Q. Has the -- has any representative of the American
5 Association of Publishers informed you of that
6 organization's view as to whether the University
7 of Michigan Orphan Works Project is legal?
8 MR. PETERSEN: Objection to form.
9 A. Not to my recollection.
10 BY MR. ROSENTHAL:
11 Q. Or whether the University of Michigan Orphan
12 Works Project is appropriate?
13 MR. PETERSEN: Objection to form.
14 A. That I'm now -- I don't recall a sort of specific
15 comment along those lines.
16 BY MR. ROSENTHAL:
17 Q. Or from the American Association of University
18 Presses, same answer?
19 MR. PETERSEN: Same objection.
20 A. The executive director of the American Association
21 of University Presses referred to the project that
22 I'm now quoting, as an instance of elfin whimsey,
23 I think I was supposed to construe that as being
24 negative.
25 BY MR. ROSENTHAL:

Page 184

1 PAUL COURANT
2 DEPOSITION EXHIBIT PC10
3 3:38 p.m.
4 BY MR. ROSENTHAL:
5 Q. Dr. Courant, I'll ask you to look at this and
6 tell me if you recognize this document?
7 A. Yes.
8 Q. And do you know what this is?
9 A. I do.
10 Q. And what is it?
11 A. It's a response prepared by library staff and
12 people whom I trust actually to a set of questions
13 asked by -- asked of the University of Michigan by
14 the plaintiffs in this case.
15 Q. Did you --
16 MR. PETERSEN: And I also note that it
17 was as to the objections prepared by counsel,
18 therefore this line of questioning does implicate
19 attorney-client privilege and I just caution
20 Dr. Courant to be careful to not waive the
21 privilege when responding to questions concerning
22 this document.
23 BY MR. ROSENTHAL:
24 Q. And did you instruct library staff with respect
25 to finding the information requested in this?

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1 PAUL COURANT
2 Q. Elfin whimsey?
3 A. Whimsey, elfin whimsey, I'm planning on forming a
4 former rock band of that name.
5 Q. You should consult trademark counsel. Did you
6 ask what he or she meant by the term elfin
7 whimsey?
8 A. No.
9 Q. How about the Register of Copyrights, did she
10 express any viewpoint as to the legality of the
11 University of Michigan Orphan Works Project?
12 MR. PETERSEN: Objection to form.
13 A. I've not heard her express such an opinion.
14 BY MR. ROSENTHAL:
15 Q. And where did you hear that?
16 A. I have not heard her.
17 Q. Oh, had not heard her, I'm sorry, I thought you
18 said I have now heard her.
19 A. No, I have not heard her express such an opinion.
20 Q. Okay.
21 MR. ROSENTHAL: Let's mark as PC10 the
22 document entitled Responses to Plaintiff's First
23 Set of Interrogatories to Defendant, Mary Sue
24 Coleman.
25 MARKED FOR IDENTIFICATION:

Page 185

1 PAUL COURANT
2 A. Library staffers specifically to a general
3 instruction to be responsive to these kind of
4 questions, yes.
5 Q. Okay. Who gave them the general instruction to
6 be responsive?
7 A. Implicitly I did, I don't think I had to
8 explicitly.
9 Q. Did the Plaintiff's First Set of Interrogatories
10 to Defendant Mary Sue Coleman, did that -- do you
11 know whether that came to you or did it go to
12 somebody else at the University of Michigan
13 Library?
14 A. I believe it came to our attorneys.
15 Q. I mean, from your attorneys, do you know who in
16 the library system received?
17 A. Several --
18 MR. PETERSEN: Objection to form.
19 A. Yeah, several people would have received copies,
20 as several people had to work on it.
21 BY MR. ROSENTHAL:
22 Q. Do you know who those people were?
23 A. Me, John Wilkin for certain, and then I think he
24 would have -- for certain, also worked with
25 others.

PAUL COURANT

Q. And as to the best of your knowledge, the information provided in this document is -- is true and accurate; is that correct?

MR. PETERSEN: Objection, objection to form, objection to do you mean at the time you, Dr. Courant, verified or do you mean as he sits here today?

BY MR. ROSENTHAL:

Q. At the time that you verified these responses?

A. At the time that I verified these responses, I absolutely believed that the best efforts of my employees who prepared this information had been made and therefore I believe that the information was true and correct as the verification says.

Q. Do you have any reason to believe that, as sitting here today, that any of this information is not correct?

A. I do not have any reason to believe that.

Q. Okay.

MR. ROSENTHAL: Let's mark as PC11 a document entitled Responses to Plaintiff's First Requests For Admission to Mary Sue Coleman.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT PC11

PAUL COURANT

MR. PETERSEN: Objection, vague.

A. The counsel who produced this document worked with members of library and other relevant -- and possibly other relevant staff, I'm not sure, at the university in preparing these answers.

BY MR. ROSENTHAL:

Q. Do you know, if you're looking at -- let's go to page 8, and I'm going to -- looking at the little sub Roman numeral (i): Defendant denies that, on the date the library conducted searches of the databases it uses to identify the availability and price of a new book, the library was able to identify an unused print copy of the following works listed on Schedule A; do you see where it says that?

A. I do.

Q. And there's a list of books under that?

A. Yeah.

Q. Do you know what the date referred to in the first line of that clause is?

MR. PETERSEN: Objection to form.

A. I do not know the exact date. It would have been, that work would have been done in response to this -- these requests.

PAUL COURANT

3:42 p.m.

BY MR. ROSENTHAL:

Q. Any time you've had a chance to review it. Do you recognize this document?

A. I do.

Q. Were you involved in the preparation of this document?

MR. PETERSEN: Objection to form and I give the same instruction I gave with response -- in regard to the interrogatory responses that was prepared and with the advice of counsel, so I just caution Dr. Courant not to divulge attorney-client privileged information when responding to questions concerning this document.

A. I saw this document in draft form before it was completed and made some comments on the draft.

BY MR. ROSENTHAL:

Q. Do you know how the information -- was the information provided in this document obtained in essentially the same way as it was with respect to the interrogatories we looked at --

MR. PETERSEN: Objection to form.

BY MR. ROSENTHAL:

Q. -- a moment ago?

PAUL COURANT

BY MR. ROSENTHAL:

Q. In other words, that the library didn't -- let me strike that.

In other words, is it your testimony that the searches of the database described in the clause I just read was subsequent to University of Michigan's receipt of the document that's been marked as PC11?

MR. PETERSEN: Objection to form.

A. You know, I actually don't know. I assume that, but I don't know.

BY MR. ROSENTHAL:

Q. What's the basis for your assuming that?

A. That people were -- it looks like an inquiry that would have been done in response to a specific question and this is where the specific question came from.

Q. Looking at little Roman numeral (ii) below, similarly it says: Defendant avers that, on the date the library conducted searches of the database it uses to identify the availability and price of a new book, and then the paragraph goes forward, do you know whether the date referred to in that clause, also -- do you know whether that

PAUL COURANT

was a date subsequent to the University of Michigan having received this document?

MR. PETERSEN: Objection to form.

A. Same answer as the answer to sub numeral (i).

BY MR. ROSENTHAL:

Q. And you just don't know, you just assume?

A. I don't know, but that is what I assumed when I read this document.

Q. And looking at the list of books and prices under little Roman numeral (ii), actually it runs from page 8 to page 10, do you know which databases the library used to identify the availability and price of a new book?

MR. PETERSEN: Objection to form.

A. I do not.

BY MR. ROSENTHAL:

Q. Do you know who would know that?

A. Possibly John Wilkin, possibly Ms. Levine, possibly Bryan Skib.

Q. Who is the last name?

A. Bryan Skib who's the associate librarian for collection development and he's actually the one who buys books.

Q. And do you know, in that, under little Roman

PAUL COURANT

be possible. This is -- this is surmise on my part.

Q. And you don't know whether looking at any of these particular works and the prices attached to those works, whether those prices were for apparently identical printings or apparently identical editions?

A. Well, it says apparently identical edition, that may be a term of art for the people who are doing this work, John Wilkin would probably -- probably know.

Q. And would there be a reason why finding an advertising for sale a new print copy of a work that was substantially identical in terms of content would not be an apparently identical edition of that work?

MR. PETERSEN: Objection to form.

Do you understand that question?

A. I really don't.

BY MR. ROSENTHAL:

Q. Do you know why the library would be searching to find an apparently identical edition as opposed to a different edition with the same substantive content?

PAUL COURANT

numeral (ii), it says, the phrase goes on, and uses the phrase an apparently identical edition of the following works; do you know what is meant by the term apparently identical edition?

MR. PETERSEN: Objection to form, objection, lacks foundation.

BY MR. ROSENTHAL:

Q. And the context of that?

A. In detail, no. But one would look at the -- what has more information about the book in one's hand than one has about the book that's for sale in a database, so I think the "apparently" there is to cover the possibility that there might be a, you know, the difference between some printing and some other printing, for example.

Q. For in other words, if the printed copy was a first edition, the library would look for new print copies of a first edition; is that your understanding?

A. I don't know -- I do not know at that level, if there were different editions, it would certainly look for the same edition. If there were different printings, I think an effort would be made to find the same printing, but that might not

PAUL COURANT

MR. PETERSEN: Objection to form and counsel Dr. Courant not to divulge any privileged information.

A. As I look at the question to which this is an answer or the instruction to it, it says: For each work listed on Schedule A, there are two, which is the works on page 8, 9, 10, admit that after reasonable effort, library could maintain an unused replacement of the work at a fair price. And so the response is since we don't know exactly what is meant by a fair price to -- for each of the works, to find as close an edition as possible and say what the price is and let the data speak for themselves.

BY MR. ROSENTHAL:

Q. Looking on page 11 of question 8, looking at little Roman numeral (i), which is around the middle of the page, I'm going to read the paragraph: Defendant avers that, on the date the library evaluated their condition, the library determined that its lawfully acquired print copies of three of the works listed on Schedule A are damaged. Do you know what -- when the library evaluated the condition of those three

PAUL COURANT

works?

A. It was after receiving this request and in the preparation of this answer.

Q. Do you know which three works were deteriorating -- were damaged?

A. I don't -- I don't know.

Q. And with respect to Roman numeral (ii) where there's reference: Defendant avers that, on the date the library evaluated their condition, the library determined that its lawfully acquired print copies of 23 of the works listed on Schedule A are deteriorating or at a substantial risk of deteriorating in the near future. Is your answer the same, that the library evaluated the condition of those works after receiving this document?

MR. PETERSEN: Objection to form.

A. Yes, that is -- that is.

BY MR. ROSENTHAL:

Q. And do you know which 23 of the works are deteriorating or at a substantial risk of deteriorating?

A. Not off the top of my head.

Q. And do you know what criteria were used to

PAUL COURANT

damaged, are there established criteria for determining whether work was damaged?

MR. PETERSEN: Objection to form, compound.

A. I don't know that there are established criteria, although I expect that there are, and again, that the person who made these determinations would be fully aware of and scrupulous in the application of commonly accepted standards.

BY MR. ROSENTHAL:

Q. If there are commonly accepted standards?

A. Yes.

Q. And the same people or persons would have done the evaluation of -- strike that.

MR. ROSENTHAL: Let's take a couple minutes break and we probably won't go too much longer.

THE WITNESS: Okay.

(Recess taken at 3:58 p.m.)

(Back on the record at 4:11 p.m.)

PAUL COURANT

determine whether a work was deteriorating or at a substantial risk of deteriorating in the near future?

A. There's a -- the head of our preservation and conservation department used commonly used standards for conservation and preservation to make those determinations.

Q. Are those written standards?

A. There is a -- there is, I believe, a written standard with respect to the acid paper problem which has to do with crimping over an edge and seeing whether the crimp becomes -- becomes fragile, but I don't know of the written standards in detail.

Q. But you do know that the library used those standards in determining whether the works listed on Schedule A are deteriorating?

MR. PETERSEN: Objection to form.

A. I am confident that the person who did this work would be scrupulous in the application of industry standards to such a problem.

BY MR. ROSENTHAL:

Q. Is your answer the same -- how is it determined, looking back at Roman numeral (i) that a work was



Q. Have you -- does the HathiTrust have any

1 PAUL COURANT
 2 arrangement or involvement with the Digital
 3 Public Library of America?
 4 MR. PETERSEN: Objection to form.
 5 A. No.
 6 BY MR. ROSENTHAL:
 7 Q. Have there been discussions between
 8 representatives of the HathiTrust and
 9 representatives of the Digital Public Library of
 10 America about any possible arrangements?
 11 MR. PETERSEN: Objection to form.
 12 A. I am a member of the executive committee of the
 13 HathiTrust and I am a member of the steering
 14 committee of the Digital Public Library of
 15 America. I occasionally think thoughts about
 16 things that those two entities might do together,
 17 but I don't think that constitutes discussions.
 18 BY MR. ROSENTHAL:
 19 Q. Have you had any discussions with Robert Darnton
 20 about a possible relationship between the Digital
 21 Public Library of America and the HathiTrust?
 22 MR. PETERSEN: Objection to form.
 23 A. I've spoken with Robert Darnton in a general way
 24 about the possibility of the public domain content
 25 of the HathiTrust being -- it would be good if we

1 PAUL COURANT
 2 could have this content available through the DPLA
 3 on some -- some terms, and so we've -- he and I
 4 have both thought that that might be a good idea,
 5 but nothing has -- nothing concrete has come of
 6 it.
 7 BY MR. ROSENTHAL:
 8 Q. Does the Digital Public Library of America make
 9 available works that are not in the public
 10 domain?
 11 MR. PETERSEN: Objection to form,
 12 objection to the extent it calls for a legal
 13 conclusion.
 14 A. The Digital Public Library of America is very much
 15 a nascent organization that doesn't do -- make
 16 available, as far as I know, anything except its
 17 own website.
 18 BY MR. ROSENTHAL:
 19 Q. Do you know, do you have any knowledge as to
 20 whether the Digital Public Library of America
 21 intends to include works that are in copyright in
 22 its digital library?
 23 MR. PETERSEN: Objection to form,
 24 objection, calls for speculation.
 25 MR. ROSENTHAL: I'm asking if he knows.

1 PAUL COURANT
 2 MR. PETERSEN: He knows of intent?
 3 A. The shape of the Digital Public Library of America
 4 is offering services, et cetera, is very diffuse
 5 at this point. It's hard to know even where you
 6 would go to pick an entity that would tell you its
 7 intent.
 8 BY MR. ROSENTHAL:
 9 Q. Is the Digital Public Library of America a
 10 potential competitor to the HathiTrust in terms
 11 of materials it may offer or make available?
 12 MR. PETERSEN: Objection to form.
 13 A. In what sense would you mean competitor?
 14 BY MR. ROSENTHAL:
 15 Q. Would -- is it possible that users would go to
 16 the Digital Public Library of America instead of
 17 to the HathiTrust to find bibliographic
 18 information about certain works or to search
 19 works?
 20 MR. PETERSEN: Objection, vague,
 21 objection, calls for speculation.
 22 A. And speculation is what I offer.
 23 MR. PETERSEN: You really shouldn't
 24 speculate on the record, Dr. Courant.
 25 A. Okay.

1 PAUL COURANT
 2 MR. PETERSEN: If all there is is
 3 speculation, it doesn't do the record any service.
 4 BY MR. ROSENTHAL:
 5 Q. The University of Michigan Library -- is it
 6 correct that the University Library undertakes to
 7 determine the copyright status of works in its
 8 collection?
 9 MR. PETERSEN: Objection to form.
 10 A. Yes, that is correct.
 11 BY MR. ROSENTHAL:
 12 Q. And how does it go about doing that?
 13 A. There's a --
 14 MR. PETERSEN: If you know.
 15 A. I know only in general terms, there's a project
 16 called the copyright review management system or
 17 copyright -- no, copyright review management
 18 system which undertakes to establish copyright
 19 status, I think again the period 1923 to 1960
 20 something, I'm told '4.
 21 BY MR. ROSENTHAL:
 22 Q. You're told by me.
 23 A. Yeah, right.
 24 Q. And not for pure works subsequent to 1964; do you
 25 know?

PAUL COURANT

- 1
- 2 A. I don't know. I believe we started with that
- 3 earlier period.
- 4 Q. When you say we, you're talking about the
- 5 University of Michigan?
- 6 A. The University of Michigan.
- 7 Q. Do you know who is responsible for undertaking
- 8 this review of copyright status?
- 9 A. That project is under the general direction of
- 10 John Wilkin.
- 11 Q. Did University of Michigan receive a grant to
- 12 help fund that --
- 13 A. Yes.
- 14 Q. -- study?
- 15 Who was that from?
- 16 A. From the Institute of Library and Museum, they
- 17 keep changing their name, sometimes it's study,
- 18 sometimes it's services. The IMLS.
- 19 Q. I actually have it as the Institute For Museum
- 20 and Library Sciences, but I may have written it
- 21 down wrong by my recollection, but it's
- 22 irrelevant. Do you know -- do you know when that
- 23 grant was made?
- 24 A. No, not exactly.
- 25 Q. Do you know the amount of that grant?

PAUL COURANT

- 1
- 2 A. And I don't -- there has been a subsequent grant
- 3 on -- for similar work, but I do not know the
- 4 details.
- 5 BY MR. ROSENTHAL:
- 6 Q. Was the substantive grant from the same
- 7 organization?
- 8 A. I believe so.
- 9 Q. Do you know the amount of that grant?
- 10 A. No.
- 11 Q. Are you generally aware of the processes
- 12 undertaken by the University of Michigan to
- 13 ensure the security of the -- wait until I finish
- 14 and wait until he objects -- the security of the
- 15 works included in the -- in any database that
- 16 holds digital copies of works?
- 17 MR. PETERSEN: Objection to form.
- 18 A. Could you restate the question?
- 19 BY MR. ROSENTHAL:
- 20 Q. Are you -- are you -- are you generally aware of
- 21 what -- of the security procedures that exist at
- 22 the University of Michigan to ensure the security
- 23 of any digital files of the works that were
- 24 digitized by Google that reside at the University
- 25 of Michigan?

PAUL COURANT

- 1
- 2 A. My dim recollection is that it was approximately a
- 3 million dollars or a little shy of that.
- 4 Q. And do you know how John Wilkin or the person
- 5 working under John Wilkin's direction go about
- 6 determining the status of a particular work?
- 7 A. There was -- I know that they use a database that
- 8 was developed by Stanford University from
- 9 information in the Library of the Congress as a
- 10 starting place, and how they proceed beyond that.
- 11 I do not know.
- 12 Q. Do you know how many works have been reviewed by
- 13 the copyright -- we never established what the
- 14 name of it was, but the group that is undertaking
- 15 this review of copyright status?
- 16 A. I do not.
- 17 Q. Do you have any approximate idea?
- 18 A. You know, there's a paper I read and I just can't
- 19 remember the number.
- 20 Q. And this is -- is this project still ongoing
- 21 today?
- 22 A. Yeah.
- 23 Q. And is it still operating, at least in part under
- 24 the grant from the IMLS?
- 25 MR. PETERSEN: Objection to form.

PAUL COURANT

- 1
- 2 MR. PETERSEN: Same objection,
- 3 objection to form.
- 4 A. I am generally aware that there are such security
- 5 procedures. I do not know them in any detail.
- 6 BY MR. ROSENTHAL:
- 7 Q. Would Mr. Wilkin know more about that?
- 8 A. He would know more about that.
- 9 MR. ROSENTHAL: I'm going to take
- 10 another brief break to see if I have anything more
- 11 to ask you, and maybe we can end.
- 12 MR. PETERSEN: Great, thanks.
- 13 (Recess taken at 4:22 p.m.)
- 14 (Back on the record at 4:25 p.m.)
- 15 MR. ROSENTHAL: I think we're done for
- 16 today, thank you very much for spending the time
- 17 with us.
- 18 MR. PETERSEN: I have just a few
- 19 questions.
- 20 MR. ROSENTHAL: Okay, sure. Then I
- 21 actually wanted to talk to the reporter about
- 22 logistics.
- 23 THE WITNESS: Okay.
- 24 EXAMINATION
- 25 BY MR. PETERSEN:

PAUL COURANT

Q. Dr. Courant, thank you very much for your time here today, I just have one question for you. In your view, is a HathiTrust a profit-making enterprise at the University?

A. Far from it. It's a not-for-profit activity nested in a not-for-profit enterprise, the University of Michigan itself, supported by other not-for-profit entities, other universities for academic purposes, so no.

MR. PETERSEN: Thank you, I have no further questions.

MR. ROSENTHAL: No further questions.

(The deposition was concluded at 4:27 p.m. Signature of the witness was not requested by counsel for the respective parties hereto.)

PAUL COURANT

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, KATHRYN L. JANES, certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.
Date: May 5th, 2012.

KATHRYN L. JANES, CSR-3442
Notary Public,
Wayne County, Michigan

My Commission expires: October 22, 2016

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

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

Page Line Reason

From to

Page Line Reason

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1 PAUL COURANT

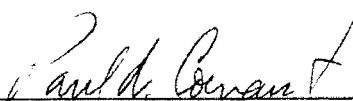
2 Q. Dr. Courant, thank you very much for your time
3 here today, I just have one question for you. In
4 your view, is a HathiTrust a profit-making
5 enterprise at the University?

6 A. Far from it. It's a not-for-profit activity
7 nested in a not-for-profit enterprise, the
8 University of Michigan itself, supported by other
9 not-for-profit entities, other universities for
10 academic purposes, so no.

11 MR. PETERSEN: Thank you, I have no
12 further questions.

13 MR. ROSENTHAL: No further questions.

14 (The deposition was concluded at 4:27 p.m.
15 Signature of the witness was not requested by
16 counsel for the respective parties hereto.)

17
18
19
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21 

22 PAUL COURANT
23
24
25

1 NAME OF CASE: The Authors Guild, Inc., et al. v. HathiTrust, et al.

2 DATE OF DEPOSITION: April 24, 2012

3 NAME OF WITNESS: Paul N. Courant

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 8 Line 4 Reason 3

9 From he appears to he appeared

10 Page 11 Line 13 Reason 3

11 From same entity that to same entity, that

12 Page 12 Line 12 Reason 3

13 From share -- that I chair to chair -- that I chair

14 Page 12 Line 16-17 Reason 3

15 From say I have no formal to say I have formal

16 Page 12 Line 17 Reason 3

17 From over their acquisitions' to over their acquisitions

18 Page 16 Line 6 Reason 3

19 From go to tenured cases to go to tenure cases

20 Page 17 Line 16-17 Reason 3

21 From School of the University to School of public policy
at the University

22 Page 18 Line 20 Reason 3

23 From Professor of Harold T. to Harold T.

24 (continued on next page)

25 _____

1 NAME OF CASE: The Authors Guild, Inc., et al. v. HathiTrust, et al.

2 DATE OF DEPOSITION: April 24, 2012

3 NAME OF WITNESS: Paul N. Courant

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 21 Line 24 Reason 3

9 From responsible budgeting for to responsible for budgeting for

10 Page 31 Line 19 Reason 3

11 From with prints disabilities to with print disabilities

12 Page 37 Line 11 Reason 3

13 From predecessor's director to predecessor as director

14 Page 51 Line 18-19 Reason 3

15 From just for the work, the to just for the moment, the

16 Page 53 Line 16 Reason 3

17 From You mean take place, to You mean take part,

18 Page 61 Line 22 Reason 3

19 From that were in train prior to that were in place prior

20 Page 63 Line 22 Reason 3

21 From of communications office to of communications' office

22 Page 89 Line 10 Reason 3

23 From John Logan would to John Wilkin would

24 (continued on next page)

25

1 NAME OF CASE: The Authors Guild, Inc., et al. v. HathiTrust, et al.

2 DATE OF DEPOSITION: April 24, 2012

3 NAME OF WITNESS: Paul N. Courant

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 95 Line 13 Reason 3

9 From improved the ability to improve the ability

10 Page 102 Line 2 Reason 3

11 From on the timing, it's to on the timing, its

12 Page 105 Line 19 Reason 3

13 From of the settlements to of the settlement

14 Page 112 Line 10 Reason 3

15 From the positive dissertations to the deposited dissertations

16 Page 112 Line 20 Reason 3

17 From I believe at the graduate to I believe that the graduate

18 Page 118 Line 2 Reason 3

19 From With that preservation to With that reservation

20 Page 130 Line 24 Reason 3

21 From know the province of the to know the provenance of the

22 Page 138 Line 6 Reason 3

23 From Hathitrust, it's hard to to HathiTrust, it's hard to

24 (continued on next page)

25

1 NAME OF CASE: The Authors Guild, Inc., et al. v. HathiTrust, et al.

2 DATE OF DEPOSITION: April 24, 2012

3 NAME OF WITNESS: Paul N. Courant

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 140 Line 22 Reason 3

9 From a right's holder cannot to a rights holder cannot

10 Page 141 Line 15 Reason 3

11 From a right's owner cannot to a rights owner cannot

12 Page 142 Line 11 Reason 3

13 From involved per force the to involved perforce the

14 Page 142 Line ^{16,19,19-20} Reason 3

15 From right's holder to rights holder

16 Page 143 Line 6 Reason 3

17 From with a right's holder to with a rights holder

18 Page 144 Line 15 Reason 3

19 From project in which they to product in which they

20 Page 150 Line 11 Reason 3

21 From cannot be induced to cannot be adduced

22 Page 154 Line 16, 17 Reason 3

23 From right's holder to rights holder

24 (continued on next page)

25

1 NAME OF CASE: The Authors Guild, Inc., et al. v. HathiTrust, et al.

2 DATE OF DEPOSITION: April 24, 2012

3 NAME OF WITNESS: Paul N. Courant

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 155 Line 19 Reason 3

9 From in the design version to in the designed version

10 Page 155 Line 22 Reason 3

11 From to authorize the authenticated to to authorized authenticated

12 Page 156 Line 22 Reason 3

13 From Copyrights and the Library to Copyrights in the Library

14 Page 165 Line 10 Reason 3

15 From that a right's holder to that a rights holder

16 Page 201 Line 24 Reason 3

17 From not for pure works to not for works

18 Page 204 Line 6 Reason 3

19 From the substantive grant to the subsequent grant

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

25

Paul N. Courant

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