

EXHIBIT 9

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JOHN P. WILKIN
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 JOHN P. WILKIN,
Taken at 530 State Street
Ann Arbor, Michigan
Commencing at 9:32 a.m.
April 25, 2012,
Before Kathryn L. Janes, CSR-3442, RMR, RPR.

Job Number: 48911

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1 JOHN P. WILKIN
 2 Ann Arbor, Michigan
 3 Wednesday, April 25, 2012
 4 9:32 a.m.

5
 6 JOHN P. WILKIN,
 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. GOLDMAN:

13 Q. Hi, Mr. Wilkin, is it Mr. Wilkin or Dr. Wilkin?

14 A. Mr. Wilkin.

15 Q. Mr. Wilkin. Good morning, thank you for coming
 16 today. My name is Jeremy Goldman, I'm an
 17 attorney with Frankfurt Kurnit Klein & Selz. We
 18 are attorneys for the Authors Guild and a number
 19 of other author organizations from around the
 20 world, and also several individual authors. And
 21 we are here in connection with a lawsuit that we
 22 brought against the University of Michigan and
 23 other universities, are you aware of that
 24 lawsuit?

25 A. I am.

JOHN P. WILKIN

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

A. My name is John Price Wilkin, I live at 525 Second Street in Ann Arbor, Michigan.

Q. Have you ever been deposed before?

A. I've never been deposed before.

Q. Have you ever testified at trial before?

A. I've never testified at a trial before.

Q. Have you ever been a witness in connection with a trial -- in connection with a lawsuit before?

A. No, I haven't.

Q. Have you ever provided testimony to Congress before?

A. I have not.

Q. Okay. Are you currently employed?

A. I am currently employed.

Q. Who's your current employer?

A. My employer is the University of Michigan.

Q. And what is your title at the University of Michigan?

A. My title at the University of Michigan is associate university librarian for library information technology and executive director of HathiTrust.

JOHN P. WILKIN
(Discussion off the record at 9:33 a.m.)

(Back on the record at 9:33 a.m.)
MR. GOLDMAN: Let's mark this as JW1.
MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT JW1
9:33 a.m.

MR. PETERSEN: Jeremy, where did you get this from? I'm trying to decipher the hieroglyphics on it.

MR. GOLDMAN: Well, Mr. Wilkin can probably illuminate us. I downloaded this from Mr. Wilkin's, I think, I believe personal website actually.

A. No.
BY MR. GOLDMAN:
Q. It wasn't on there? I thought that's where I downloaded it. I think the hieroglyphics are redactions of address and contact information.
A. I think you got this from University of California Davis.
Q. Okay, so I may have downloaded from the University of California Davis. That actually does ring a bell. Well, let me ask, Mr. Wilkin,

JOHN P. WILKIN

do you recognize this document?

A. I do.

Q. And then what is this document?

A. This is my CV.

Q. Okay, and do you know --

MR. PETERSEN: Just give me a couple seconds. I know it's preliminary stuff, but just give me a few seconds.

BY MR. GOLDMAN:
Q. And actually, let me take a step back, given that you've never been deposed before.

A. Uh-huh.

Q. It's probably helpful to go over some instructions and ground rules --

A. Uh-huh.

Q. -- about how this deposition will be conducted. I'm going to ask a number of questions. Please wait until I finish the question before you answer. Also try to speak slowly and make sure that you give verbal responses to the questions so that the court reporter can record that and so that we can have a clear transcript.

Also as your counsel just mentioned, it's helpful to give a slight, at least a slight

JOHN P. WILKIN

pause after I ask a question to give him an opportunity to object. Also we should both endeavor to not speak over one another as is routine when you're in normal conversation but very difficult if our reporter has to take down what we're saying.

If I ask a question and it is unclear, please feel free to ask me to repeat the question or to rephrase the question. We can always have the court reporter read back a question that I just asked.

If you need to take a break at any time for the bathroom or otherwise, please request, and I, of course, will allow breaks at any time. The only thing I ask is that we wait until a question is finished before a break and sometimes before a line of questions is finished. If I'm nearing the end of a line of questions, sometimes I'll prefer to wait until I finish until we take a break.

A. Thank you.
Q. Is that clear?
A. It is clear, thanks.
Q. We were talking about the document that's been

JOHN P. WILKIN

1 marked as JW1, and this is your CV, do you know
2 when you prepared this CV? Or let me ask, did
3 you prepare this CV?

4 A. I did prepare the CV.

5 Q. And approximately when did you prepare the CV?

6 A. I believe I prepared the CV late last year, but I
7 don't have an exact sense of time.

8 Q. And taking a look at the CV, is there any
9 information on this document that you believe to
10 be inaccurate?

11 MR. PETERSEN: I think it's a compound
12 question. If you want to ask him particular
13 points of the CV, but I don't think it's
14 appropriate to put a question to the witness in
15 that fashion. He can speak to if he generally
16 thinks it's accurate at the time it was prepared.

17 BY MR. GOLDMAN:

18 Q. Do you generally think that this CV is accurate
19 at the time that you prepared it?

20 A. I do. I think it was accurate at the time I
21 prepared it, November 15th, 2011.

22 Q. Now, you mentioned that you have two titles at
23 the University of Michigan; is that correct?

24 A. That is correct.
25

JOHN P. WILKIN

1 understanding it, I'm sure he'll let me know.

2 MR. PETERSEN: Sure.

3 A. I have a number of roles at the University of
4 Michigan and this is designated to -- this is
5 designed to designate those roles. I would note
6 that it's been the case previously that I've had
7 multiple areas of responsibility that have been
8 reflected in my title.

9 BY MR. GOLDMAN:

10 Q. Are you aware whether your salary is split
11 between two different budgets at the University
12 of Michigan?

13 MR. PETERSEN: Objection to form.

14 A. I'm aware that my salary is split between two
15 different budgets at the University of Michigan.

16 BY MR. GOLDMAN:

17 Q. And is it that part of your salary comes from the
18 HathiTrust budget; is that correct?

19 MR. PETERSEN: Objection to form.

20 BY MR. GOLDMAN:

21 Q. And if I'm saying that incorrectly, please tell
22 me how.

23 A. Yeah, I think if we looked at my -- at the
24 composition of my salary, we would find probably
25

JOHN P. WILKIN

1 Q. Could you explain that, how you have two titles?

2 MR. PETERSEN: Objection to form. Do
3 you want to know what he does for each title in
4 connection with each title? Or do you want to
5 know -- very vague question.

6 BY MR. GOLDMAN:

7 Q. I can ask it this way. Ordinarily a person has
8 one title. It's more my experience is that a
9 person has one title at an employer. I'm asking
10 whether there's -- how it came about that you
11 have two titles?

12 MR. PETERSEN: You just deposed a
13 witness --

14 MR. GOLDMAN: I'm going to ask --

15 MR. PETERSEN: -- yesterday that has
16 multiple titles, I'm not -- it's a preliminary
17 matter --

18 MR. GOLDMAN: Sure.

19 MR. PETERSEN: -- I'm not trying to
20 give you a hard time, you have some latitude, but
21 I do want to have some questions that have some
22 coherence that Mr. Wilkin can respond to.

23 MR. GOLDMAN: Okay. I'll ask
24 Mr. Wilkin the question, if he has trouble
25

JOHN P. WILKIN

1 at least three and probably four different areas
2 where it's posted, for example, on grants, the
3 extent to which the grant covers part of my salary
4 or part of my salary is designated to the grant,
5 and that's the case with the HathiTrust portion of
6 my salary as well.

7 Q. What are the three to four areas that I would see
8 on -- and I can't remember what you said on, what
9 you see -- I would see three to four areas on the
10 document?

11 A. On the university budget, yeah.

12 Q. On the university budget, what are those three to
13 four that I would see?

14 A. I don't know that it is three or four at this
15 given -- at this point in time, but I know it's
16 more than two; for example, a portion of my salary
17 is designated as cost share for an IMLS grant, for
18 example.

19 Q. What is IMLS?

20 A. IMLS is a federal governing agency, the Institute
21 For Museum and Library Services.

22 Q. And what is -- do they provide a grant to the
23 University of Michigan?

24 A. IMLS provides many grants to the University of
25

JOHN P. WILKIN

Michigan.

Q. And what is the -- what is your responsibilities in connection with the grant from IMLS?

MR. PETERSEN: Objection to form.

A. I believe at this point in time, and I haven't looked at this closely recently, I'm cost share on a grant from IMLS and maybe two.

BY MR. GOLDMAN:

Q. What does that mean that you're a cost share on a grant?

A. In funding agency terms, a person can contribute some of his or her effort to the funded activities, and the agency, typically the federal agency recognizes, acknowledges the value of that contribution as part of the work being done.

Q. To the best of your understanding, what are the funded activities for which you are receiving money from IMLS?

MR. PETERSEN: Objection to form.

You can answer, please.

A. All right. I'm not receiving money from IMLS, the university is contributing money to IMLS in this case, that's the nature of cost share. One of the areas that I'm aware of is an IMLS grant on

JOHN P. WILKIN

Q. Are you aware what the parameters were of the first IMLS grant in 2008 in connection with the CRMS?

MR. PETERSEN: Objection to form, vague as to the definition of parameters.

A. Can you be specific about?

BY MR. GOLDMAN:

Q. Sure, what was the -- do you know what the purpose was of the funds that IMLS gave to UM as part of the development of the CRMS in 2008?

MR. PETERSEN: Objection to form.

A. The purpose -- it was an award for a proposal to develop the system.

BY MR. GOLDMAN:

Q. The money was given for a proposal, is that what you said?

A. That's the way that the grants work, a proposal is made, it's accepted and the funds are awarded.

Q. And what was the proposal? What was the nature of the proposal? Are you aware whether University of Michigan submitted a proposal to IMLS in connection with that grant?

A. The University of Michigan did submit a proposal to IMLS.

JOHN P. WILKIN

determining quality for digitized publications.

BY MR. GOLDMAN:

Q. Did IMLS also provide funds to the University of Michigan in connection with a copyright review management system?

MR. PETERSEN: Objection to form, foundation, you want to ask him if he knows?

BY MR. GOLDMAN:

Q. If you can answer.

A. I'm not --

MR. PETERSEN: If you know.

BY MR. GOLDMAN:

Q. If you know, if you know, yeah.

A. The IMLS has awarded two grants to the University of Michigan in conjunction with the development of a copyright review management system.

Q. When was the first grant awarded?

A. I don't recall the date for that.

Q. And when was the second date -- approximately, do you know approximately when the first grant was awarded?

A. I believe the first grant was awarded in 2008 and I believe the second grant was awarded in 2011, but I would have to look at records to make sure.

JOHN P. WILKIN

Q. Did you participate in the preparation of that proposal?

A. In 2008?

Q. Correct.

A. I did participate in the preparation of that proposal.

Q. Could you give a brief description of what the nature of that proposal was?

MR. PETERSEN: Objection to form.

A. It's a broad area. I can give a general sense, but it actually would require a fairly lengthy description. It was for the development of a system to improve the reliability of copyright determinations for U.S. publications.

BY MR. GOLDMAN:

Q. And did there come a time when University of Michigan was awarded the grant by IMLS?

A. Yes.

Q. And did there come a time when University of Michigan developed a system to improve the reliability of copyright determinations?

MR. PETERSEN: Objection to form.

A. We're talking about the first grant?

BY MR. GOLDMAN:

JOHN P. WILKIN

- 1 Q. We're talking about the first grant now.
- 2 A. Yes, we did develop a system in conjunction with
- 3 those activities.
- 4 Q. Did there come a time when Michigan commenced the
- 5 activities that were developed under that system?

MR. PETERSEN: Objection to form.

- 6 A. I'm not entirely sure what you're asking. The
- 7 grant-funded work began late in the year, I
- 8 believe in October, and yeah.

BY MR. GOLDMAN:

- 9 Q. And does the grant-funded work continue through
- 10 the present?

MR. PETERSEN: Objection, vague, what do you mean grant funded? Does the work or does the --

MR. GOLDMAN: He mentioned that the grant-funded work began in late 2008.

BY MR. GOLDMAN:

- 11 Q. What do you mean by grant-funded work?
- 12 A. What I mean by grant-funded work is the work that
- 13 was undertaken in conjunction with the funding
- 14 from IMLS and the funds contributed by the
- 15 University of Michigan.

- 16 Q. And the work that commenced in late 2008, does

JOHN P. WILKIN

- 1 that work continue through today?
- 2 MR. PETERSEN: The grant-funded work
- 3 that he just testified to?

MR. GOLDMAN: Yes.

- 4 A. Although the funding has ended, the work
- 5 continues.

BY MR. GOLDMAN:

- 6 Q. When did the funding end, to the best of your
- 7 knowledge?

- 8 A. To the best of my knowledge, it ended in December
- 9 of 2011, it may have been earlier.

- 10 Q. Do you know why the funding was ended? Do you
- 11 know why the grant -- no, why the funding was
- 12 ended is my question?

- 13 A. The funding ended because that was the term of
- 14 funding.

- 15 Q. And are you aware whether the University of
- 16 Michigan applied to extend the funding for that
- 17 grant?

- 18 A. We did not apply to extend the funding for that
- 19 grant. I am not aware that we applied to extend
- 20 the funding for that grant.

- 21 Q. Do you know why the University of Michigan did
- 22 not apply to extend the funding for that grant?

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MR. PETERSEN: Objection to form, mischaracterizes his testimony. He said he's not aware that they did.

If you have any knowledge on that, but.

BY MR. GOLDMAN:

- 1 Q. I can ask it that way. Do you have any knowledge
- 2 as to why the University of Michigan did not seek
- 3 to renew that grant?

- 4 A. It's not typical that a funded agency, a funded
- 5 organization would apply to continue work that
- 6 under the terms of the grant would have been
- 7 completed.

- 8 Q. You said that the work continues, though; is that
- 9 correct?

- 10 A. That's right.

- 11 Q. And what is the source of funding for the work
- 12 that continues?

- 13 A. The source of funding for the work that continues
- 14 is primarily the University of Michigan.

- 15 Q. Are there other sources of -- are there sources
- 16 of funding other than from the University of
- 17 Michigan?

- 18 A. Other collaborating institutions self fund their
- 19 activities.

JOHN P. WILKIN

- 1 Q. Who are the other collaborating institutions?

- 2 A. At the current time Indiana University, the
- 3 University of Wisconsin, and the University of
- 4 Minnesota, to the best of my knowledge.

- 5 Q. Were those universities collaborating from the
- 6 outset of the grant in late 2008?

MR. PETERSEN: Objection to form.

- 7 A. Those universities collaborated with us on the
- 8 grant. I don't recall when their work began.

BY MR. GOLDMAN:

- 9 Q. Were those universities referenced in the
- 10 proposal to IMLS?

MR. PETERSEN: If you know.

BY MR. GOLDMAN:

- 11 Q. If you know?

MR. PETERSEN: If you can recall.

- 12 A. They were.

BY MR. GOLDMAN:

- 13 Q. You mentioned another CRMS related grant from
- 14 IMLS that was granted in 2011; is that correct?

- 15 A. That is correct.

- 16 Q. And what is the -- did you help prepare the --
- 17 was there a proposal prepared in connection with
- 18 that grant?

JOHN P. WILKIN

- 1
- 2 A. A proposal was prepared.
- 3 Q. And did you help prepare that proposal?
- 4 A. I had some involvement in the preparation of the
- 5 proposal.
- 6 Q. Did you see the proposal?
- 7 A. I did see the proposal.
- 8 Q. And what was the -- what was the nature of --
- 9 well, could you briefly describe what the nature
- 10 is of that proposal?
- 11 A. Keeping in mind that I am not as directly involved
- 12 in that and my knowledge is not as detailed of
- 13 that, it is to develop a second copyright review
- 14 management system for making determinations of the
- 15 copyright status of non-U.S. works from specific
- 16 countries.
- 17 Q. Are there institutions other than University of
- 18 Michigan that are involved in the work that was
- 19 proposed to be done in connection with that
- 20 project?
- 21 MR. PETERSEN: Objection to form.
- 22 A. Are there other institutions that are contributing
- 23 effort in this in a formal way?
- 24 BY MR. GOLDMAN:
- 25 Q. Yes.

JOHN P. WILKIN

- 1
- 2 A. Yes, there are.
- 3 Q. And what are those universities?
- 4 A. I don't recall in detail, there are -- there are
- 5 several.
- 6 Q. Is there -- is there a point person at the
- 7 University of Michigan that's leading this
- 8 project on behalf of University of Michigan?
- 9 MR. PETERSEN: Objection to form.
- 10 A. Can you -- can you explain what you mean by point
- 11 person?
- 12 BY MR. GOLDMAN:
- 13 Q. Is there -- is there a person who is -- who is
- 14 responsible for supervising the work being
- 15 conducted in connection with the second phase of
- 16 the CRMS grant, if you will?
- 17 A. There are several people with areas of
- 18 responsibility in the grant. I believe you're
- 19 asking about what -- the primary investigator for
- 20 that grant.
- 21 Q. What is -- yes, who was the primary investigator?
- 22 A. The primary investigator for that grant is Melissa
- 23 Levine.
- 24 Q. Was there a primary investigator for the previous
- 25 grant?

JOHN P. WILKIN

- 1
- 2 A. There was.
- 3 Q. And who was the primary investigator for that?
- 4 A. I was the primary investigator for that.
- 5 Q. And are you -- do you continue to have
- 6 responsibilities as the primary investigator for
- 7 the work being done in connection with the first
- 8 grant?
- 9 MR. PETERSEN: Objection to form.
- 10 A. No.
- 11 BY MR. GOLDMAN:
- 12 Q. And who is -- is there a primary investigator in
- 13 connection with the work that's being done today?
- 14 A. No.
- 15 Q. Who supervises the work that is being done today
- 16 as part of the first phase of the CRMS project?
- 17 A. The first phase of the CRMS project is complete,
- 18 so nobody supervises the grant-funded work.
- 19 Q. I guess aside -- following the termination of the
- 20 grant, you mentioned that the work continues; is
- 21 that right?
- 22 A. Copyright review determinations for U.S. works
- 23 continues.
- 24 Q. And who supervises that work?
- 25 MR. PETERSEN: Objection to form.

JOHN P. WILKIN

- 1
- 2 A. Many people supervise that work.
- 3 BY MR. GOLDMAN:
- 4 Q. Is there a person in charge?
- 5 MR. PETERSEN: Objection to form.
- 6 A. Can you be specific about what you mean by in
- 7 charge?
- 8 BY MR. GOLDMAN:
- 9 Q. Is there a single person who supervises the work
- 10 that is being conducted to review U.S. works?
- 11 A. No.
- 12 Q. Did there -- did there come a time when Google
- 13 entered into an agreement with the University of
- 14 Michigan to digitize books in Michigan's
- 15 libraries?
- 16 A. There came a time when Google entered into an
- 17 agreement with the University of Michigan to
- 18 digitize printed publications in Michigan's
- 19 libraries.
- 20 Q. Do you know when that agreement was entered into?
- 21 MR. PETERSEN: Objection to form.
- 22 A. I -- I believe I recall that agreement was entered
- 23 into in late 2004 or 2005, but I don't know
- 24 specifically when.
- 25 BY MR. GOLDMAN:

JOHN P. WILKIN

Q. Okay. I'm going to show you a document that's been -- that was marked yesterday at Mr. Courant's deposition. It was marked as PC2. The title of this document says Cooperative Agreement. I'm going to ask you to take a look at this document and let me know if you recognize it?

MR. PETERSEN: And just for the record, you know that we talked about yesterday with Dr. Courant, this witness is here as a fact witness. He's not going to draw legal conclusions from this document or speak to the legal terms or the effective legal terms, and I do instruct the witness not to divulge attorney-client privileged information in connection with any line of questions you may ask concerning this document. And I do, I also caution the witness to read and review the document before responding to the questions on it.

BY MR. GOLDMAN:

Q. And I'm going to direct you to particular parts of the agreement, Mr. Wilkin. For right now I'm just asking you to look it over and generally -- and tell me as a general matter whether you

JOHN P. WILKIN

recognize the document?

A. This looks like the agreement that we entered into with Google.

Q. Now, you'll notice on the, I believe it's the second to last page, there's a signature block that's been redacted.

MR. PETERSEN: I think actually that's the last page.

MR. GOLDMAN: Oh, it is the last page.

MR. PETERSEN: Remember, we didn't have Exhibit A.

MR. GOLDMAN: That's right, I'm sorry.

BY MR. GOLDMAN:

Q. I don't know why that happened, but there is an Exhibit A that's attached to this, I think just through errors in our duplication process we omitted that inadvertently, but the date on the signature line is blank. I'm going to show you a document that was marked yesterday as PC7 --

A. Uh-huh.

Q. -- which is titled Amendment to Cooperative Agreement.

MR. PETERSEN: When you say the date in the signature line is blank, what are you

JOHN P. WILKIN

referring to, Jeremy? I just don't see a blank.

MR. GOLDMAN: Not blank, it's been redacted. There's a --

MR. PETERSEN: Well, signature has been redacted, but I don't know if the date has been redacted.

MR. GOLDMAN: Fair enough. I actually don't know whether there was a date on this document and I don't on the first page see a date on the document, so I'm just trying to -- trying to figure out when -- when this document may have been executed.

BY MR. GOLDMAN:

Q. So I'm showing you a document that was marked yesterday as PC7 which is titled Amendment to Cooperative Agreement. And I'm showing this document to you just to see if it may refresh your recollection as to when the original document was executed.

MR. PETERSEN: He hasn't testified that he had a recollection.

MR. GOLDMAN: No, I understand that. I haven't asked a question yet.

MR. PETERSEN: Okay.

JOHN P. WILKIN

BY MR. GOLDMAN:

Q. So first if you could take a look at the, at PC7, what has been marked as PC7 and let me know whether this appears to be a document that you've seen before?

MR. PETERSEN: And I will have the same objection I noted yesterday, this is an unsigned version of this document, so there's no assurance on the face of the document that it is, in fact, a final version. And my colleague, Ms. Roach, points out that there's a red line on paragraph 34 of the document which would suggest it is not, in fact, a final document.

A. I'm sorry, can you?

BY MR. GOLDMAN:

Q. Have you seen this document before?

MR. PETERSEN: Meaning PC7?

MR. GOLDMAN: PC7.

MR. PETERSEN: You mean, this form or you mean, the general subject?

BY MR. GOLDMAN:

Q. First I'm going to ask if you've seen PC7 before and then I'll ask a follow-up question if necessary.

JOHN P. WILKIN

MR. PETERSEN: Note my objection to vagueness on the record, it's not clear if you mean the final agreement or this particular document, but if the witness can answer, he is certainly free to do so.

A. I don't know, I've seen -- I've seen something similar to this with many of the terms here, I don't have a clear recollection of the -- of the content of the agreement or what the final form was and whether this is consistent with the final form.

BY MR. GOLDMAN:

Q. That's fine. If you look at the -- under background points, paragraph A, it says: The U of M and Google entered into a Cooperative Agreement dated June 15th, 2005. I just want to know, does that -- does that help refresh your recollection as to when the original Cooperative Agreement was executed?

MR. PETERSEN: Objection to form. Maybe if you would ask does he have any reason to think it was not the date, but I mean, he didn't say -- he didn't testify to having a recollection, so.

JOHN P. WILKIN

know.

Q. When -- when did you first learn about Google's plan to digitize library books in general, not just UM, but library books in general?

MR. PETERSEN: Objection to form. If you can answer.

A. Yeah.

MR. PETERSEN: You need him to rephrase that question?

A. Yeah, I'm having a hard time with the question. It assumes Google having a plan, and I think there are a lot of assumptions baked into the question.

BY MR. GOLDMAN:

Q. Okay. I can break it down.

A. Sure.

Q. Are you aware of the term Google Library Books Project or something similar to that?

A. Something similar to that, at least, yeah.

Q. And when did you first learn about -- about -- what do you understand that term to be?

A. I understand the Google Library Program, and I'm sorry, I also don't recall the exact phrase, to be about a partnership with libraries to digitize contents from those libraries.

JOHN P. WILKIN

A. I'd be guessing, but I would guess that this is the June 2005.

MR. PETERSEN: It doesn't do anyone any good to have you guess on the record, so I would caution you not to guess or speculate here today.

BY MR. GOLDMAN:

Q. Do you know when the partnership between Google and University of Michigan was first publicly announced?

MR. PETERSEN: Objection to form.

A. I don't recall.

BY MR. GOLDMAN:

Q. Do you recall -- do you recall that there was such an announcement?

A. I do.

Q. And do you recall whether the -- whether the Cooperative Agreement that's been marked as PC2 was entered into before or after that public announcement?

MR. PETERSEN: Objection to form.

A. I don't. I believe it was.

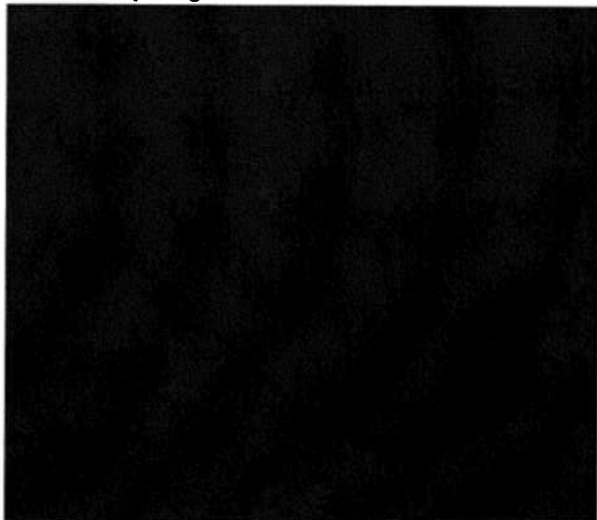
BY MR. GOLDMAN:

Q. You believe it was what, sorry?

A. Entered into before the announcement, but I don't

JOHN P. WILKIN

Q. So let's refer to it as Google Library Program, and when did you first learn about the Google Library Program?

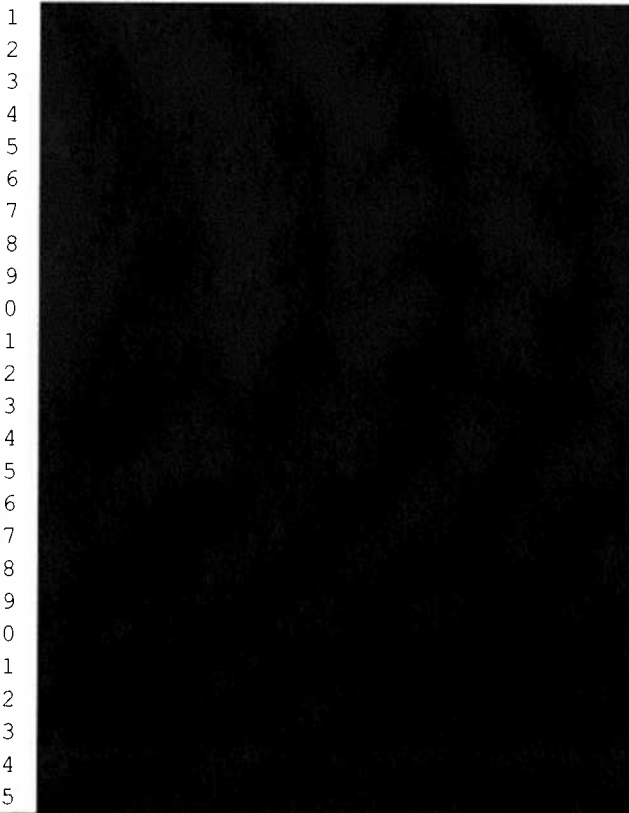
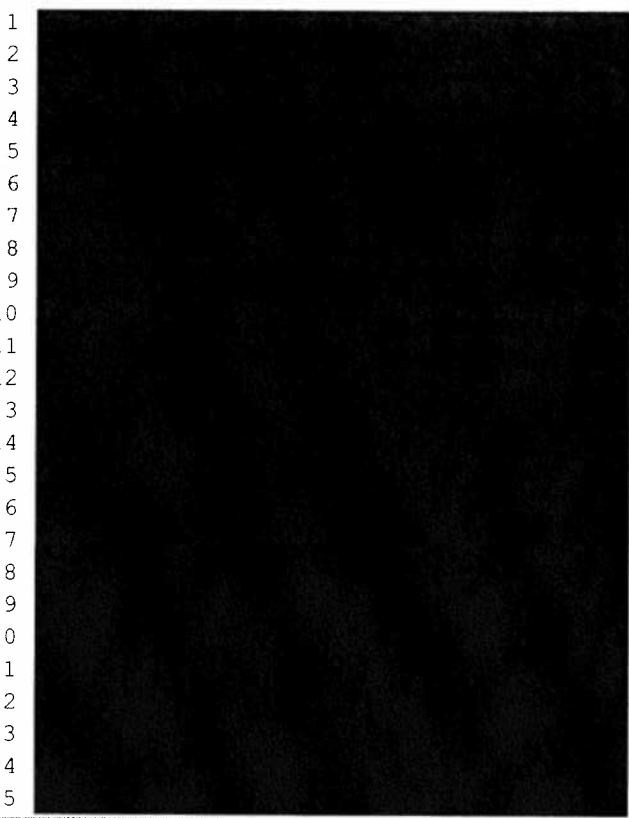


MR. GOLDMAN: Can I have 2? I don't think it's been marked.

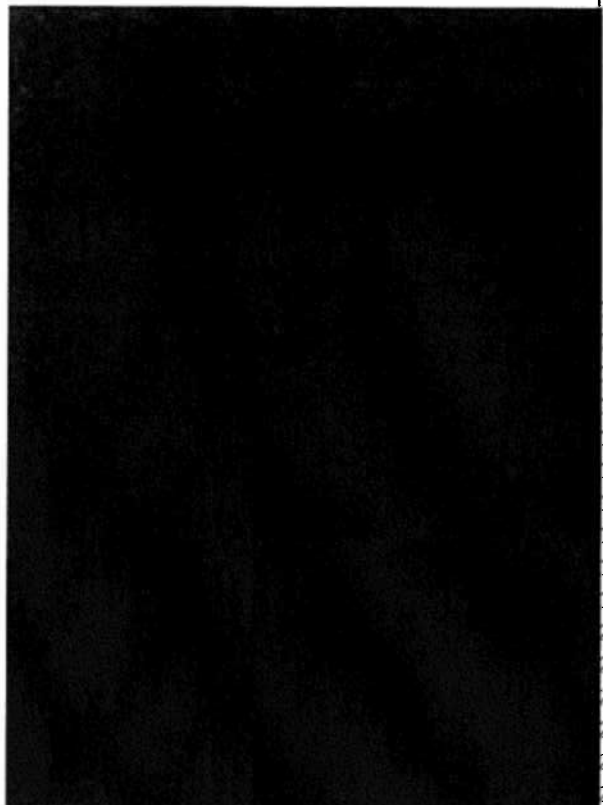
MR. ROSENTHAL: Uh-huh.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT JW2

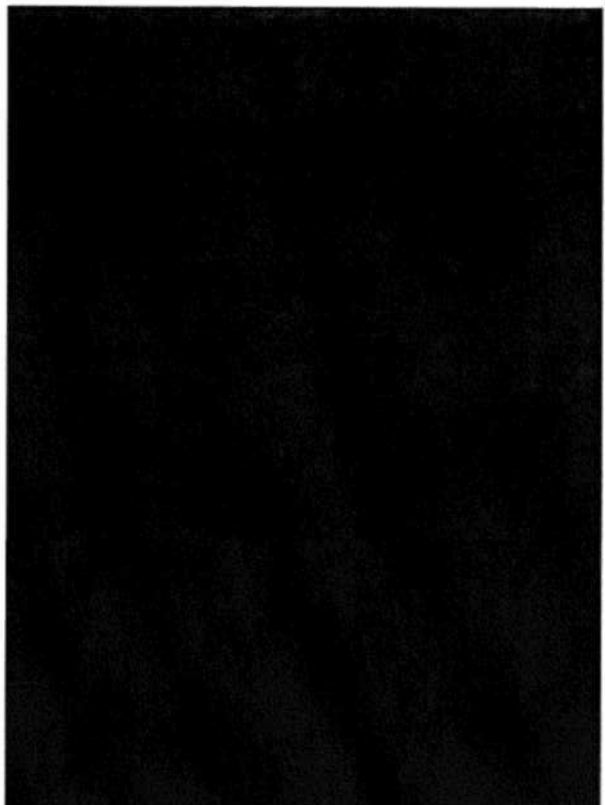
1 JOHN P. WILKIN
 2 10:05 a.m.
 3 MR. PETERSEN: What will this be?
 4 MR. GOLDMAN: JW2.
 5 BY MR. GOLDMAN:
 6 Q. What I marked as JW2 is a press release that I
 7 downloaded from the Google website dated
 8 December 14, 2004, entitled Google Checks Out
 9 Library Books; do you recall seeing this press
 10 release before?
 11 MR. PETERSEN: Objection to form.
 12 A. I believe I did.
 13 BY MR. GOLDMAN:
 14 Q. And does seeing the date on this, December 14,
 15 2004, help refresh your recollection?
 16 A. It does.
 17 Q. And so now having seen this document, can you --
 18 do you have a better idea when you first learned
 19 about the Google Library Program?
 20 A. It would have been late 2004.
 21 Q. Did you find out about -- did you learn about the
 22 Google Library Program prior to the public
 23 announcement?
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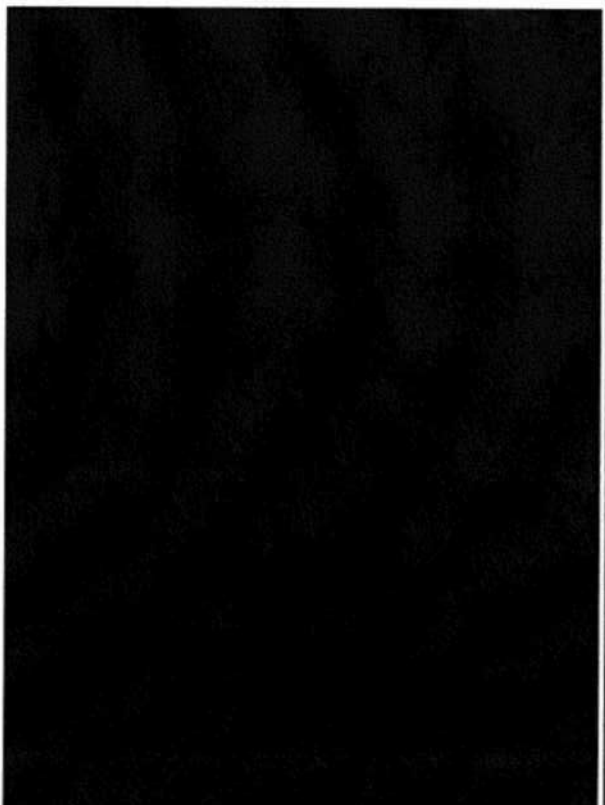
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Q. Larry is an alum of the University of Michigan; is that right?

A. He is.

Q. And did you know Mr. Page prior to your initial meeting with him that you described in 2002 or 2003?

MR. PETERSEN: Objection to form. You mean, by reputation or did you personally know him?

BY MR. GOLDMAN:

Q. Did you personally know him?

A. I did not.

Q. Had you spoken to him at any time before your initial meeting on North Campus?

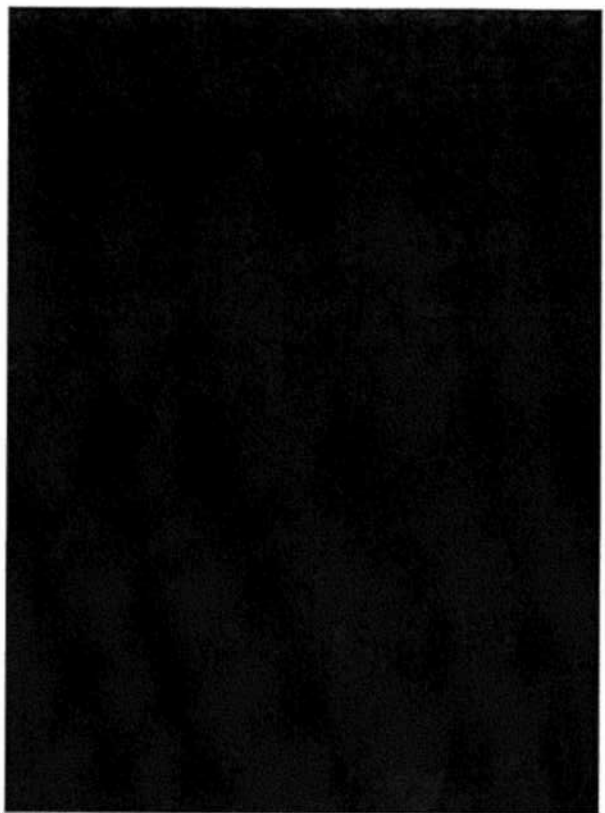
A. I believe I did.

Q. And when was that?

A. Years earlier, probably between 1996 and 1999.



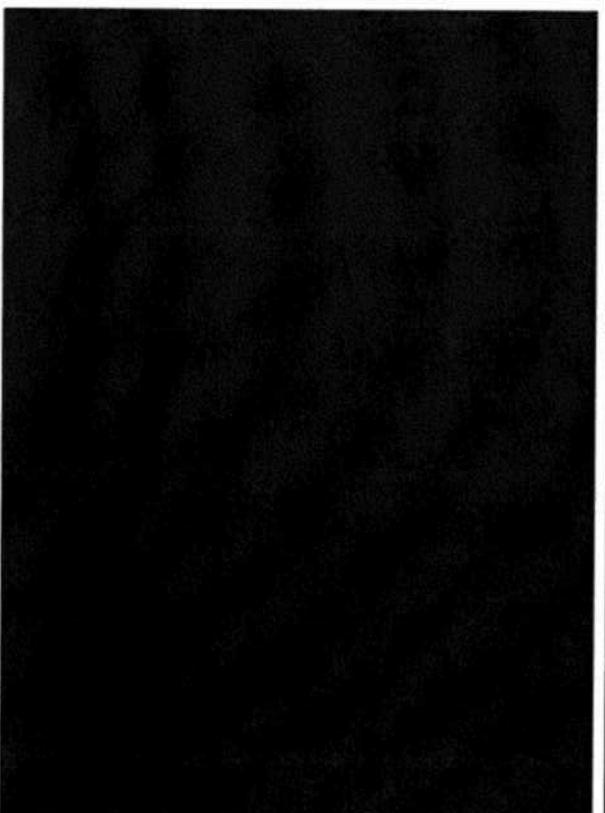
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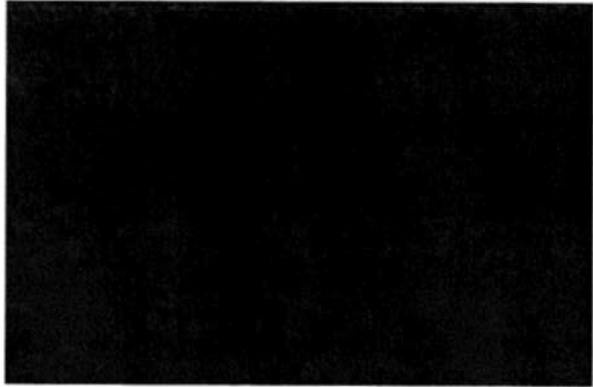
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MR. PETERSEN: Jeremy, we're approaching an hour, is it a good time to take a break and finishing this line, or where do you stand?

MR. GOLDMAN: We can take a quick break.

MR. PETERSEN: How do you feel?

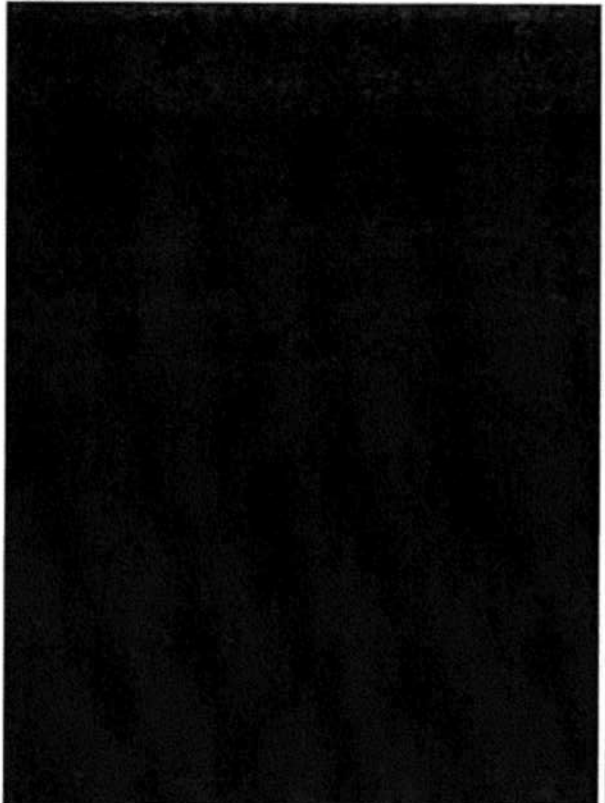
BY MR. GOLDMAN:

Q. Do you want to take a break?

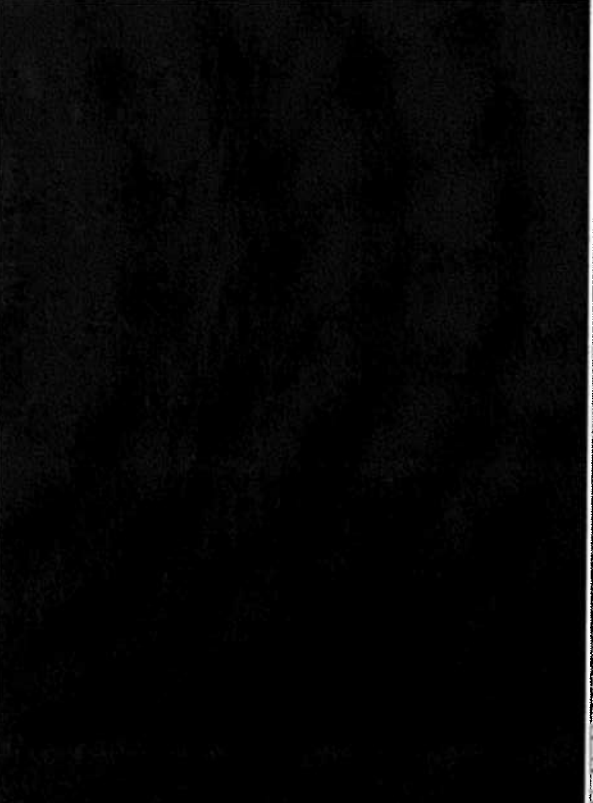
A. I'm okay right now.



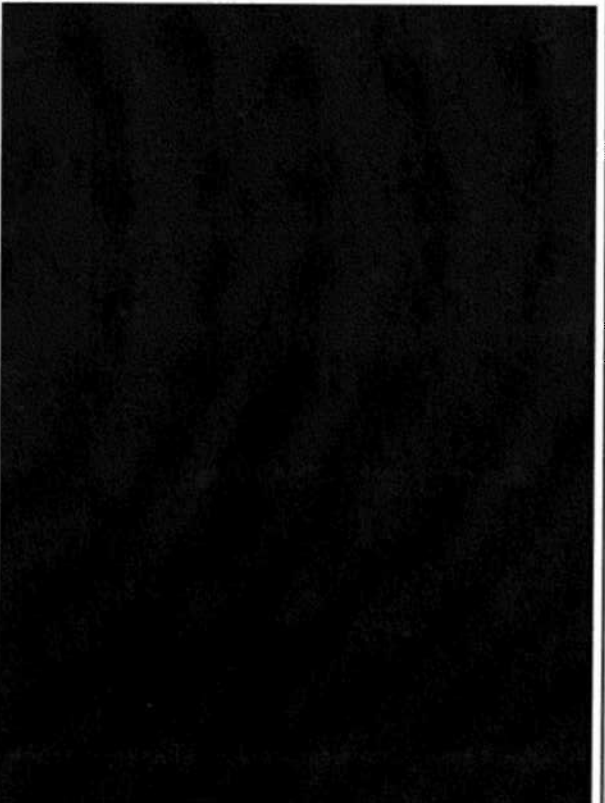
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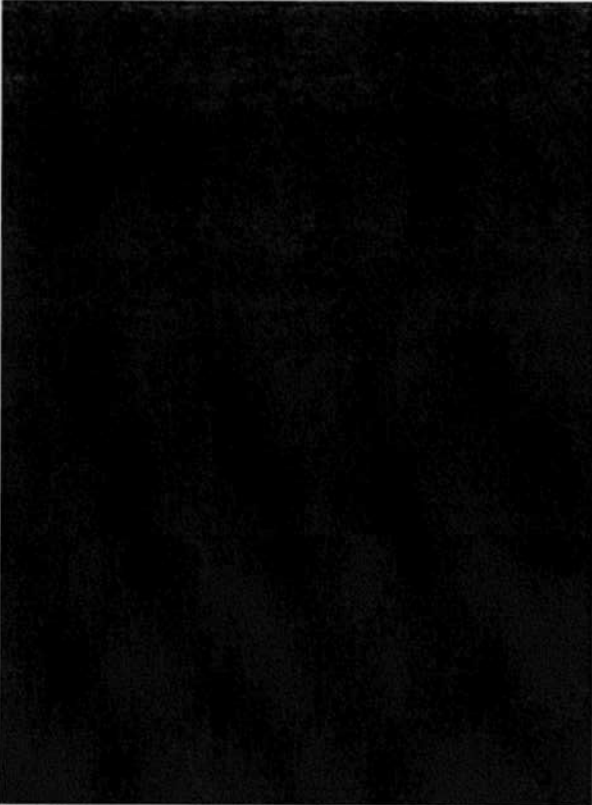
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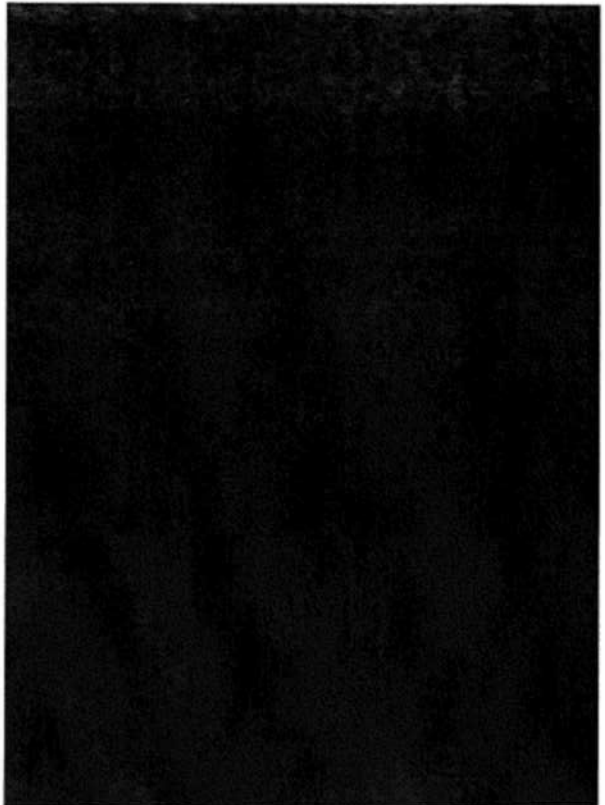
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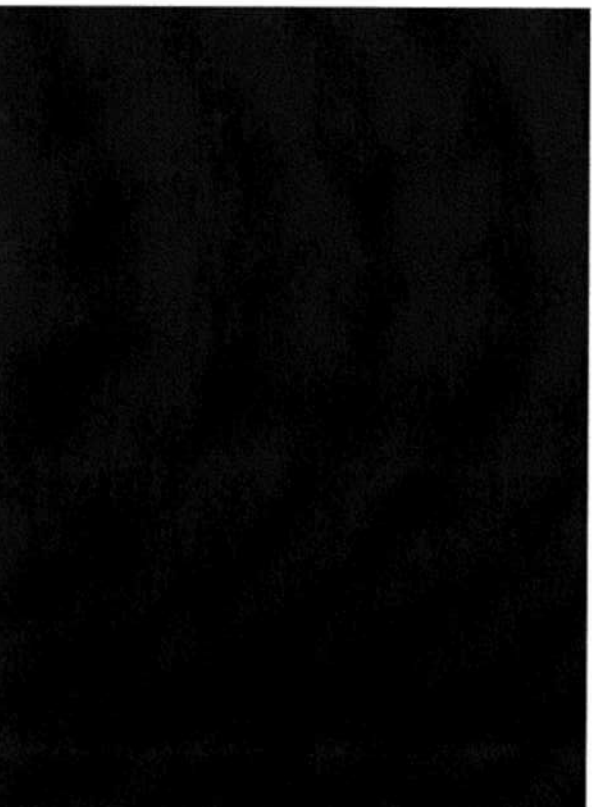
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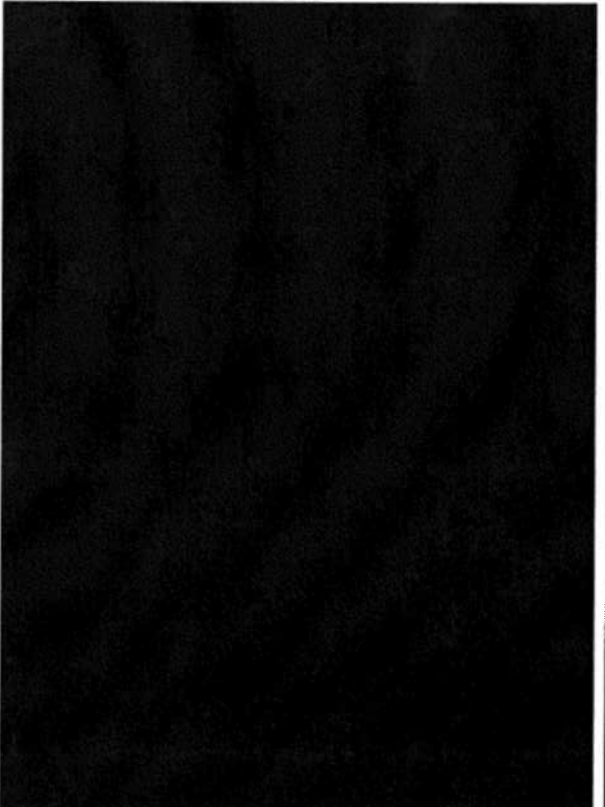
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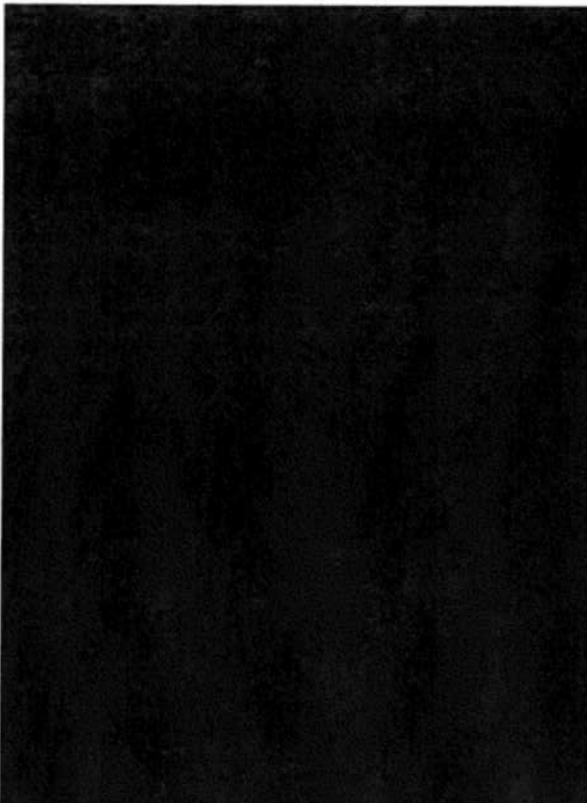
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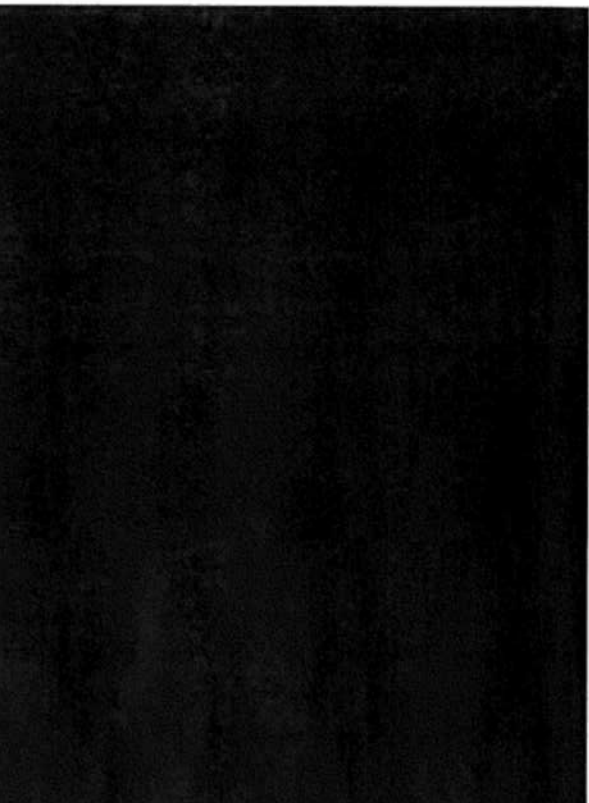
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BY MR. GOLDMAN:

Q. Now, prior to the digitization of UM books by Google, UM had undertaken digitization projects on its own accord?

MR. PETERSEN: I'm sorry, it sounds like you're starting a new line. Can we take a five-minute break?

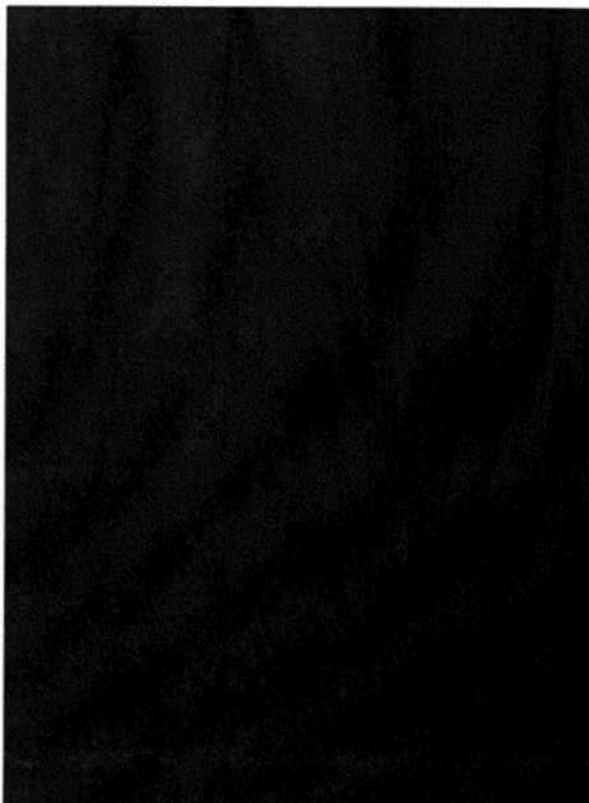
MR. GOLDMAN: Yeah, we can take a five-minute break, okay, that's fine.

(Recess taken at 10:31 a.m.)

(Back on the record at 10:43 a.m.)



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13 Q. Okay. So prior to the UM/Google partnership, isn't it correct that University of Michigan had engaged in book digitization projects?

14 MR. PETERSEN: Objection to form. I just note my continuing objection for the record, so each time you say partnership, obviously we object to the use of that in a legal sense through this witness, so but if you want to define it that way and if you note my continuing objection, that's fine.

15 MR. GOLDMAN: I have -- I defined it that way or if you have a way you want to characterize the relationship between Google and

1 JOHN P. WILKIN

2 Michigan in connection with the digitization project other than partnership.

3 BY MR. GOLDMAN:

4 Q. Mr. Wilkin, do you have a way that you would characterize the relationship between Google and Michigan in connection with the digitization project?

5 A. I can -- I can suggest that we use MDP as shorthand, Michigan digitization project.

6 Q. That's actually interesting that you say that. I wanted to know, were there any mass -- MDP means mass digitization project; is that right?

7 A. No.

8 Q. What does MDP mean, oh, Michigan digitization project?

9 A. (Witness nods head affirmatively.)

10 Q. Were there any digitization projects prior to the Google MDP?

11 A. Yes.

12 MR. PETERSEN: Referring to any digitization of any types of works at all?

13 BY MR. GOLDMAN:

14 Q. Digitization of library books?

15 A. Library books and materials.

1 JOHN P. WILKIN

2 Q. There were?

3 A. Of library books and materials, yes, there were.

4 Q. Okay. And what efforts are you aware of that took place in Michigan prior to the Google MDP?

5 MR. PETERSEN: Objection to form.

6 A. I'm aware of many digitization projects over -- over a number of years prior to the MDP.

7 BY MR. GOLDMAN:

8 Q. Were you in -- did you -- were you involved in any way in any of those digitization projects?

9 MR. PETERSEN: Objection to form.

10 But if you can answer.

11 A. I was, yes.

12 BY MR. GOLDMAN:

13 Q. And what was your role in connection with those projects?

14 MR. PETERSEN: Objection to form.

15 A. I had many roles in those projects.

16 BY MR. GOLDMAN:

17 Q. Could you describe some of the most -- could you describe some of the most important projects, and by important projects, I mean, projects that involved the largest volume of works that were digitized?

1 JOHN P. WILKIN

2 MR. PETERSEN: Objection to form.

3 A. Can we stipulate that important is not largest volume?

4 BY MR. GOLDMAN:

5 Q. Yes.

6 A. So one of the early projects was an effort to digitize papyrus. Another was an effort to digitize technical reports from our engineering library. Another was early, the Making of America.

7 Q. Say that again?

8 A. The Making of America.

9 Q. What does that mean?

10 A. It's a title.

11 MR. PETERSEN: Objection, just note my objection to form.

12 BY MR. GOLDMAN:

13 Q. Any others?

14 A. Yes. I don't think I can be exhaustive in the list of projects. Would you like a few more examples?

15 Q. No, why don't we continue. Are you aware whether any of the digitization projects that took place at University of Michigan prior to the Google MDP

1 JOHN P. WILKIN
 2 involved the digitization of copyrighted works?
 3 MR. PETERSEN: Objection to form,
 4 objection to the extent it would call for a legal
 5 conclusion as to works that were in copyright.
 6 A. Some of our activities digitizing works prior to
 7 digitization with Google did involve digitizing
 8 works that we believe to be in copyright.
 9 BY MR. GOLDMAN:
 10 Q. And tell me about those projects.
 11 MR. PETERSEN: Objection to form.
 12 A. I wouldn't characterize them as projects. I would
 13 characterize them as library preservation access
 14 activities.
 15 BY MR. GOLDMAN:
 16 Q. Under what circumstances did University of
 17 Michigan digitize books that were believed to be
 18 in copyright for the purposes of preservation,
 19 and we're talking about the time period prior to
 20 the Google MDP?
 21 MR. PETERSEN: Objection to form and
 22 objection to the extent it calls for a legal
 23 conclusion.
 24 But you can answer.
 25 A. The library routinely digitized works that were

1 JOHN P. WILKIN
 2 damaged or deteriorating.
 3 BY MR. GOLDMAN:
 4 Q. How was the -- was a determination made that a
 5 particular work was damaged or deteriorating?
 6 MR. PETERSEN: And you mean factually?
 7 BY MR. GOLDMAN:
 8 Q. Factually.
 9 A. Yes.
 10 Q. And how was that determination made?
 11 A. Those determinations were made in many different
 12 ways, sometimes at a circulation desk when
 13 somebody was checking out the work, sometimes by
 14 preservation and conservation staff.
 15 Q. And what was -- what was the process by which a
 16 work that was determined to be damaged or
 17 deteriorating at the circulation desk, what was
 18 the process by which such a work would be
 19 digitized at UM?
 20 A. The process by which it -- I'm sorry, there were
 21 two different questions there.
 22 MR. PETERSEN: Object to form on it,
 23 yeah.
 24 BY MR. GOLDMAN:
 25 Q. Well, I guess I'm asking you to walk me through

1 JOHN P. WILKIN
 2 step by step how a -- how a work that was
 3 determined to be damaged or deteriorating would
 4 be digitized by UM prior to the Google MDP?
 5 MR. PETERSEN: So you're talking about
 6 after a decision was made that it was, in fact,
 7 damaged or deteriorating at that point in time
 8 physically, mechanically how that work would have
 9 been digitized, is that fair to say, Jeremy, is
 10 that the nature of the question?
 11 MR. GOLDMAN: Yes, I mean, we could go
 12 step by step, but yes, that is the nature of my
 13 question.
 14 BY MR. GOLDMAN:
 15 Q. Why don't we start with that.
 16 A. A book that the circulation staff identified as
 17 damaged or deteriorating was sent to -- would be
 18 sent to the preservation and conservation staff.
 19 Preservation and conservation staff would make a
 20 treatment decision. It may be possible, for
 21 example, to repair the book. But if the book was
 22 to be digitized, there were a number -- there are
 23 a number of methods by which the -- there were
 24 then and there are now a number of methods by
 25 which the book could be digitized.

1 JOHN P. WILKIN
 2 Q. Are you aware of the criteria that were applied
 3 to determine whether a work was damaged?
 4 A. No, not specifically.
 5 Q. Where did you -- why are you using the word
 6 damaged, is that a term of art?
 7 MR. PETERSEN: Objection to form,
 8 objection to the extent it calls for a legal
 9 conclusion.
 10 A. It is -- I'm not -- I'm not using it as a term of
 11 art, I'm using it to broadly describe the rubric
 12 of materials that a circulation staff would
 13 identify as being in need of treatment.
 14 BY MR. GOLDMAN:
 15 Q. And do you distinguish between a work that is
 16 damaged and a work that is deteriorating?
 17 MR. PETERSEN: Objection to form.
 18 But if you can answer.
 19 You mean him personally?
 20 BY MR. GOLDMAN:
 21 Q. I mean you personally.
 22 A. Right.
 23 Q. When you say the words damaged or deteriorating,
 24 are you referring to one state of a book or are
 25 you referring to two different states of a book,

1 JOHN P. WILKIN
 2 and by state, I mean condition, physical
 3 condition?
 4 MR. PETERSEN: His personal view.
 5 A. My personal view, I can distinguish between the
 6 two and, of course, both may apply.
 7 BY MR. GOLDMAN:
 8 Q. What does it mean, in your opinion, when a book
 9 is damaged?
 10 A. For example -- for example, somebody may have
 11 spilled a drink or have food in the book or the
 12 bindings may be removed. There are many ways that
 13 a book could be damaged.
 14 Q. And what does it mean, in your view, that a work
 15 was deteriorating?
 16 A. Keeping in mind that this is outside of my
 17 professional sphere of responsibility, I generally
 18 understand that to be materials with acid content
 19 in the paper, that category of materials published
 20 between 1850 and 1990 typically where the paper is
 21 in a process of decaying.
 22 Q. Is the -- when you say that there's materials
 23 with acid content, is the acid content intrinsic
 24 to the medium itself?
 25 MR. PETERSEN: Objection to form,

1 JOHN P. WILKIN
 2 objection, lacks foundation.
 3 But if you have a basis on which to
 4 answer that's not speculative, please do so.
 5 A. The process of making paper during that period,
 6 pulping process typically involved creating paper
 7 with a high acid content, a low alkaline content.
 8 BY MR. GOLDMAN:
 9 Q. And when you say typically, you said typically
 10 for works that are in which date range did you
 11 mention?
 12 A. 1850 to 1990.
 13 Q. So are you saying books that were created during
 14 the time period 1850 to 1990 typically involved
 15 paper with a high acid content; is that correct?
 16 MR. PETERSEN: Objection to form.
 17 A. That's my -- that's my understanding.
 18 BY MR. GOLDMAN:
 19 Q. And so is it your understanding that works that
 20 were created during that time period with a high
 21 acid content are deteriorating?
 22 MR. PETERSEN: Objection to form.
 23 A. It is my understanding that works created using
 24 that method during that period are deteriorating
 25 with the natural process of decay.

1 JOHN P. WILKIN
 2 BY MR. GOLDMAN:
 3 Q. Now -- now, you said earlier that this wasn't
 4 your area of expertise; is that right?
 5 MR. PETERSEN: Objection to form.
 6 BY MR. GOLDMAN:
 7 Q. And by this area, I mean, the area of making a
 8 determination as to whether something is damaged
 9 or deteriorating; is that right?
 10 MR. PETERSEN: Same objection.
 11 A. The preservation and conservation is not my
 12 professional area of training or expertise.
 13 BY MR. GOLDMAN:
 14 Q. Who at UM ultimately would make the determination
 15 as to whether a particular work would be
 16 digitized for preservation purposes because it is
 17 damaged or deteriorating?
 18 MR. PETERSEN: Objection to the extent
 19 it suggests that only one person would make that
 20 determination. If the witness can answer, he is
 21 certainly free to do so.
 22 A. It's a complicated process with many people who
 23 are involved, including preservation and
 24 conservation staff, and not infrequently
 25 collection development staff.

1 JOHN P. WILKIN
 2 BY MR. GOLDMAN:
 3 Q. Do they -- do you know, are you aware of whether
 4 those -- those people have written guidelines
 5 that they use when making a determination as to
 6 whether a work is damaged or deteriorating?
 7 A. I'm not aware of whether they have written
 8 guidelines.
 9 Q. Have you ever seen written guidelines that set
 10 forth the criteria that should be applied to
 11 determine whether a work is damaged or
 12 deteriorating?
 13 MR. PETERSEN: Prepared by anyone?
 14 BY MR. GOLDMAN:
 15 Q. Prepared by anyone.
 16 A. I don't recall. This is an area of considerable
 17 professional activity and I'm sure that things
 18 like that have been around me and I may have seen
 19 them, but I don't recall.
 20 Q. Do you know whether prior to a work being
 21 digitized for preservation purposes anyone on the
 22 library staff made a search to determine whether
 23 an unused replacement copy of the particular work
 24 that was going to be digitized could be obtained
 25 on the market?

JOHN P. WILKIN

MR. PETERSEN: If you could just give me a moment to look at that question. That was a huge question.

MR. GOLDMAN: I know it's a long question, we can read it back if we need to.

MR. PETERSEN: Yeah, I'm not sure, but when do you mean? What time?

BY MR. GOLDMAN:

Q. And this question still relates to the time period prior to the Google MDP. Let your counsel take a look and make his objections, if any.

MR. PETERSEN: Objection to form, objection, vague, and objection, lacks foundation. If the witness is comfortable, if he understands the question, he certainly may answer it.

I know it's been some time, been delayed occasioned by my objections, so you may want to have that question read back to you.

A. Why don't we read it -- read it back.

(The following record was read by the reporter at 11:01 a.m.:

"QUESTION: Do you know whether prior to a work being digitized for preservation purposes anyone on the

JOHN P. WILKIN

library staff made a search to determine whether an unused replacement copy of the particular work that was going to be digitized could be obtained on the market?")

MR. PETERSEN: And this is prior to the -- and counsel clarified, this is prior to the MDP.

A. Right. I believe it's the case that it was common for searches to be performed for unused replacement copies.

BY MR. GOLDMAN:

Q. Do you know how those searches were conducted at that time?

A. I don't.

Q. Who would know how those searches were conducted?

A. At that time --

MR. PETERSEN: Who at the university now would know then or who then would know?

BY MR. GOLDMAN:

Q. Who would know then?

MR. PETERSEN: Titles of people or names?

BY MR. GOLDMAN:

JOHN P. WILKIN

Q. I'm asking generally who, and we'll see what answer you can provide.

A. Probably preservation and conservation staff at that time.

Q. And what about today?

A. Today? I -- let me just think about that for a second. I think that might be done by technical services staff.

Q. Okay, I'm going to show you what was marked yesterday as PC11, which are -- which are entitled Responses to Plaintiff's First Requests For Admission to Mary Sue Coleman, this is a document that was provided to us by counsel for University of Michigan and others.

MR. BERNARD: Which document is it?

MR. PETERSEN: The Response to Plaintiff's First Request For Admission to Mary Sue Coleman.

BY MR. GOLDMAN:

Q. And I see you're already taking a look at this document, but I guess I would just first ask you to take a look at the document and let me know whether you've seen a copy of this document before?

JOHN P. WILKIN

MR. PETERSEN: And I'll just note for the record and also for the witness that this document was prepared in part under the advice of counsel, and so I just caution the witness not to divulge attorney-client privileged information.

But you are free to answer factual questions addressed to that, but please be careful not to -- not to divulge attorney-client privileged information.

BY MR. GOLDMAN:

Q. Have you seen a copy of this document before?

A. I have.

Q. Okay. And did you help collect information that -- to respond to the request that was made for this document?

A. I did.

Q. If we could turn to page 5 -- sorry, page 7 and look at request number 5.

A. Uh-huh.

Q. Let's read the -- I'll read the request and then I'll direct you to the portion of the response for which I'm going to ask questions.

A. Uh-huh.

Q. So number 5 says: For each work listed on

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Schedule A hereto, admit that the library could, after a reasonable search (sic), obtain an unused replacement of the work at a fair price. And then if you turn to the next page, and after your counsel included a number of objections --

A. Uh-huh.

Q. -- which are, you know, preserved, subpoint (i) says: 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, and then it sets forth a number -- a number of works. I guess my first question is: Do you know the -- do you know the date that the library conducted the searches that are referenced in this question?

MR. PETERSEN: Objection to form.

A. I don't. They were conducted in -- in support of preparing a response.

BY MR. GOLDMAN:

Q. So you mean the searches that are referenced here were conducted in response to plaintiff's question; is that --

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MR. GOLDMAN: The part that we're talking about right now, subpart (i).

MR. PETERSEN: Objection to form.

A. By help do you mean coordinated the process?

BY MR. GOLDMAN:

Q. Let me -- let me ask a different question. What was the nature of your help? How did you help collect the information that was used in this response?

A. I identified managers who could direct staff to collect this information.

Q. And who was the manager that you directed to help staff in response to this question?

A. Who was the manager who could direct staff to collect the information?

Q. Yes.

A. Right, because the manager wouldn't have collected the information. Our associate university librarian for collections, Bryan Skib.

Q. I'm sorry, say the name again?

A. Bryan Skib, S-K-I-B, B-R-Y-A-N. S-K-I-B.

Q. Are you aware of which databases were used to conduct the searches referenced in this answer?

MR. PETERSEN: Objection to form.

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MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

Q. Is that your understanding?

A. That's my understanding.

Q. When it says the library conducted searches, do you know who at the library conducted these searches?

MR. PETERSEN: Objection to form.

A. Are you asking about the individual or the department?

BY MR. GOLDMAN:

Q. Let's start with the department.

A. I believe that would have been the acquisitions department.

Q. And do you know who at the acquisitions department?

A. I do not. I do not recall.

Q. Did you -- you said that you did help collect information that was used in these responses; is that right?

A. I did say that.

Q. Did you help collect the information that was used to respond to this question number 5?

MR. PETERSEN: Which part of number 5?

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A. I'm not. I could speculate.

BY MR. GOLDMAN:

Q. Well, are you generally aware of what databases the library uses to conduct searches like this?

A. Not comprehensively.

Q. So I'm going to ask you to speculate.

MR. PETERSEN: It doesn't do the record any good, Jeremy, you know that. We can't use speculating on the record.

BY MR. GOLDMAN:

Q. Well, what is your -- let me ask this, not to speculate. Why would -- you said you could speculate, what do you mean by speculate?

MR. PETERSEN: Is it an informed opinion or would you be guessing?

THE WITNESS: I would be guessing.

MR. PETERSEN: Okay. All right.

BY MR. GOLDMAN:

Q. I assume that Bryan Skib would know the answer to that question?

A. He may know the answer to that question.

Q. Are you aware of databases that are generally used by the acquisitions department to search for the availability of books?

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MR. PETERSEN: Objection to form.

A. Some. One, maybe a couple.

BY MR. GOLDMAN:

Q. What are the databases that you're aware of?

A. Amazon is one that they would use.

Q. And what is another one?

A. In the past in my experience, Bookhouse, keeping in mind that this is not my area of responsibility and I'm several steps removed from it.

Q. If we go to subpart (ii), it says: Defendant avers 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 identified offers advertising for sale one or more allegedly new print copies of an apparently identical edition of the following works listed on Schedule A for the following prices. When it says on the date that the library conducted searches, is it the same answer as before?

MR. PETERSEN: Objection to form. If you put the question to him --

BY MR. GOLDMAN:

Q. Let me ask it again. Are you aware of when this search was conducted?

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MR. PETERSEN: Objection to form.

But if you can answer.

A. I'm not aware of the specific date. It was done in preparation for the response.

BY MR. GOLDMAN:

Q. And are you aware of which databases were searched?

A. I'm not.

Q. Now, when it says that the library identified offers advertising for sale one or more allegedly new print copies of an apparently identical edition of the following works, do you know what is meant by apparently identical edition?

MR. PETERSEN: Objection to form.

A. The whole sentence is important, often materials are advertised and when we attempt to acquire them, they are not available. Offers advertising for sale, sometimes the work is not available. It has advertised availability, but the work is not available. The works are alleged to be new, and when we acquired them, if we are able to acquire them, they are not new in some cases. And occasionally the work will be purported to be of a specific edition and when the book arrives, it's

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not the same edition.

BY MR. GOLDMAN:

Q. We were speaking earlier about the -- we were speaking earlier about the library's digitization of certain works for preservation purposes, and I'm talking about the time period prior to the Google MDP, and I believe you said that it was common for the library to make a search for a replacement work of an unused copy; is that -- is that right?

MR. PETERSEN: Object to the extent it mischaracterizes his testimony.

If you can identify if it does at all.

BY MR. GOLDMAN:

Q. And if I am mischaracterizing, please let me know.

A. I think that's a fair, incomplete characterization. In many cases, not all cases necessarily, and I couldn't tell you which cases that was -- that where it did happen, but it was common for us to search for the availability of a replacement copy.

Q. Now, turning to that phrase replacement copy --

A. Uh-huh.

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Q. -- when the library does a search for a replacement copy for preservation purposes, does the library look for the identical edition of the copy it is looking to replace?

A. Typically, frequently, and overwhelmingly, I would say.

Q. So if there's a later imprint or edition of the work available, the library would not consider that a replacement copy?

MR. PETERSEN: Objection, form, objection to the extent it would call for a legal conclusion, but the witness can certainly answer if he understands the question and has information to describe.

A. So I didn't say we would not acquire that copy, and that's what you said.

BY MR. GOLDMAN:

Q. Would the library, if -- if the library conducted a search and found a later edition of the same work, do you know whether the general practice of the library would be to still digitize that work?

MR. PETERSEN: Objection to form, lacks foundation, and objection to the extent it calls for legal conclusions.

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A. I think the answer is perhaps.

BY MR. GOLDMAN:

Q. Let me ask it a different way.

A. Yes.

Q. Would -- would the determination by library staff that a later edition of that work was available for purchase, and by later edition, I mean, unused copy of a later edition --

A. Uh-huh.

Q. -- was available for purchase, would that preclude the library from digitizing that work?

MR. PETERSEN: Objection to form, and objection to the extent it calls for a legal conclusion. And objection, this question kind of lacks context, but if the witness can understand the question, then by all means, but I don't understand the context.

MR. GOLDMAN: Well, the context is the same context that we've been talking about, which is digitization for preservation of works that occurred prior to the mass digitization project.

MR. PETERSEN: Digitization for purposes of the preservation prior to MDP where there's no purpose of providing access either to

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people with print disabilities or for purposes of adding a search functionality to a corpus of works, so that's what I meant about context.

So if we can put that fine a point on it, and if you understand that question, then please by all means respond.

A. I think I need the question read back, but I think the answer is perhaps.

BY MR. GOLDMAN:

Q. Perhaps -- the question was whether the existence or whether a determination that an unused --

A. Later edition.

Q. -- later edition was available, whether that would stop the library from making a digital copy?

MR. PETERSEN: And I need to have all the context on it, for purpose of preservation prior to MDP --

MR. GOLDMAN: Okay.

MR. PETERSEN: -- for purposes that are not including for giving access to people with print disabilities or adding search functionality, is that essentially --

MR. GOLDMAN: It is. I honestly

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appreciate your help in doing that, I'm just afraid that adding all those caveats prevents me from actually asking the questions because it's hard for lay people -- not lay people, any person to answer questions when all that is going on.

MR. PETERSEN: I just want to make sure we understand the full context.

MR. GOLDMAN: Yes, we do, I think Mr. Wilkin understands the context.

A. In the past in those circumstances, it might have and it might not have.

BY MR. GOLDMAN:

Q. And what would determine whether it would or would not have prevented the library from making the copy?

A. Many factors would -- it might depend on the work and it might depend on the copy available, for example.

Q. Are you aware of the term HathiTrust?

A. Yes.

Q. Okay. And does -- what is HathiTrust?

MR. PETERSEN: Objection to form. But you can answer.

A. HathiTrust is a service of the University of

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Michigan through which a number of libraries collaborate to support activities of collective and individual interests to libraries.

BY MR. GOLDMAN:

Q. And does the HathiTrust have -- does the HathiTrust operate something called the HathiTrust Digital Library?

A. The HathiTrust --

MR. PETERSEN: I will object to form on that.

But you can answer.

A. -- yeah, does operate what we call the HathiTrust Digital Library.

BY MR. GOLDMAN:

Q. And what is the HathiTrust Digital Library?

A. There's a lot bound up in that. I don't -- it would take a lot to unravel it, but it's the amalgamation of the works and the right's determination process and the preservation and the access controls and the -- I couldn't begin to iterate everything that's involved in that.

Q. What is the HathiTrust right's data -- what is the HathiTrust's Rights Database?

MR. PETERSEN: Objection to form.

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 2 But you can answer.
 3 A. We call the database, the relational database
 4 where we store information about known and -- and
 5 assumed or purported rights for works in something
 6 called the Rights Database.
 7 BY MR. GOLDMAN:
 8 Q. And does the Rights Database assign various
 9 attributes to the works that are stored in the
 10 HathiTrust Digital Library?
 11 MR. PETERSEN: Objection to form.
 12 A. Yes.
 13 BY MR. GOLDMAN:
 14 Q. And do those attributes -- are those attributes
 15 used to determine the extent to which a user of
 16 the HathiTrust system can access a particular
 17 work?
 18 A. Some of those attributes are. There are a number
 19 of attributes in the Rights Database.
 20 Q. Are one -- is one of the attributes in the Rights
 21 Database something called OPB?
 22 A. Sorry, yes.
 23 MR. PETERSEN: Only if you know.
 24 A. Yes, that's right, yes.
 25 BY MR. GOLDMAN:

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 2 be so badly damaged, it's unusable, the work may
 3 no longer be in the collection. We use succinct
 4 -- this is a relational database, we use succinct
 5 labels and that was handy nomenclature.
 6 BY MR. GOLDMAN:
 7 Q. When is -- when is the attributes of OPB applied
 8 to a particular work?
 9 MR. PETERSEN: Objection to form,
 10 objection to the extent it was asked and answered.
 11 A. Chronologically when?
 12 BY MR. GOLDMAN:
 13 Q. Yes, chronologically in the process from a book
 14 going from print form to being stored in the
 15 HathiTrust Digital Library, at what point in the
 16 process is the attribute of OPB applied?
 17 MR. PETERSEN: Objection to form.
 18 A. It could be applied at any time prior to
 19 digitization, after digitization. Typically it's
 20 applied after digitization.
 21 BY MR. GOLDMAN:
 22 Q. Do you know of instances in which it was applied
 23 prior to digitization?
 24 A. I don't.
 25 Q. Now, as part of the process for determining

1 JOHN P. WILKIN
 2 Q. And I'm not trying to quiz you, I'm happy to show
 3 you a document --
 4 A. Right, it is.
 5 Q. -- if you need help remembering these acronyms.
 6 And what does OPB mean?
 7 A. It stands for out of print and brittle.
 8 Q. And what is -- when is a -- the attribute of OPB
 9 applied to a particular work?
 10 MR. PETERSEN: If you know.
 11 A. We apply the attribute OPB to works where we have
 12 determined the work -- the work in question to be
 13 out of print and the work to be unusable or to no
 14 longer be in the collection because it is missing.
 15 And I realize that's not brittle, but...
 16 BY MR. GOLDMAN:
 17 Q. Right. So I want to -- that's what I was going
 18 to ask. Tell me again, how are you defining the
 19 term brittle used for that definition?
 20 MR. PETERSEN: Objection to form,
 21 objection to suggest that he's defining that,
 22 mischaracterizes testimony, lacks foundation, but
 23 if the witness can answer, he certainly may do so.
 24 A. It's -- it's a placeholder for a number of
 25 conditions. The work may be brittle, the work may

1 JOHN P. WILKIN
 2 whether the attribute of OPB is applied to a
 3 particular work, is it the case that subsequent
 4 searching must first determine that no later
 5 imprint or edition is available of that work?
 6 MR. PETERSEN: Objection to form,
 7 objection, it lacks foundation, objection to the
 8 extent it calls for a legal conclusion.
 9 But you may answer to the extent you
 10 know and are not speculating and you understand
 11 the question, then please, of course, respond.
 12 A. I'm afraid I don't understand the question.
 13 BY MR. GOLDMAN:
 14 Q. That's fine. Number 24?
 15 A. Uh-huh.
 16 MR. PETERSEN: Jeremy, we're
 17 approaching another hour mark, so whenever you
 18 feel --
 19 MR. GOLDMAN: Yeah, let's get through
 20 this line. Time is flying.
 21 Can we mark this JW3.
 22 MARKED FOR IDENTIFICATION:
 23 DEPOSITION EXHIBIT JW3
 24 11:25 a.m.
 25 BY MR. GOLDMAN:

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Q. What I marked as JW3 is a document that I printed off -- that I printed from HathiTrust.org. It's entitled HathiTrust Rights Database, I printed this last week.

A. Uh-huh.

Q. Do you recognize this document or what was -- what's on the website and was printed as this document?

MR. PETERSEN: May he have a few more minutes to take a look at it?

BY MR. GOLDMAN:

Q. Sure, take your time to look at it.

A. Yes. I believe this is the documentation for our Right's Database.

Q. And who prepared this documentation?

MR. PETERSEN: If you know.

BY MR. GOLDMAN:

Q. If you know.

A. I don't. It would be several of my staff.

Q. Do you know, did you review this documentation before it was posted on the HathiTrust website?

A. I -- yeah, I almost certainly reviewed a version of this before it was posted. Documents undergo continuing revision.

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Pierre Soule, 1853 to 1855 by Amos Ettinger, OUP, 1932, is evaluated and determined to be too brittle to circulate. Subsequent searching determined that no later imprints or editions are available. My question is: When it says here no later imprints or editions are available, does this mean that the search that is conducted as part of making the determination for an OPB attribute --

A. Uh-huh.

Q. -- includes searches for later imprints or additions?

A. No.

MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

Q. And your answer was no?

A. No.

Q. So what does it mean?

A. It means in this simplified, hypothetical case for a work that we don't even know it exists, it was determined that later imprints or editions would have been a relevant replacement, that's a hypothetical. It wouldn't necessarily be the case that a later imprint or edition would be

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Q. And do you as a general matter review revisions before they are posted?

MR. PETERSEN: Objection to form.

A. To this document in particular?

BY MR. GOLDMAN:

Q. Yes.

A. No.

Q. If you turn to the second page --

A. Uh-huh.

Q. -- under the heading Rights Assignment, there's a subheading use cases, and then it says: The following simplified, hypothetical rights examples help illustrate both the attributes applied and the rules interpreted.

A. Uh-huh.

Q. I would like you to turn your attention to number 5 on this list.

A. Yes.

Q. And for the record I'll just read it to make it clear.

A. Yes.

Q. It says: Out-of-print and brittle: Through standard mechanisms, (e.g., review of a volume at a circulation desk), The Mission to Spain of

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appropriate as a replacement.

Q. So there are circumstances where a later edition or imprint would be an appropriate replacement and there are circumstances under which a later edition or imprint would not be an appropriate replacement?

MR. PETERSEN: Objection, asked and answered. But he can certainly answer that again. I believe the answer was given a few minutes ago.

A. I believe I -- yeah, it's a fair statement, both are true.

BY MR. BERNARD:

Q. And you -- you don't know the criteria that would determine whether a later edition or imprint would be appropriate?

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

A. There are many criteria where that would be -- where that would be assessed.

BY MR. GOLDMAN:

Q. What are some of those criteria?

A. The nature of the edition and the importance of the particular edition would be a criterion.

Q. One more question, can you just give an example

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2 of when a later imprint or edition would be an
3 appropriate replacement?

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

7 But if you have any examples that come
8 to mind, please do respond.

9 A. I can't give you a specific example.

10 BY MR. GOLDMAN:

11 Q. Or a category of work that would fall under those
12 parameters?

13 A. I don't think a category would be appropriate
14 either. I could draw on my experience of some 20
15 plus years ago on the other side as a selector and
16 talk about when I would have seen a later edition
17 as an appropriate replacement or not, but every
18 one is a case unto itself.

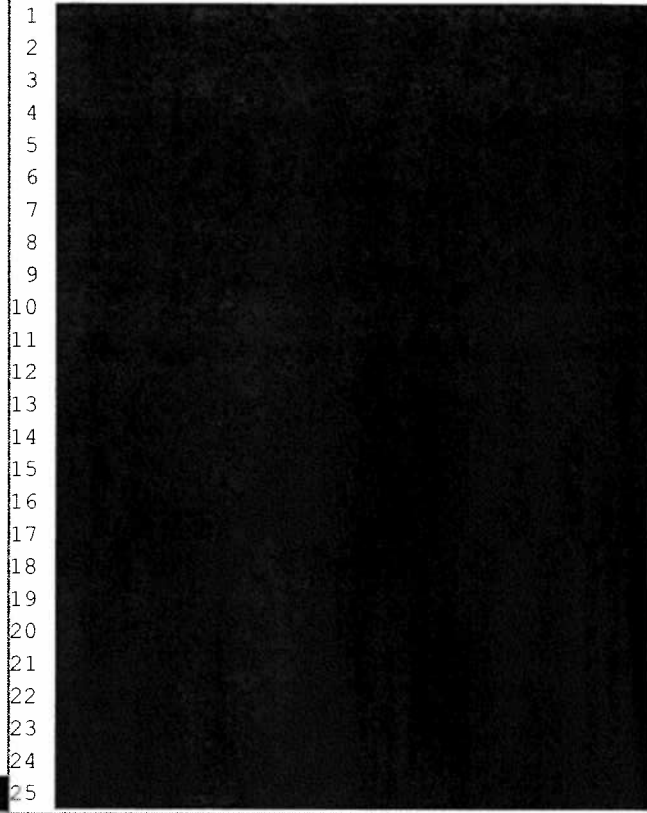
19 MR. GOLDMAN: Okay. Let's take a
20 break.

21 MR. PETERSEN: Okay, great.

22 (Recess taken at 11:31 a.m.)

23 (Back on the record at 11:46 a.m.)

24 BY MR. GOLDMAN:
25



11 Q. At that time had you made any estimates of what
12 the cost would be to digitize Michigan's library
13 collection as it existed at that time?

14 MR. PETERSEN: By you, you mean,
15 Mr. Wilkin personally or do you mean the
16 university?

17 MR. GOLDMAN: Right now I'm just asking
18 about Mr. Wilkin.

19 BY MR. GOLDMAN:

20 Q. Whether you had made any such estimates?

21 A. I had not made any such estimates of the cost. We
22 had done considerable -- as a library,
23 considerable work to determine costs, publications
24 about cost, about scale. I was knowledgeable
25 about cost, but I had not sat down to calculate

1 JOHN P. WILKIN
2 the cost of digitizing the entire collection of
3 the library.

4 Q. At that time did you have a general notion of
5 what the cost would be to digitize UM's library
6 collection?

7 MR. PETERSEN: Objection to form.

8 A. I think what I said before is probably the best
9 answer. I have had then a sense of the range of
10 costs for digitization depending on treatment and
11 depending on the materials and a sense of the size
12 of our collection. Without undertaking that
13 digitization, it's impossible to get a specific
14 sense of what the cost would be.

15 BY MR. GOLDMAN:

16 Q. What was the range of costs that you had
17 estimated at that time?

18 A. I had not made estimates of a range of cost.

19 Q. I believe you said you had some idea of what the
20 range of costs might be?

21 A. For a book, for a book. Right, so the
22 determination would be made with regard to a
23 specific volume and you have a sense of the size
24 of your collection. Can I elaborate on this a
25 bit?

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Q. Please.

A. So some books are in such bad condition that the only effective way to digitize them is the last use they will have, and typically that involves sheet feeding. Librarians will use the term corn flakes to describe the condition of the book, it's falling apart in your hands, and that tends to be more -- less expensive, more inexpensive to digitize that book because sheet feeding is an automatic process.

Some books have significant artifactual value and it's important to keep the print. It's almost always important to keep the print because of the relationship between formats, and -- and the process of digitizing it will be more expensive. It's impossible to know before you evaluate the books what the most appropriate method would be and what the cost would be. If you've got 9 million books, you've got 9 million decisions, at least theoretically.

Q. Did you have an estimate of the range of cost per book depending on the conditions that you just described?

MR. PETERSEN: Objection to form.

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A. I had a professional sense of the range of costs.

BY MR. GOLDMAN:

Q. And what was your professional sense of the range of costs?

A. Specifically I couldn't tell you, but I suspect that it may have been as low as \$35 and as high as several hundred dollars per book.

Q. And did you have a sense at that time of how the totality of Michigan's collection broke down into those various categories of works that you just described?

A. No.

MR. PETERSEN: Objection to form, vague.

BY MR. GOLDMAN:

Q. So you didn't know approximately what percentage of works would fall into the \$35 per book range?

MR. PETERSEN: Objection to form.

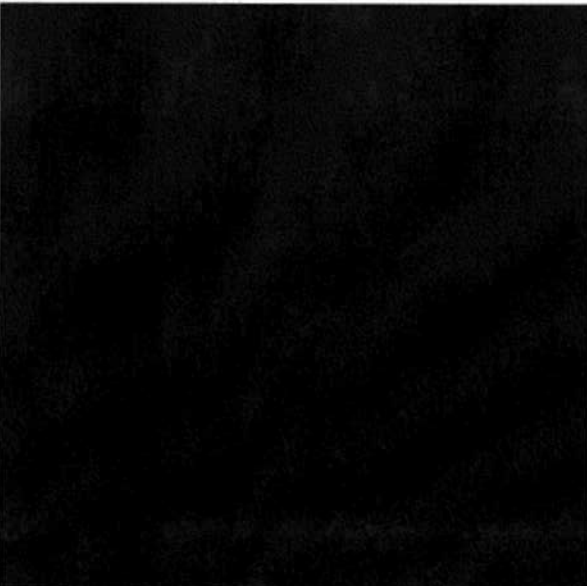
A. That's right. We know something about the distribution of the collection based on bibliographic information, we know something about publishing history and conditions. We know that 75 percent of the collection is published between 1950 and 1990, that period that would be most

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likely to be in peril, 75 percent of the collection. Those are things that we carry with us, but everything is an individual decision.

BY MR. GOLDMAN:

Q. Do you know approximately how many works -- withdrawn.



MR. PETERSEN: Objection to form, objection to the extent it's been asked and answered when the witness gave testimony about the range of expense on a per book basis.

But if you have anything additional to add.

A. You may have seen references to numbers where we would use a nominal \$60 per volume in order to help a conversation to understand the scope and scale of the challenge and the value of the work.

BY MR. GOLDMAN:

Q. I actually haven't seen the \$60 nominal value, but where would that number have appeared, to your knowledge?

A. I don't know, but I've heard and seen numbers like that in -- in a number of venues.

Q. And do you know what the basis is for that \$60 nominal value?

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- 1
- 2 A. It's a number that's often used because it is
- 3 somewhat representative, but it's always an
- 4 estimate.
- 5 Q. Do you believe it to be a fair estimate of the
- 6 nominal -- of the average cost per -- to digitize
- 7 each book?

MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

- 10 Q. In your personal opinion?
- 11 A. It seems a bit low.
- 12 Q. In your personal opinion, what do you think the
- 13 number should be?

MR. PETERSEN: Note my objection to form on that, please.

But you can answer.

- 17 A. In hypothetical discussions, it's a useful number,
- 18 but I think the number really is what it costs
- 19 you.

BY MR. GOLDMAN:

- 20 Q. And what cost do you place into -- what factors
- 21 go into the cost of digitizing a book?

MR. PETERSEN: From an accounting standpoint?

BY MR. GOLDMAN:

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believe that digitizing UM's library books was a pressing issue at the time; is that correct --

MR. PETERSEN: Objection.

BY MR. GOLDMAN:

- 6 Q. -- that you said that, is that a fair
- 7 characterization?

MR. PETERSEN: Objection to form.

- 9 A. Could we get read back my characterization?

MR. GOLDMAN: If you can find the place in the transcript where he talked about a pressing issue.

(The following record was read by the reporter at 12:00 p.m.:

"ANSWER: Keeping in mind that we had been digitizing for the purposes of preservation and access, we had a very clear sense of scale and cost and how pressing the issue was and having paid and getting that work done is/was attractive to us.")

BY MR. GOLDMAN:

- 24 Q. I guess I meant how pressing the issue was?
- 25 A. Thank you. The issue is about not just U of M

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- 2 Q. I mean, from an expense standpoint.
- 3 MR. PETERSEN: If you know.

A. Yeah, it's -- it's helpful to think of the library's work as a continuum of work with catalogers, I wouldn't be able to calculate the cost of their work in cataloging, bar coding materials. All these things happen in the process, and the digitization doesn't happen without them, there are those additional costs. The cost of scanning a book typically nondestructively is about 21 to 23 cents per page, OCR will vary depending on the staff and the tools that are used. But when you use an estimate, it's a placeholder for what ultimately is the real cost to you.

BY MR. GOLDMAN:

- 18 Q. But you said that you believe \$60 per book to be
- 19 on the low side, is that --

A. I believe it is.

- 21 Q. And so what do you think the number should be?

A. I don't know what the number should be.

- 23 Q. But just more than 60?

A. Right.

- 25 Q. You also mentioned that digitizing, that you

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Library's collection, but what we refer to as the cultural record, not simply -- but right now primarily printed books and journals, not simply held by the University of Michigan, but library collections more generally. We have some sense of the scope and scale of the issue, and that materials are disappearing for a variety of reasons.

- 10 Q. And some of those reasons including that works
- 11 are deteriorating, for example?

A. Yes.

- 13 Q. And some of those works are damaged, for example?

A. Yes.

- 15 Q. And many of those works are printed on acid
- 16 paper; is that right?

A. Yes, acidic paper, right.

- 18 Q. Now, there are works in University of Michigan's
- 19 collection that are not deteriorating; is that
- 20 correct?

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

- 23 A. Less so is probably a fair characterization, less
- 24 rapidly. For example, I think we would all agree
- 25 that everything material is deteriorating. Books

JOHN P. WILKIN

printed in the 16th century on rag cotton paper tend to be more durable than books printed in the early 20th century, or they are more durable than books printed in the early 20th century.

BY MR. GOLDMAN:

Q. Did there come a time when publishers stopped printing books on acid paper as a general matter?

A. As a trend, acid paper is being used less. I believe it's being used widely in some parts of the world, but I believe that in the United States, for example, that has diminished significantly.

Q. At the time when you were considering working with Google to digitize UM's books, I'm talking about the time before you entered into the agreement, were there works in UM's collection that you -- that you didn't believe were -- that for which you did not believe there was a pressing need to digitize them for preservation purposes?

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

A. Let's try the question again.

BY MR. GOLDMAN:

JOHN P. WILKIN

Subsequent to their microfilming they disappeared. Many works are not on the market and even works that are on the market today may not be on the market tomorrow. We're dealing with a large problem on the order of millions of volumes and the deterioration takes place so rapidly that, for example, an assessment of all of the criteria would be so expensive and time consuming that materials would be lost in the process. And so your question was would I see those works that were more contemporaneous being in scope and the answer is yes, not simply for preservation purposes, but for -- but for other purposes that are part of the library's responsibility.

BY MR. GOLDMAN:

Q. I noticed that HathiTrust has -- at least purports to have a digital copy of Harry Potter and the Deathly Hallows by J.K. Rowling, what is the -- what is the need, if you think there's a need to digitize a book like that for preservation purposes?

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

JOHN P. WILKIN

Q. Well, there's newer books in UM's collection too, by newer books, I mean, books printed in the last five years?

A. Yes.

Q. Or ten years, correct?

A. Yes.

Q. And books that are printed not on acid paper, correct?

A. Yes.

Q. And books that are commercially available on the market, correct?

A. Yes.

Q. Did you -- did you find it pressing to digitize those books as well?

MR. PETERSEN: Objection to form, objection, vague, objection to the extent it calls for legal conclusions.

But if he can answer, please do so.

A. So the answer -- the answer is generally yes because it's not just deterioration that poses a threat. It's the disappearance of a book. We know that works that were microfilmed by Eugene Power and the British manuscripts project that were in fine condition no longer exist.

JOHN P. WILKIN

unduly truncates the purposes of the HathiTrust, but if the witness understands the question and can respond, certainly he may do so.

MR. GOLDMAN: Mr. Petersen, like I said before, I actually do appreciate, your objections are very helpful, I am a little concerned that they're bordering on what is characterized as speaking objections and just coaching the witness a little bit. So I would just ask, and I am not saying that is necessarily the case, but I would just ask you to watch out for that.

MR. PETERSEN: I disagree with the characterization.

MR. GOLDMAN: Okay.

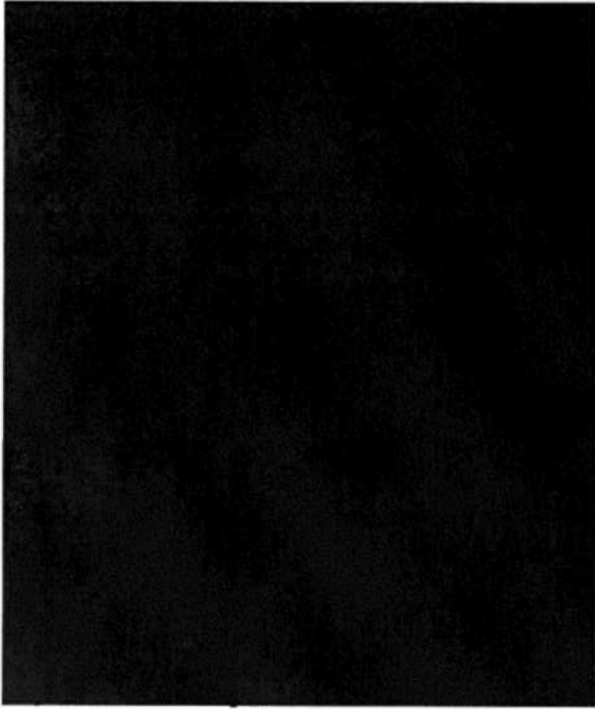
MR. PETERSEN: But again, if the witness can respond to the question, certainly he may do so.

MR. GOLDMAN: Sure.

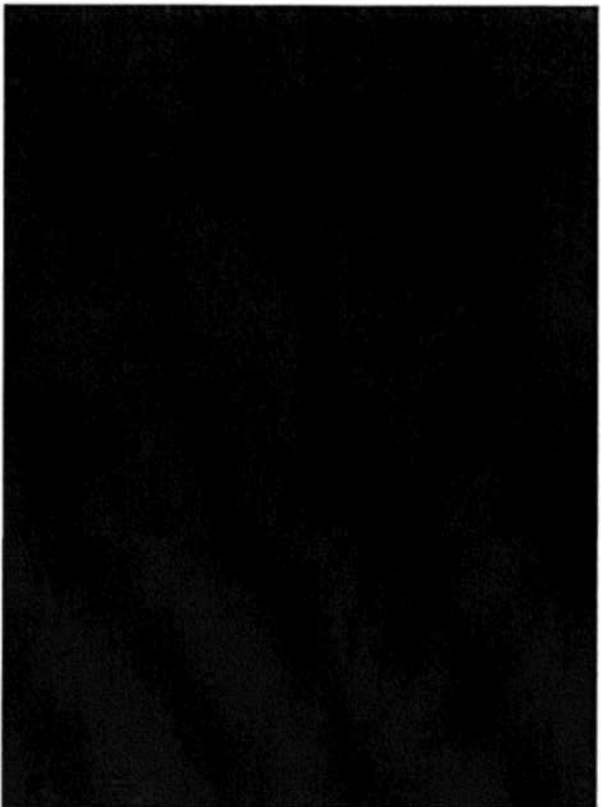
A. I think the simple answer is yes. And yes, because we have a curatorial responsibility, but it is the case that we consider more things than just preservation in the process. So the question was directed at whether Harry Potter and the Deathly Hallows needs to be preserved, and the

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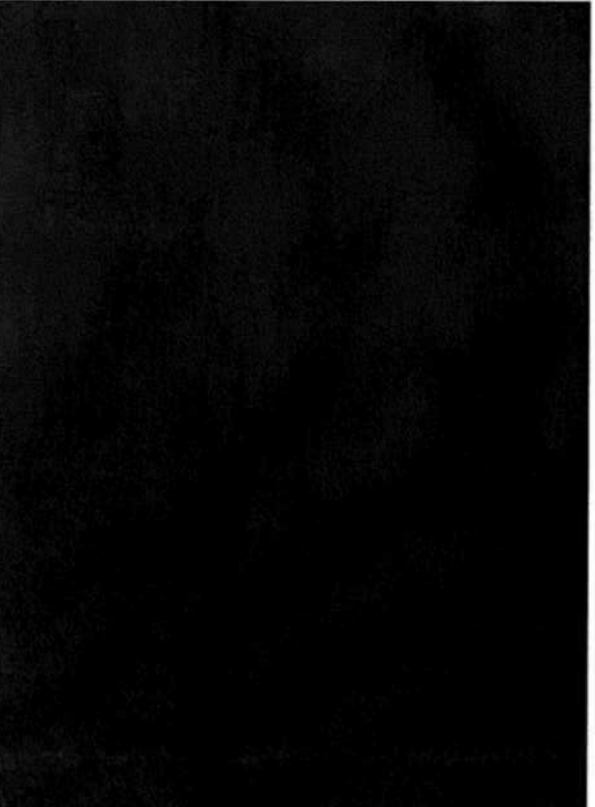
JOHN P. WILKIN
answer is yes.
BY MR. GOLDMAN:



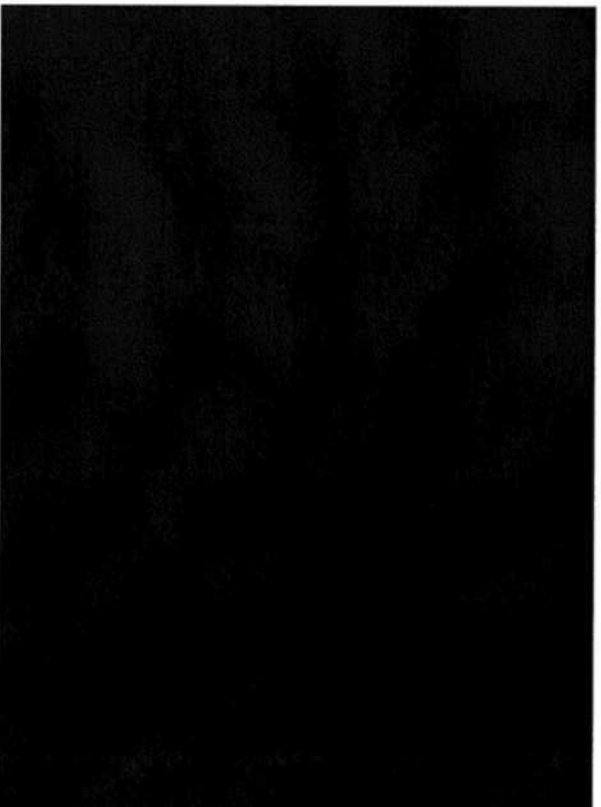
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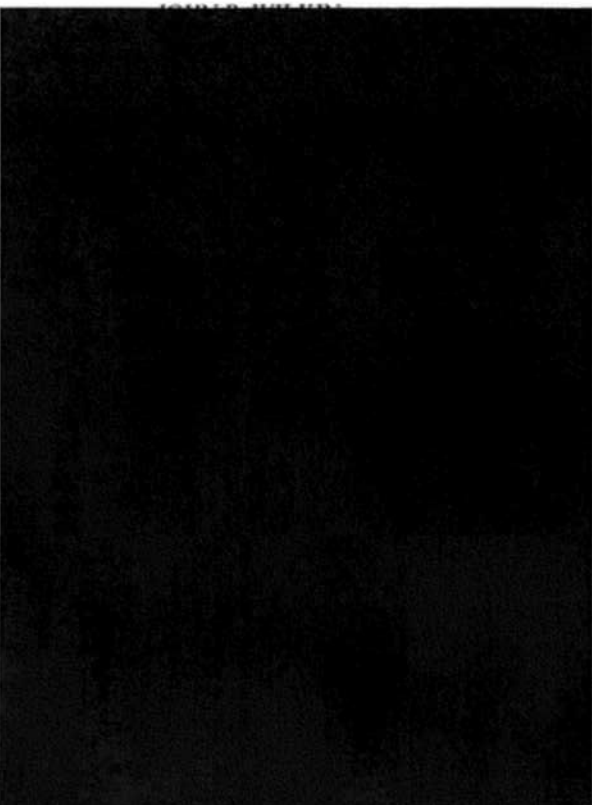
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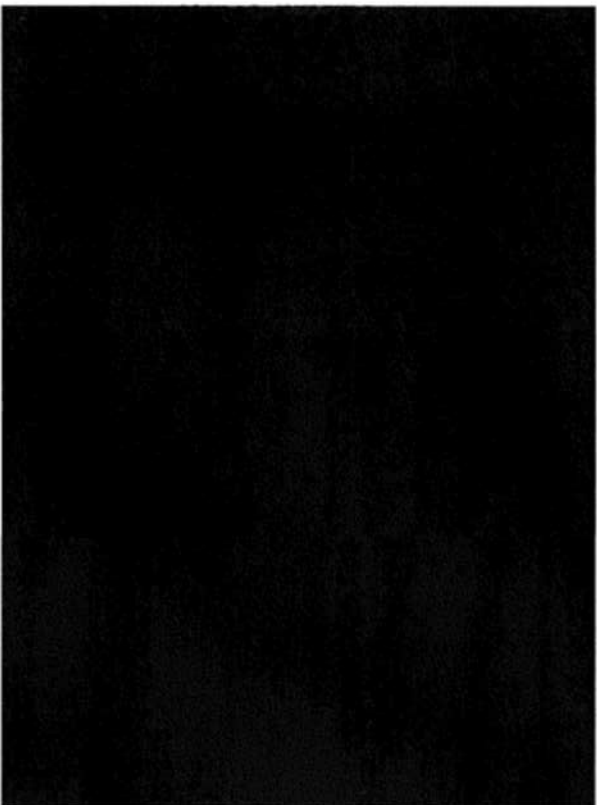
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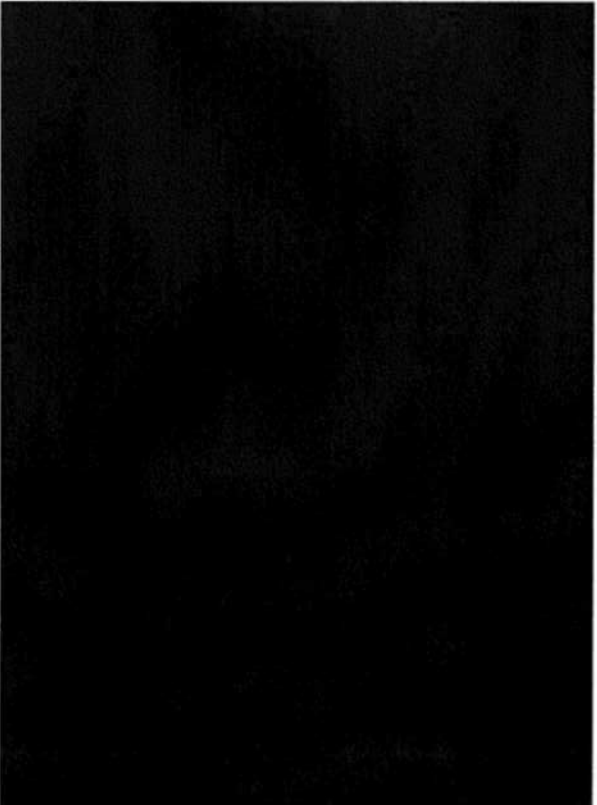
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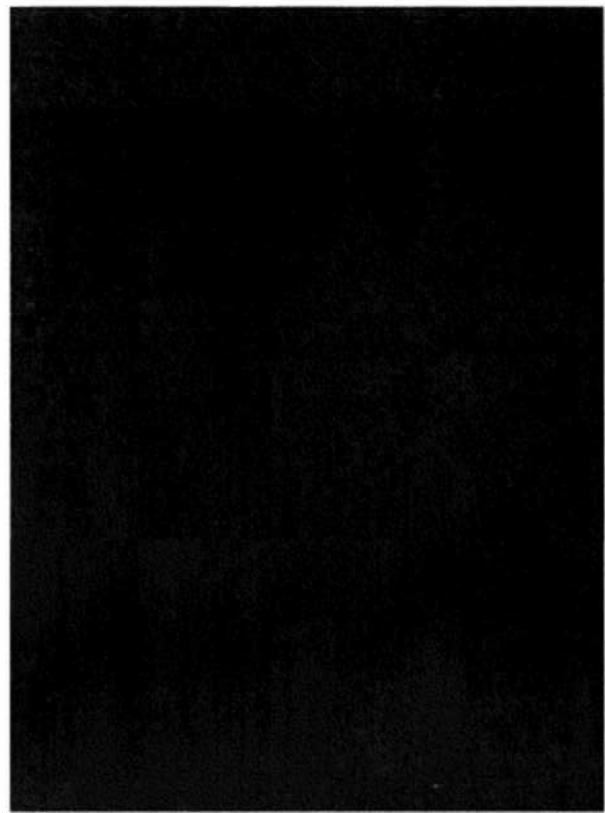
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BY MR. GOLDMAN:
Q. Are you aware that -- are you aware that Harvard, at least publicly, did not permit Google to digitize works that it believed were in copyright?
MR. PETERSEN: Objection to form.
A. I've heard that Harvard publicly asserted that they didn't allow Google to digitize in-copyright works. I don't know whether they did or didn't.



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JOHN P. WILKIN
Q. I have a --
MR. PETERSEN: Getting right around that time where lunch is ordinarily appropriate.
MR. GOLDMAN: I'm just getting started here. Can I have 33?
MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT JW4
12:21 p.m.
MR. PETERSEN: Jeremy, we are around that time where blood sugar levels get low.
MR. GOLDMAN: Okay. I'll finish with this document and then we'll --
MR. PETERSEN: Okay.
BY MR. GOLDMAN:
Q. What I marked as JW4 is a document titled John Wilkin Talks Google Print & Digitalization. You can take a look, although I assume you haven't seen this document before, but can you let me know whether you have?
A. I don't recall seeing this document.
Q. Do you know who John Blyberg is?
A. Yeah, uh-huh.
Q. He is a librarian at the Ann Arbor Digital Library, to the best of your knowledge?

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JOHN P. WILKIN
A. John used to be a librarian at the Ann Arbor District Library.
Q. District Library.
A. Yes. I believe he is in Connecticut, I'm not sure where he is.
Q. Do you recall giving a talk at the Ann Arbor District Library in or about 2005?
A. I do.
Q. Okay. What -- you can take a look at this document. This document is Mr. Blyberg's blog --
A. Yes.
Q. -- and notes about -- about that talk that you gave at the Ann Arbor District Library. It's not a direct transcription, I don't think it purports to be a direct transcription and I'm certainly not representing that anything in this document is accurate.
A. Thank you.
Q. But I did want to point to a couple of notes that he took that purport to be what you said, and I wanted to ask whether you have any recollection about those topics.
A. Okay.
Q. If you turn to the last page you can see this is

1 JOHN P. WILKIN

2 his notes about a Q and A session that occurred
3 after your talk, I believe, because it says prior
4 to it, there is something that says some mentions
5 from Q and A.

6 A. Uh-huh.

7 Q. And there is a question here that says, and it's
8 the third paragraph down, it says: Why has so
9 little been digitized at other libraries?

10 A. Uh-huh.

11 Q. And the response says: Harvard said to UM, and
12 then it says in parens, paraphrase --

13 A. Uh-huh.

14 Q. -- you haven't done much deep thinking about CR
15 issues. UM decided to stay focused on
16 principles. They don't want to break any laws or
17 hurt any books. UM had signed contract -- had
18 signed contract months before. Other
19 institutions did days before the public
20 announcement. I just wanted to know whether you
21 had any recollection or knowledge about this
22 statement that Harvard said to UM in paraphrase,
23 you haven't done much deep thinking about CR
24 issues?

25 MR. PETERSEN: Objection to form.

1 JOHN P. WILKIN

2 A. That's the salient piece there that I recall, but
3 nothing else from that conversation.

4 BY MR. GOLDMAN:

5 Q. Did Mr. Hilton tell you to whom he had spoken at
6 Harvard?

7 A. I believe that he said that he had spoken to Dale
8 Flecker.

9 Q. Can you spell the last name?

10 A. F-L-E-C-K-E-R.

11 Q. And do you know what Mr. Flecker's general
12 position is at Harvard or was at the time?

13 A. At the time. Mr. Flecker has retired.
14 Mr. Flecker was in a position similar to mine,
15 responsible for technology and the library.

16 Q. When you said -- or sorry, not when you said.

17 A. Yes.

18 Q. It says here on this page, UM decided to stay
19 focused on principles.

20 A. Yes.

21 Q. Did you say something in sum or substance like
22 that?

23 A. Uh-huh.

24 MR. PETERSEN: Objection to form.

25 A. Taking into account the misspelling, which is

1 JOHN P. WILKIN

2 A. I do. Reporting secondhand conversations there,
3 not conversations that I had.

4 BY MR. GOLDMAN:

5 Q. And what secondhand conversations have you heard
6 about?

7 A. I heard a -- from one of my colleagues, former
8 colleagues that somebody at Harvard had said this
9 to him.

10 Q. And who was the former colleague that you heard
11 that from?

12 A. James Hilton. James Hilton.

13 Q. Do you recall what James Hilton's position was at
14 UM at the time that you heard this?

15 A. I don't recall what it was specifically at the
16 time I heard this, but he was at one time interim
17 director of the library, and it may have been
18 during that time.

19 Q. Could you tell me, to the best of your
20 recollection, what Mr. Hilton told you?

21 A. That somebody at Harvard said that we hadn't done
22 much deep thinking on copyright issues.

23 Q. Anything else?

24 A. That's --

25 MR. PETERSEN: Objection to form.

1 JOHN P. WILKIN

2 important.

3 BY MR. GOLDMAN:

4 Q. Certainly. Well, you were speaking, so I guess
5 you wouldn't have spelled anything.

6 A. That's right.

7 Q. Taking into account the misspelling, did you say
8 something in sum or substance like that?

9 A. Yes, I believe that I did.

10 Q. And what did you say?

11 A. I said that we focused on principles that were
12 important to us, handling materials, having files
13 that conformed to specific formats and having the
14 files under our control.

15 Q. Now, were you saying that you were focused on
16 principles in contrast to the prior statement
17 about not having done deep thinking about
18 copyright issues?

19 MR. PETERSEN: Objection to form;
20 objection, mischaracterizes his testimony;
21 objection, calls for the witness to speculate
22 about matters and issues that were said many years
23 ago.

24 But to the extent you can respond, you
25 certainly may do so.

JOHN P. WILKIN

A. I think John's juxtaposing of these two things is puzzling. I think that what he's doing is listing several things he heard.

BY MR. GOLDMAN:

Q. If you turn to the first page and I only have a couple more questions and then we'll break. If you turn -- sorry, the second page.

A. Uh-huh.

Q. About halfway down the page there's a question, what are the transformative implications. And again, I'm going to read --

A. Uh-huh.

Q. -- what Mr. Blyberg wrote and then I'll ask you what you actually may or may not have said.

A. Right.

Q. Okay. The second -- we can read the first one, but I'm really going to ask you about the second point in this, which is --

A. Yep.

Q. -- John sees digitization as a catalyst to exaggerate and resolve intellectual property issues; do you recall making a statement, that statement or a statement similar to it?

MR. PETERSEN: Objection to form.

JOHN P. WILKIN

A. No.

BY MR. GOLDMAN:

Q. Okay. So you don't see digitization as a catalyst -- you did not see digitization as a catalyst to exaggerate and resolve intellectual property issues?

MR. PETERSEN: Objection to form.

A. I don't believe I would have used the word exaggerate, nor resolve. I don't think that digitization resolves issues, so it's not a statement that resonates with me.

BY MR. GOLDMAN:

Q. Do you believe that one of the goals of digitization is to encourage legislation?

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

A. That is not one of my goals.

BY MR. GOLDMAN:

Q. And you are aware of something called the Orphan Works Project, right?

A. Yes.

MR. PETERSEN: Is this a new line of questioning?

MR. GOLDMAN: It's not, it's not.

JOHN P. WILKIN

A. I don't.

BY MR. GOLDMAN:

Q. And do you recall -- then it continues, it says: He pointed to orphan copyright issues as a prime example. He said that current copyright law is keeping material locked by dead copyright holders, hence orphan copyright. He hopes that the impetus behind GP will help legislation next year that will protect libraries from orphan copyright.

A. Yes.

Q. Do you recall making a statement like that?

A. I don't.

MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

Q. Do you agree with either of the statements that are provided here?

MR. PETERSEN: Objection to form.

A. I think that what John is doing is --

MR. PETERSEN: You shouldn't speculate as to what the writer of this blog is doing.

A. Right.

MR. PETERSEN: It's just not appropriate for a deposition.

JOHN P. WILKIN

MR. PETERSEN: All right.

BY MR. GOLDMAN:

Q. Was one of the goals of the Orphan Works Project to encourage legislation?

MR. PETERSEN: Objection to form, objection, lacks foundation. Objection and instruction to the witness not to divulge any privileged information. And subject to those objections and not divulging privileged information, the witness can respond and, of course, is free to do so.

A. I don't recall that being one of the goals of the Orphans Work Project.

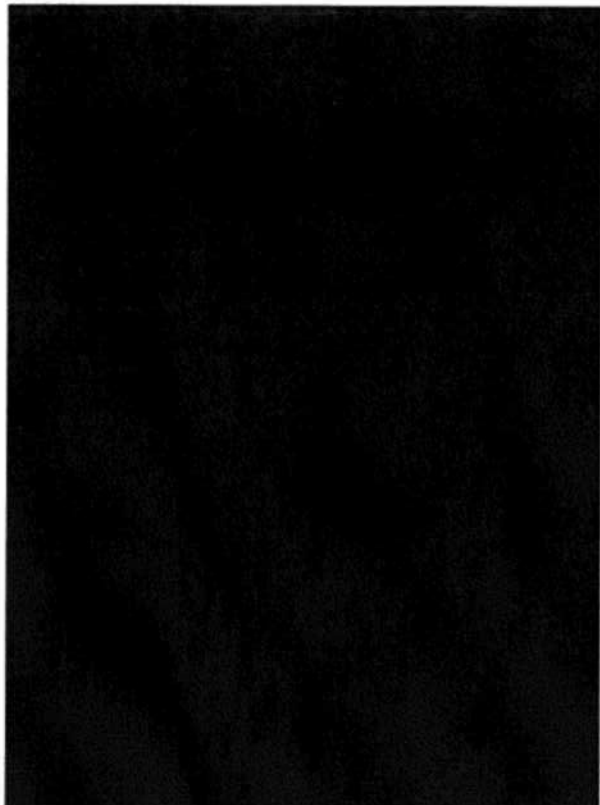
MR. GOLDMAN: Okay, let's break for lunch.

MR. PETERSEN: Great.

(Recess taken at 12:31 p.m.)

(Back on the record at 1:35 p.m.)

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BY MR. GOLDMAN:

Q. Well, I actually would like to go back to the --
I'm sure it's everyone's favorite exhibit, but
this -- the Blyberg piece about the talk.

A. Yeah, uh-huh, I have that.

MR. GOLDMAN: Which number is that?

MR. BERNARD: 4.

BY MR. GOLDMAN:

Q. JW4, if you turn to the last page.

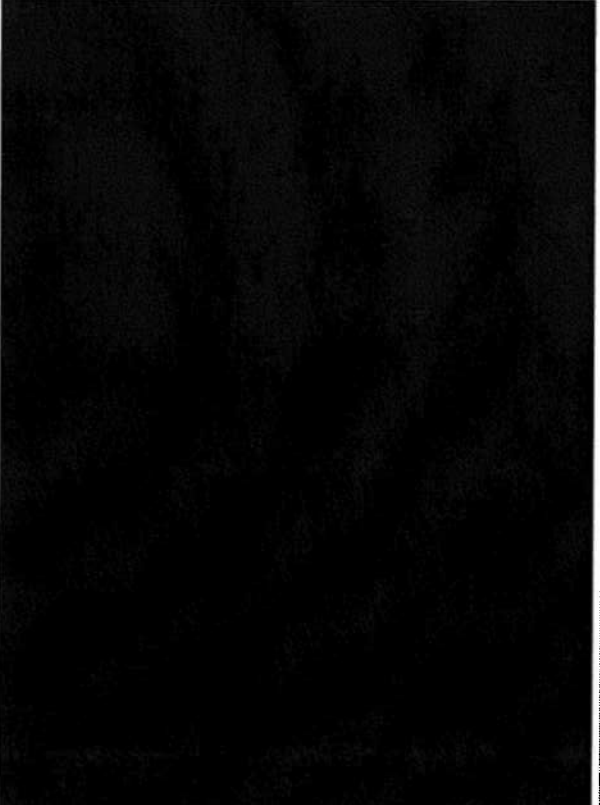
A. Uh-huh.

Q. I think it's a helpful way to frame this
discussion.

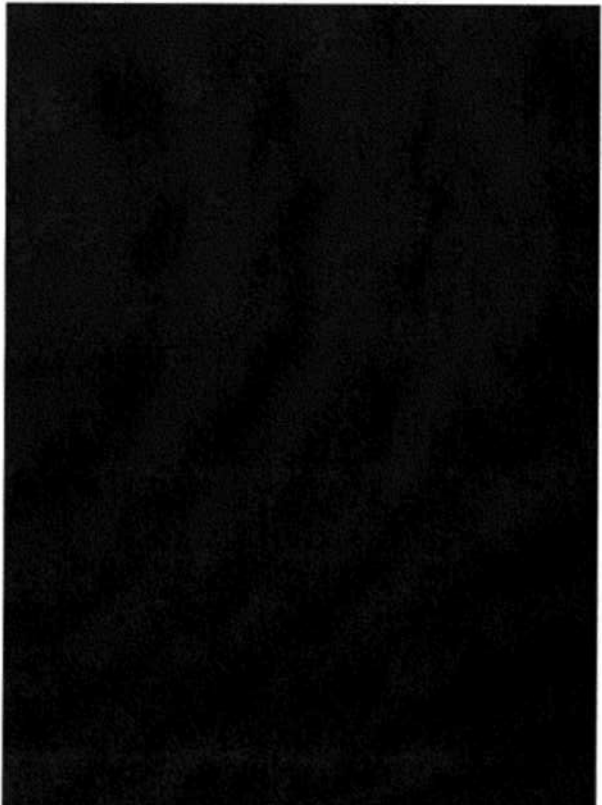
A. Yes.



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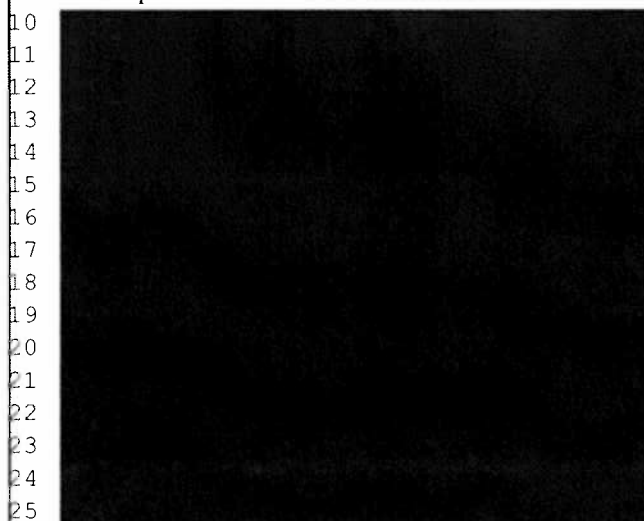




17 BY MR. GOLDMAN:
 18 Q. I'd like to ask some more questions about the
 19 Cooperative Agreement with Google that was
 20 previously marked as PC2.
 21 A. Uh-huh.
 22 Q. And I believe you do have that in front of you.
 23 A. Yep.
 24 Q. But first I want to ask, is your -- and you can
 25 look back at your CV, but I believe your CV says

1 JOHN P. WILKIN
 2 that you were -- that your responsibilities
 3 included the negotiation of the contract terms
 4 with Google; is that true?
 5 MR. PETERSEN: Objection, if you want
 6 to give him a chance to see what he says.
 7 BY MR. GOLDMAN:
 8 Q. Sure, you're welcome to look at it.
 9 MR. PETERSEN: Are you referring to
 10 something in particular?
 11 BY MR. GOLDMAN:
 12 Q. Yes, under the second bullet point under your job
 13 as associate librarian --
 14 A. Uh-huh.
 15 Q. -- and you see where it says, it says:
 16 Coordinate all phases of Michigan's large scale
 17 digitization effort with Google, including
 18 negotiation of contract terms and Michigan's
 19 portion of implementation.
 20 A. Yes.
 21 Q. Is it true that you were -- that you coordinated
 22 the negotiation of contract -- contract terms
 23 with Google?
 24 MR. PETERSEN: Just give me one second
 25 to get that document.

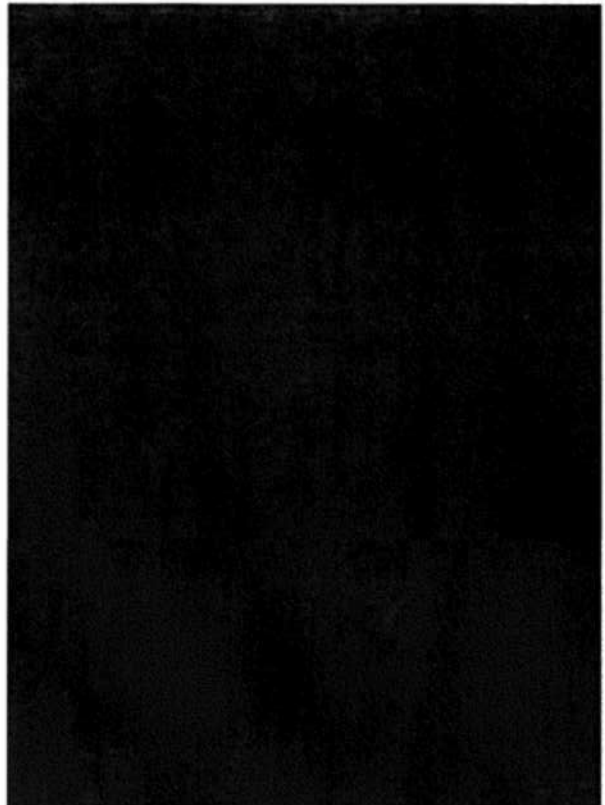
1 JOHN P. WILKIN
 2 A. I think keep in mind that this two-page CV is in
 3 NSF format, it's very terse so everything is
 4 packed tightly, so I coordinate, did then and do
 5 now coordinate all things of a large-scale
 6 digitization effort with Google. Full stop. I
 7 have been involved with negotiation of contract
 8 terms and Michigan's portion of the
 9 implementation.



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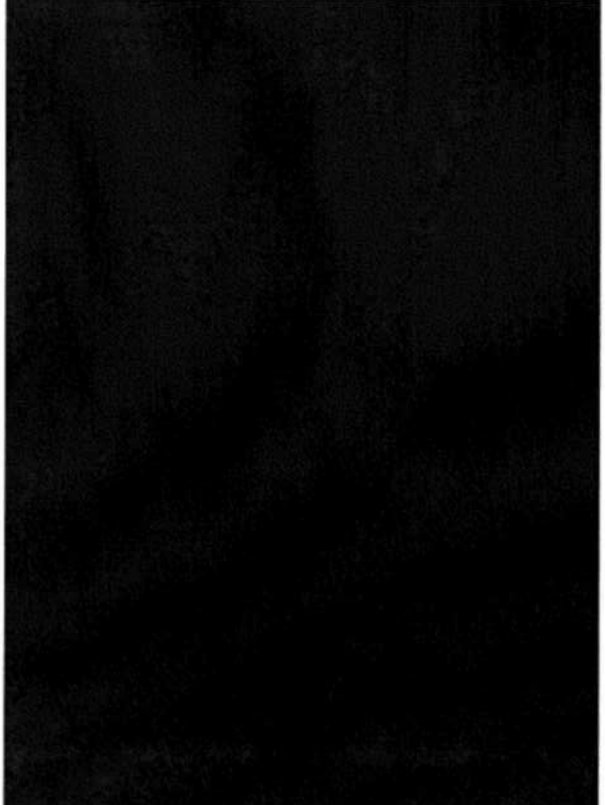
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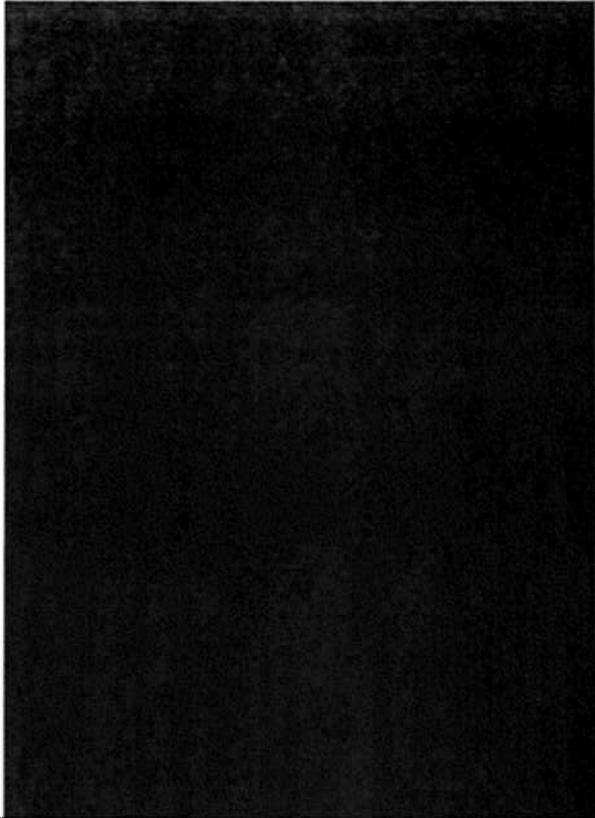
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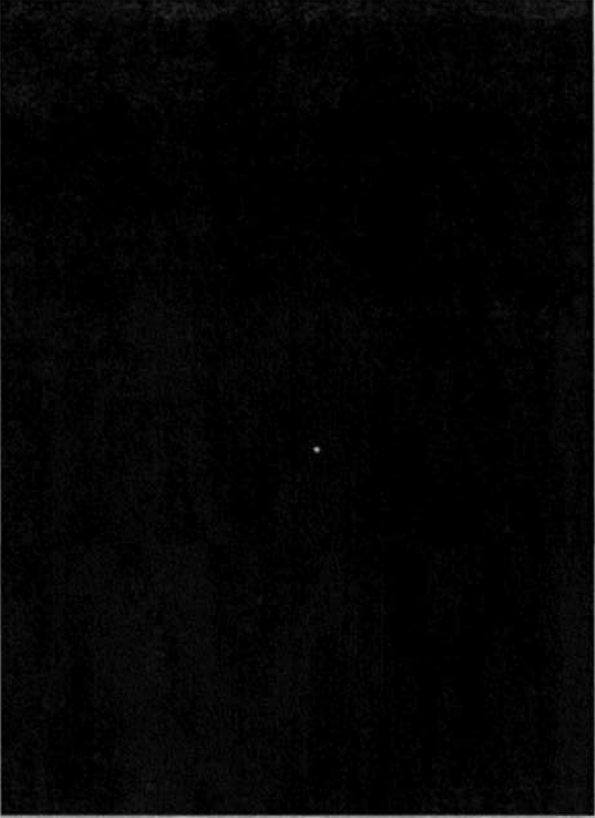
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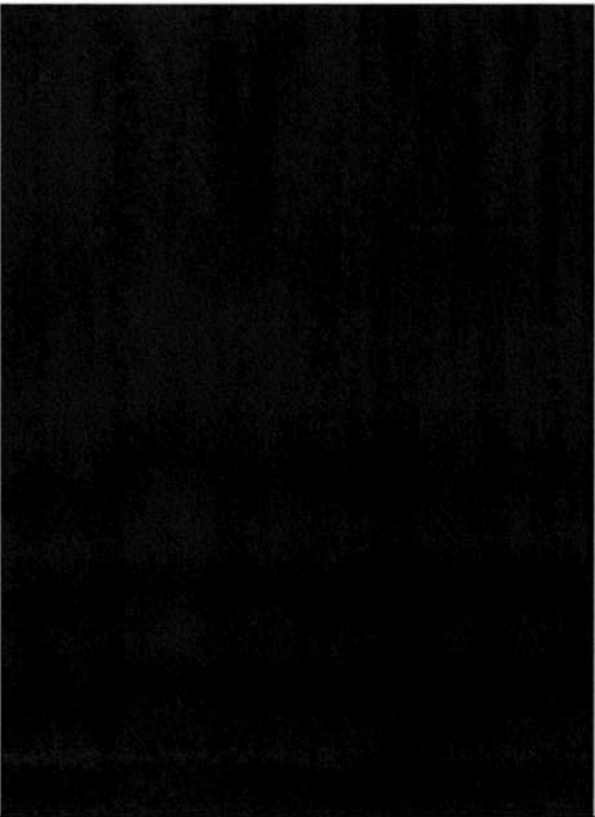
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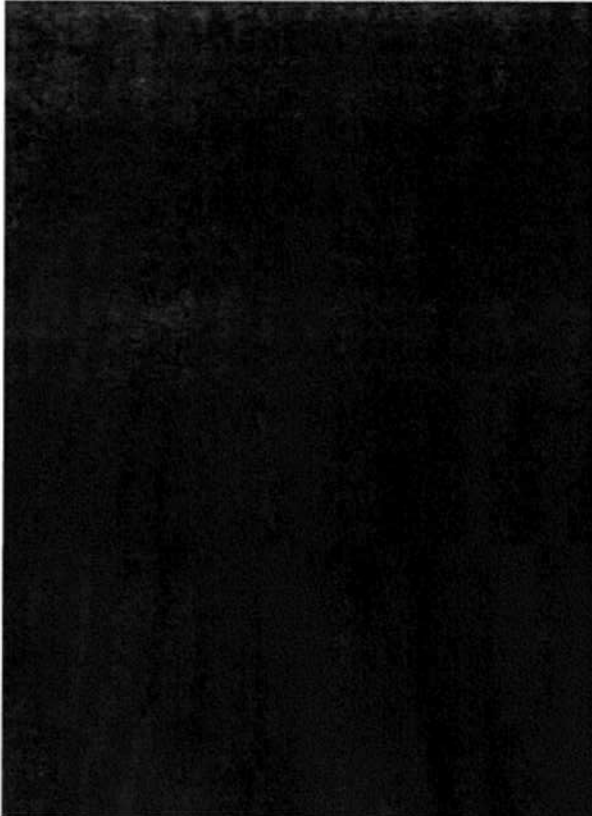
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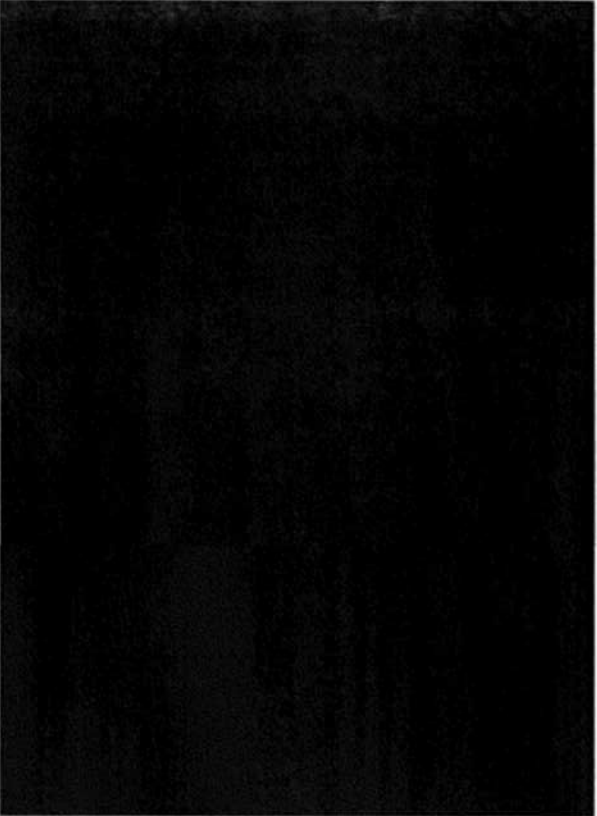
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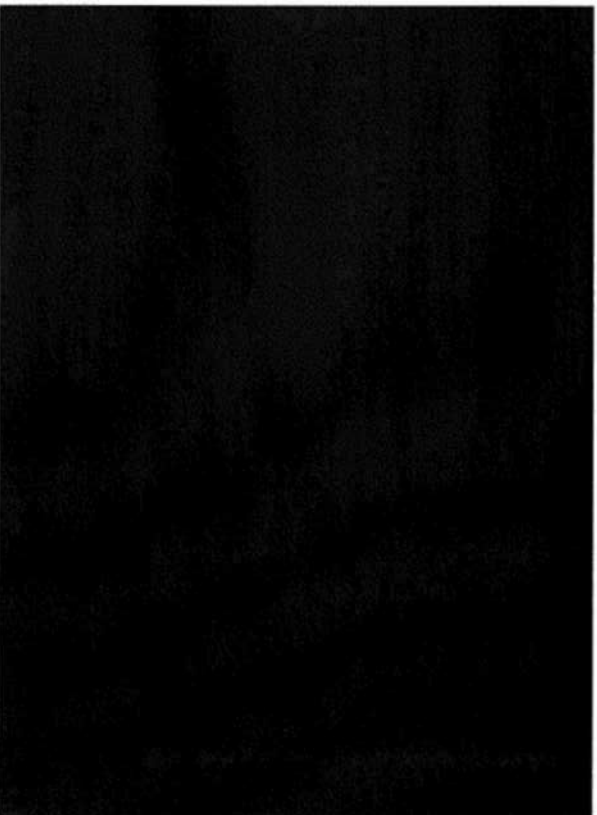
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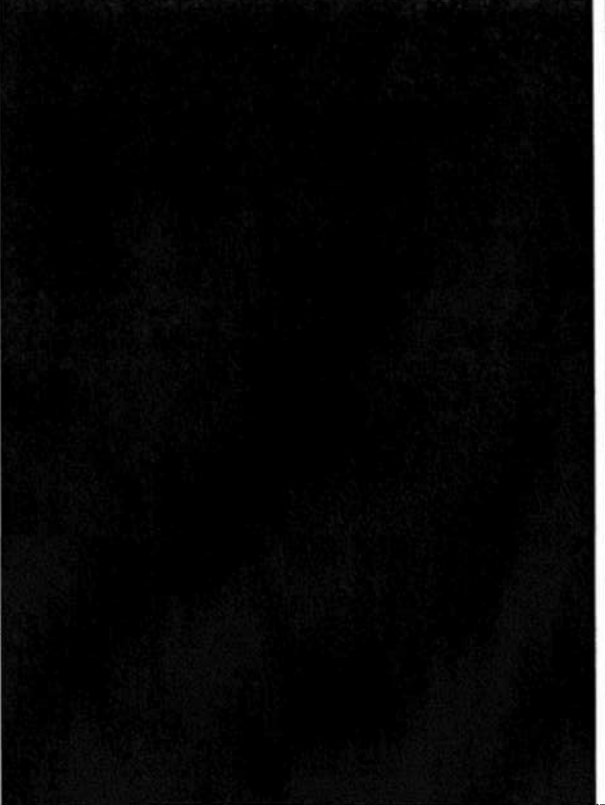
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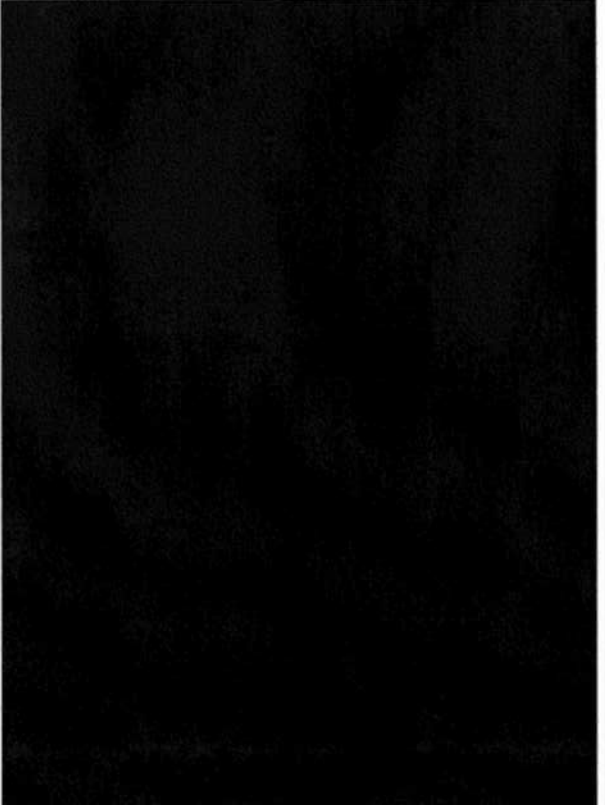
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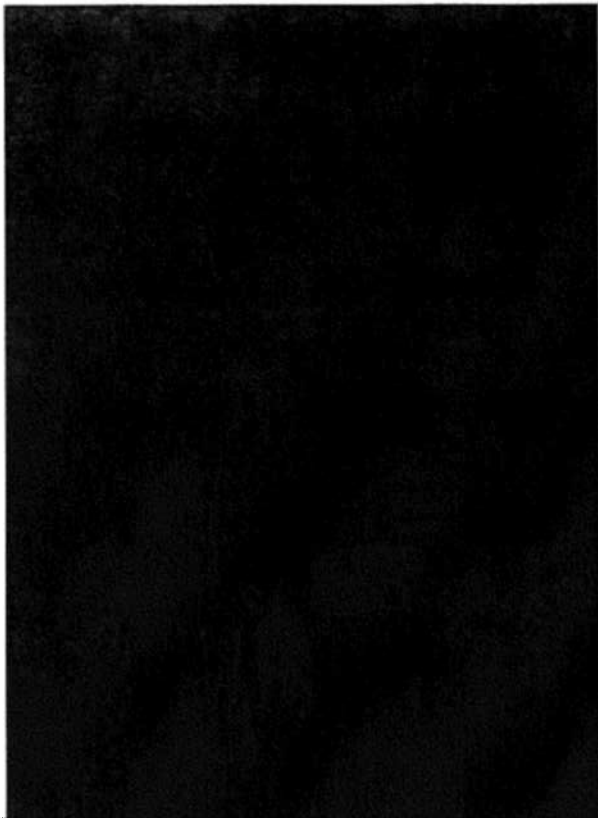
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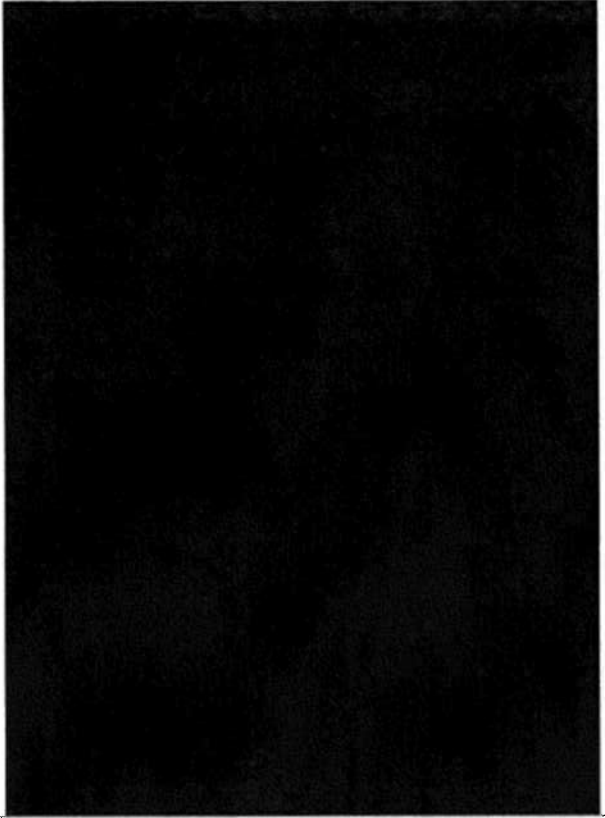
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MR. GOLDMAN: Actually, want to take a five-minute break.

(Recess taken at 2:10 p.m.)

(Back on the record at 2:20 p.m.)

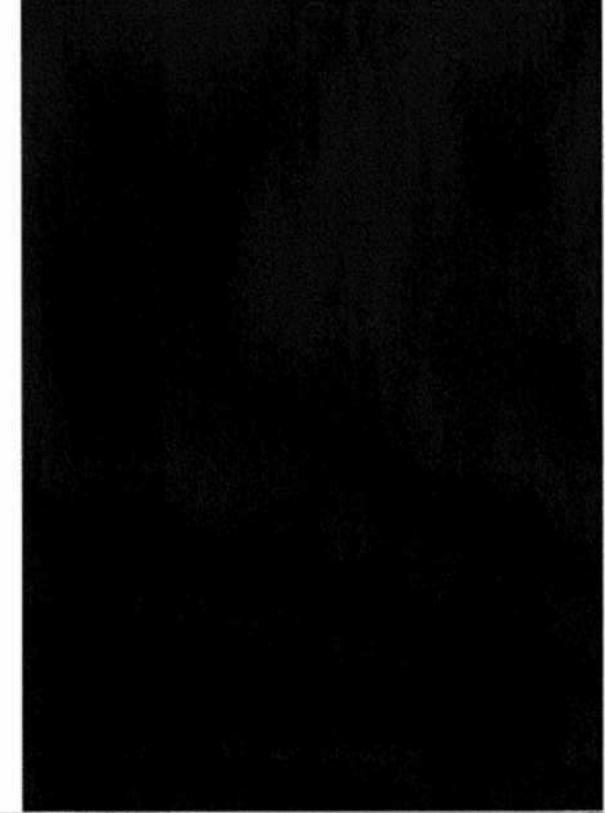
BY MR. GOLDMAN:

Q. Did Michigan hire additional staff to perform the work that was being done as part of the digitization project?

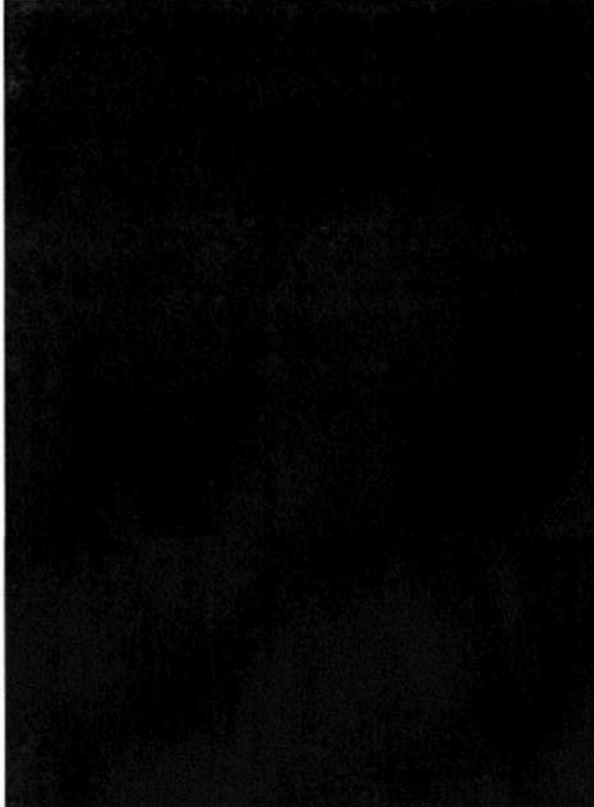
A. For shelving?



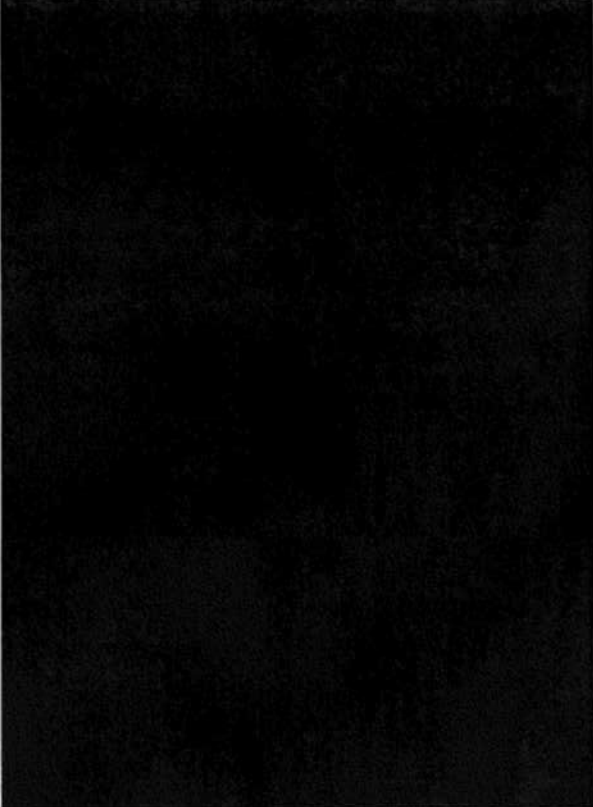
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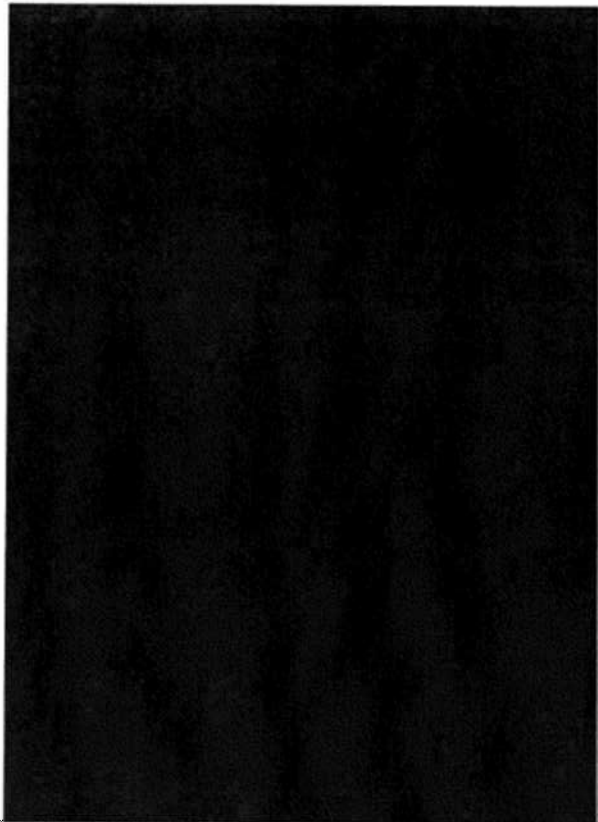
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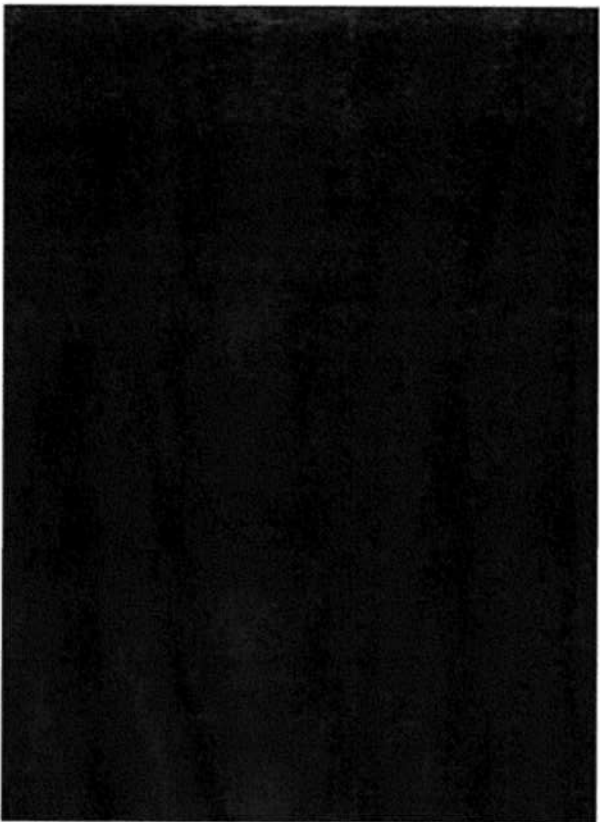
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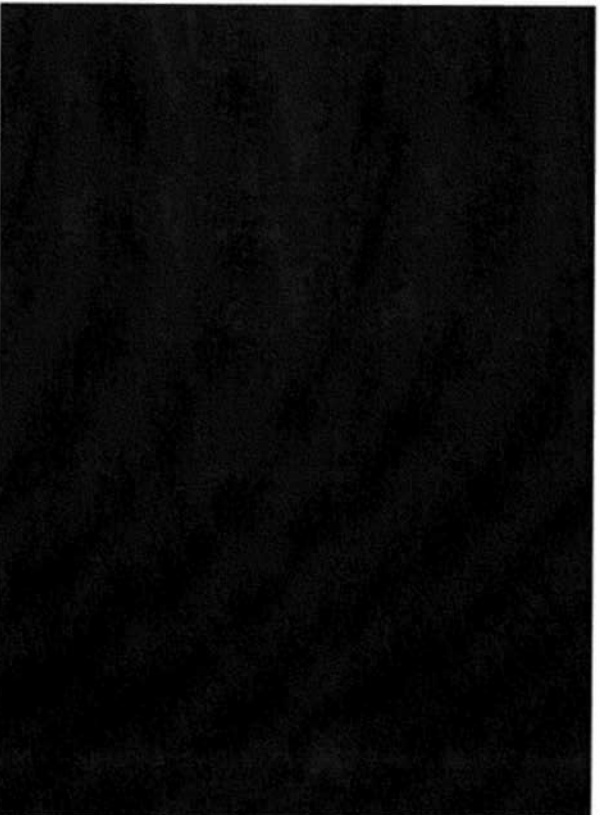
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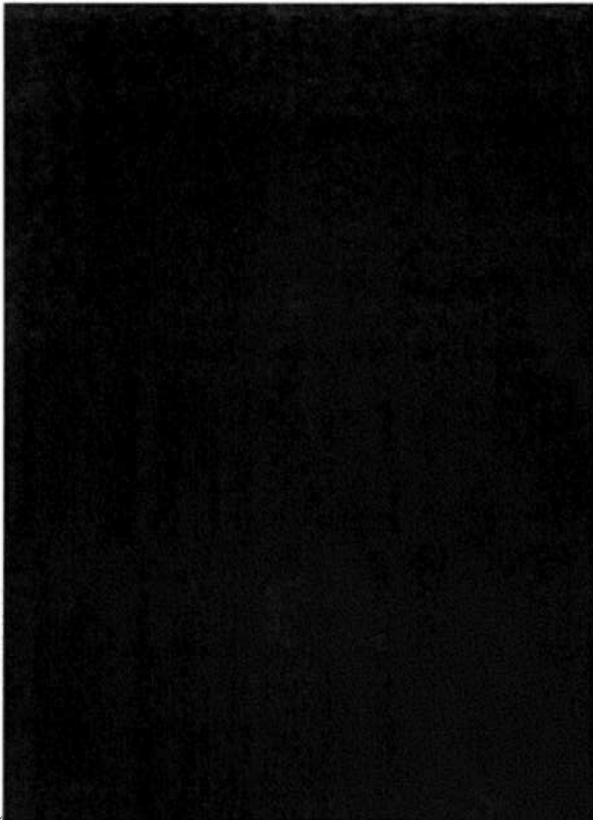
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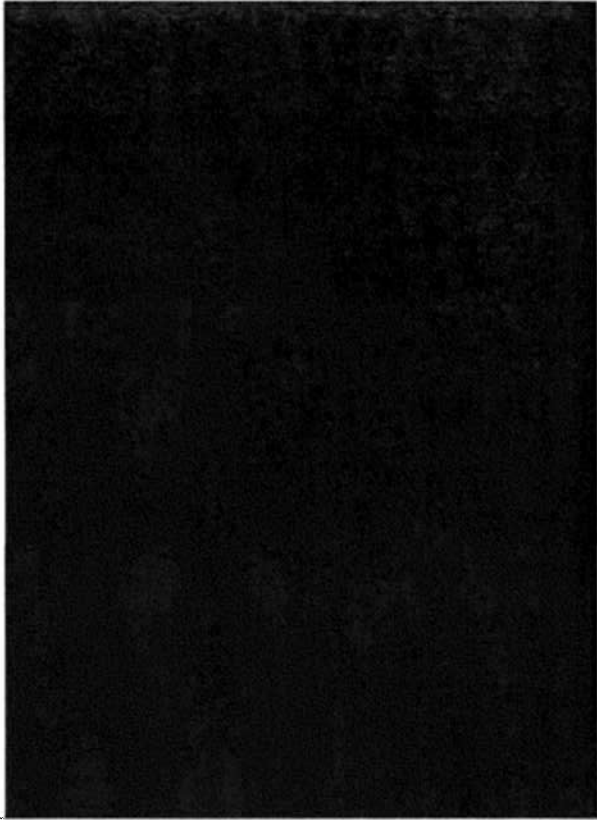
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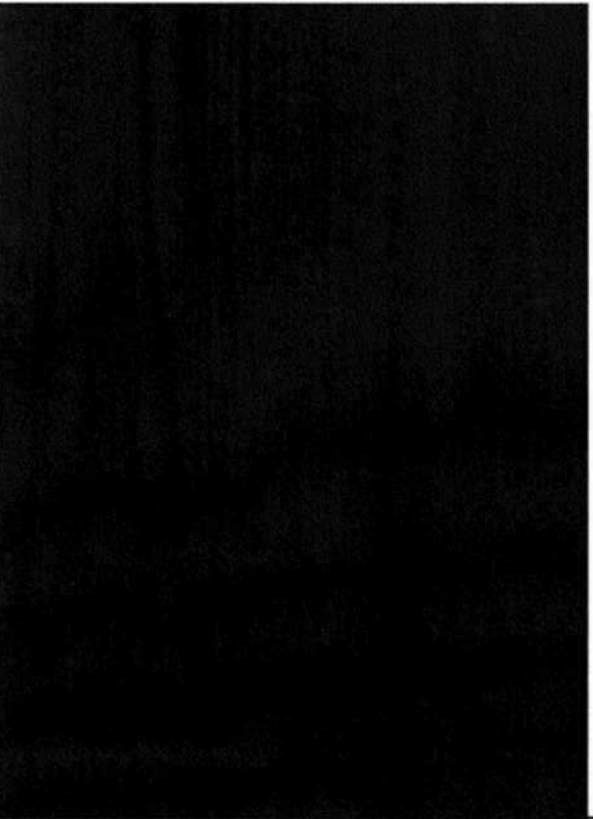
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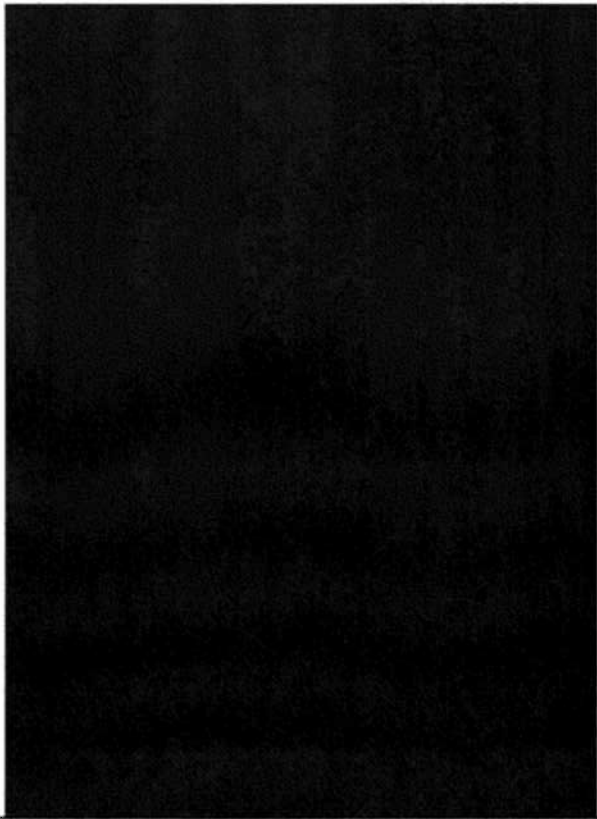
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JOHN P. WILKIN

BY MR. GOLDMAN:

Q. When the digital files are accessed through GRIN, are there occasions when University of Michigan creates a copy on its own servers?

MR. PETERSEN: Objection to form. If you can answer.

BY MR. GOLDMAN:

Q. It's a funny way to ask whether they download the copy, I would say do they download a copy, but maybe do you take issue with that word or it's not characterizing it correctly?

A. Yeah, I will try to describe what happens from my perspective. The files come in to us and we package those files. We validate those files. We parse the information that comes along with the files. We turn it into a meaningful preservation package. We use that terminology with regard to some of the standards being used. And -- and we, as far as I know, don't make a copy of those files. We have validated them and processed them into a package that we then put in to the repository.

Q. And by repository, do you mean the HathiTrust Digital Library?

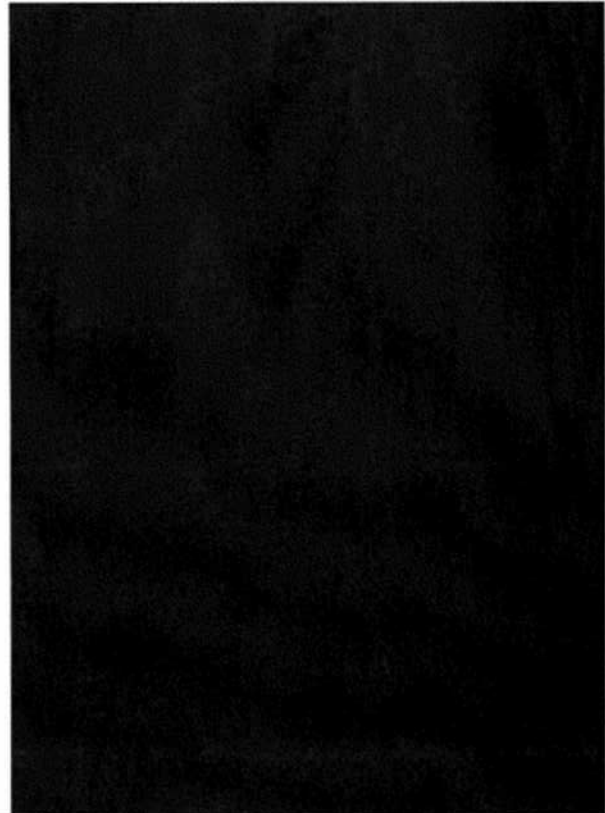
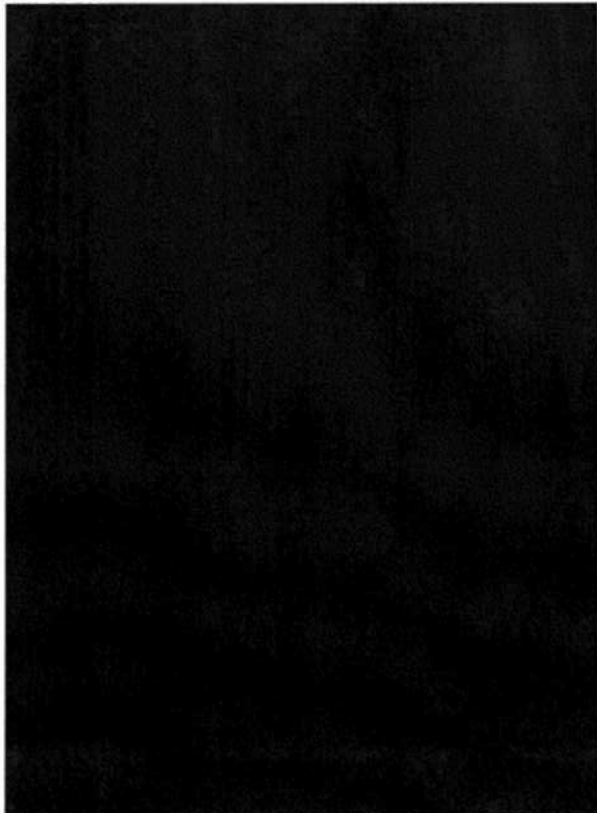
JOHN P. WILKIN

A. That's what I mean.

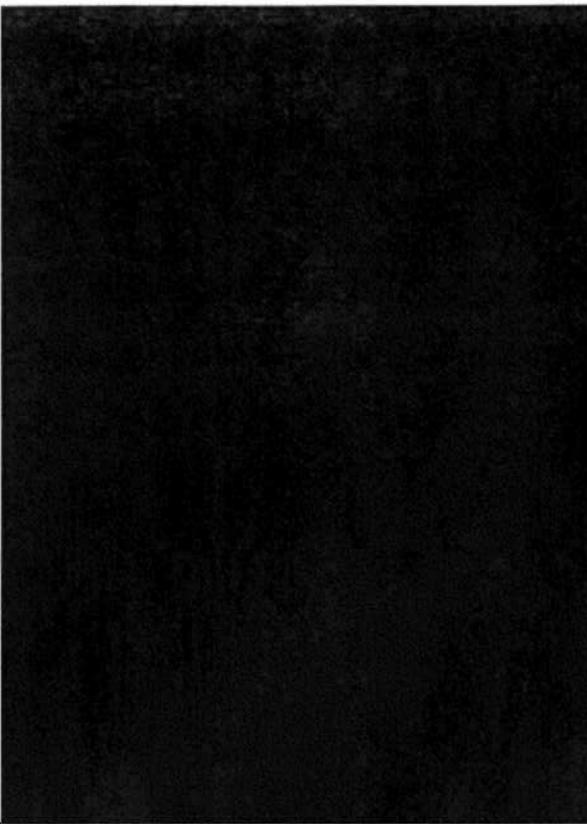
Q. And is that the same for other schools other than Michigan?

MR. PETERSEN: Objection to form.

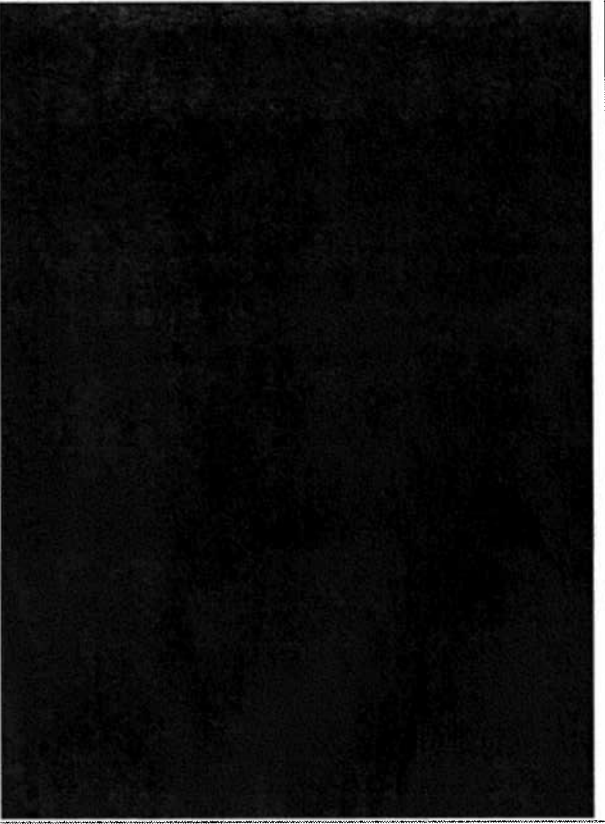
A. It's the same for content coming from Google from other schools, and it's the same for content coming from vendors where we source work, and it's the same coming from the individual institutions. It's the same process in every case.



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Q. So does -- my understanding is that HathiTrust sometimes makes works available only on a page-by-page basis; do you know what I mean by that?

A. I do.



BY MR. GOLDMAN:

Q. Are you aware of any scripts that were designed to achieve that purpose?

MR. PETERSEN: Objection to form.

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JOHN P. WILKIN

If you can answer.

A. I am.

BY MR. GOLDMAN:

Q. Tell me about that, what script are you aware -- one script or more than one script?

A. I'm aware of one.

Q. And what script is that?

A. There may be others, the Internet is rife with these sorts of things, but an early one that I was aware of was called HathiHelper.

Q. When you say the Internet is rife with these types of things, what do you mean by that?

A. Bots, people write bots to try to do things like mass downloading.

Q. Are you aware of any attempts that have been made to obtain unauthorized access to HathiTrust?

MR. PETERSEN: Objection to form. And what are you referring to when you say HathiTrust, you mean, the works that are --

BY MR. GOLDMAN:

Q. Fair point, when I say unauthorized access to HathiTrust, I mean, unauthorized access to the content, underlying content stored on HathiTrust.

MR. PETERSEN: And for purpose of that

JOHN P. WILKIN

question, you need the distinction between public domain materials or --

A. I do.

MR. PETERSEN: -- maybe you can break it down in that fashion.

BY MR. GOLDMAN:

Q. I don't want to just say copyrighted materials because I know there -- sometimes there's authorization to make copyrighted materials available. I mean, unauthorized access to copyrighted materials.

A. Thank you. We see evidence like that in the logs of attempts to get into the system.

Q. How often do you see evidence of that in the logs?

A. I couldn't tell you how often, but it's not rare.

Q. What steps are taken to monitor the Hathi -- the access logs of HathiTrust?

A. There are several types of access logs, so if we're talking about --

Q. Right now let's first talk about server level access logs.

A. Both would be server level access logs, but if we're talking about putting aside web logs, would

JOHN P. WILKIN

break.

THE WITNESS: Okay.

(Recess taken at 2:53 p.m.)

(Back on the record at 3:02 p.m.)

MR. GOLDMAN: Let's mark this as JW6.

MARKED FOR IDENTIFICATION:

DEPOSITION EXHIBIT JW6

3:03 p.m.

BY MR. GOLDMAN:

Q. JW6 is a printout from HathiTrust.org entitled Technological Profile. I also printed this last week and I believe an exact copy of this document was actually produced by counsel.

A. Uh-huh.

Q. But I don't have the Bates version here for some reason. Could you take a look at this and see whether you recognize this document?

A. I do, yes.

Q. And what is this document?

A. This is a framework document that was developed by Johns Hopkins University to assess a variety of technologies and we supplied information, my staff supplied information about HathiTrust according to that framework.

JOHN P. WILKIN

that --

Q. Well, let's start with web logs actually.

A. Web logs would show requests, but since no permission is given to provide access to in-copyright materials except for authorized users, we do only see those authorized users in the access logs.

Q. What about other logs?

A. There are system logs that show port activity or attempted log-in activity and those are reviewed by every one of my staff members responsible for system administration every time that person is on call, and somebody is on call every day.

Q. Are you aware --

MR. PETERSEN: We've been going over an hour. When we hit a natural breaking point in the next few minutes, let's take a break.

BY MR. GOLDMAN:

Q. Are you aware of any instance in which unauthorized access was obtained to HathiTrust corpus?

A. I'm not aware of any unauthorized accesses to any portion of the HathiTrust corpus.

MR. GOLDMAN: All right, let's take a

JOHN P. WILKIN

Q. Did you help prepare this document?

A. I didn't help prepare this document.

Q. Did you review this document before it was posted on the website?

A. I didn't review this document before it was posted on the website -- did not.

Q. Okay, so I'm going to ask you some questions about it, and I understand that you didn't help prepare this document.

A. Uh-huh.

Q. If you turn to the sixth page --

A. Uh-huh.

Q. -- under the heading security, it says 2006 framework.

A. Uh-huh.

Q. Under the heading user management --

A. Yes.

Q. -- it says HathiTrust maintains (sic) lists of staff members with privileged access to repository content --

A. I'm sorry, I --

MR. PETERSEN: It says manages. Oh, you're on the wrong page.

A. Okay.

1 JOHN P. WILKIN
 2 MR. PETERSEN: But, and Jeremy, you I
 3 know not intentionally, you misread, it says
 4 HathiTrust manages --
 5 MR. GOLDMAN: Okay.
 6 MR. PETERSEN: -- not maintains, but
 7 he's right there.
 8 THE WITNESS: Here, okay, thank you.
 9 Good.
 10 BY MR. GOLDMAN:
 11 Q. HathiTrust manages lists of staff members with
 12 privileged access to repository content and lists
 13 of users' ID for personalized services, e.g.,
 14 Collection Builder. First let me ask, is that
 15 statement accurate today?
 16 MR. PETERSEN: Objection to form.
 17 If you know.
 18 A. This statement is accurate today.
 19 BY MR. GOLDMAN:
 20 Q. So when it says HathiTrust manages lists of staff
 21 members, when it says HathiTrust, who at
 22 HathiTrust manages the list of staff members?
 23 MR. PETERSEN: Objection to form.
 24 But if you can answer.
 25 A. Which of my staff manage these lists?

1 JOHN P. WILKIN
 2 A. I must approve it.
 3 Q. Now, what is -- do you know what is meant by
 4 privileged access to repository content?
 5 A. What staff were trying to convey here was
 6 activities like work in the CRMS or quality
 7 review.
 8 Q. I'm going to show you what was marked yesterday
 9 as PC10.
 10 A. Uh-huh.
 11 Q. This document is entitled Responses to
 12 Plaintiff's First Set of Interrogatories to
 13 Defendant HathiTrust.
 14 A. Uh-huh.
 15 Q. This is a document that was produced to us in
 16 discovery from your counsel --
 17 A. Yes.
 18 Q. -- and University of Michigan's counsel.
 19 I'm assuming that Mr. Petersen is
 20 going to want to advise you, so.
 21 MR. PETERSEN: Yes, I will provide the
 22 same instruction that we provided in connection
 23 with other discovery responses that we discussed
 24 at yesterday's deposition. This was prepared on
 25 connection with advice of counsel, and therefore I

1 JOHN P. WILKIN
 2 BY MR. GOLDMAN:
 3 Q. I didn't even know it was your staff.
 4 A. Right.
 5 Q. So your staff manages those lists?
 6 A. That's right.
 7 Q. And which of your staff manages those lists?
 8 A. So developers and system administrators, Phil
 9 Farber principally assigns with my permission, my
 10 consent and review individual staff members'
 11 levels of control.
 12 Q. Now, it says lists, is there more than one list
 13 that contains members with privileged access to
 14 repository content?
 15 MR. PETERSEN: Objection to form.
 16 A. Yeah, I don't know. I don't know how those -- how
 17 that data -- how those data are stored.
 18 BY MR. GOLDMAN:
 19 Q. In order for somebody to be added to the list of
 20 members with privileged access, do you have to
 21 approve it?
 22 MR. PETERSEN: Meaning Mr. Wilkin
 23 personally?
 24 BY MR. GOLDMAN:
 25 Q. Mr. Wilkin personally.

1 JOHN P. WILKIN
 2 instruct the witness not to divulge any
 3 attorney-client communications or the substance of
 4 such communications in responding to any questions
 5 that may be put to you.
 6 Though with appropriate factual
 7 questions put to you, and to the extent that if
 8 you think it's within your knowledge, you should
 9 certainly answer the questions posed.
 10 BY MR. GOLDMAN:
 11 Q. Do you recall seeing this document before?
 12 A. I do.
 13 Q. And did you help collect information to respond
 14 to this -- did you help collect information that
 15 was included in this document?
 16 A. I did.
 17 Q. Now, if you turn to page 7.
 18 A. Uh-huh.
 19 Q. I'm going to ask you a question, but it's going
 20 to take a little navigation, so if you'll bear
 21 with me. If you look at number 2 on page 7.
 22 MR. PETERSEN: Number 2?
 23 MR. GOLDMAN: Are we looking at the
 24 same document?
 25 MS. ROACH: 10 is Mary Sue Coleman, not

JOHN P. WILKIN

HathiTrust.

BY MR. GOLDMAN:

Q. Okay. If you look at page 11.

A. Uh-huh.

Q. Question 3.

A. Yes.

Q. It says: For each work listed on Schedule A, provide the following information with regard to the master digital copy, master university copy and all secondary university copies, HathiTrust digital copies and third party digital copies of the work. Everything I just read are capitalized and defined terms which may require you looking back in the document, but I don't think you'll have to.

MR. PETERSEN: To which they are subject to objections.

MR. GOLDMAN: Yes.

BY MR. GOLDMAN:

Q. And there's a number -- there's a list of information that's requested with respect to those works, and if you turn the page to subsection (l) --

A. Uh-huh.

JOHN P. WILKIN

through defendant's counsel. And then there's a chart here with a number of individuals listed, did you -- did you help prepare this schedule, Mr. Wilkin, and I mean, you personally?

MR. PETERSEN: Objection to form.

A. No, I believe that this is the processing of information we provided.

BY MR. GOLDMAN:

Q. Now, is it -- it's my understanding that the individuals that are listed in the second row and second column under initial HathiTrust digital copy, those are the list of individuals who have --

A. I'm sorry, Jeremy, I'm having a hard time.

Q. Sorry.

A. Second row, second column, you mean --

Q. The column that starts -- the cell that starts with Ezra Brooks.

A. Thank you.

Q. These are the individuals who have access to the physical location of the initial HathiTrust digital copy; is that right?

MR. PETERSEN: Objection to form. He's going to need some time. I think these are very

JOHN P. WILKIN

Q. -- it says: The identities of the individuals who currently have authorized access to the physical location and/or virtual case of the digital copy, including such individual's name and current address, as well as his or her current employer, title and job description. Did you help collect information to respond to this particular request?

MR. PETERSEN: To the extent you can recall.

A. I managed staff who collected this information and reviewed the information that was submitted.

BY MR. GOLDMAN:

Q. Now, if you turn to page 16.

A. Uh-huh.

Q. In the middle of the page it says: In response to subpart L, which is the subpart I just read, it says: Defendant provides the information in the chart below, which applies to the master digital copy and the HathiTrust digital copies for each of the works listed on Schedule A as of February 1st, 2012. All individuals identified as employees of the university, the University of Wisconsin or Indiana University may be contacted

JOHN P. WILKIN

detailed.

MR. GOLDMAN: I know.

MR. PETERSEN: The interrogatories themselves are very detailed, and so it is difficult to have the witness just on the fly respond to a particular cell or component.

A. Uh-huh.

MR. PETERSEN: So I don't know how else to do it, he will have to spend a lot of time looking through each one and he -- obviously it's your time here today and if that's the way you want to put his time, that's absolutely fine, but I would caution you to give him enough time because he's --

MR. GOLDMAN: Okay, I understand.

BY MR. GOLDMAN:

Q. Let's try to simplify it a little bit and maybe you can use this as a reference point --

A. Yeah.

Q. -- rather than asking specifically about it.

Which categories of staff have authorized access to the physical machines where the HathiTrust digital copies are stored?

MR. PETERSEN: If you know.

1 JOHN P. WILKIN
 2 BY MR. GOLDMAN:
 3 Q. If you know.
 4 A. System administrators generally, and, yes.
 5 Q. Anyone else other than system administrators?
 6 A. To the physical, no.
 7 Q. And is it the same answer with respect to the --
 8 well, let me take a step back. There's a
 9 secondary copy at the Indiana University; is that
 10 right?
 11 MR. PETERSEN: Objection to form.
 12 A. A mirror copy?
 13 BY MR. GOLDMAN:
 14 Q. Yes.
 15 A. Yes.
 16 Q. And is it the same answer with respect to the
 17 mirror copy?
 18 A. Yes.
 19 Q. Now, in the next line, and I --
 20 A. Uh-huh.
 21 Q. -- and there's a list of people that extends for
 22 three pages --
 23 A. Yes.
 24 Q. -- of individuals who have what I called virtual
 25 access to the HathiTrust digital copy and the

1 JOHN P. WILKIN
 2 mirror copy at Indiana.
 3 A. Uh-huh.
 4 Q. Who are the categories of people who have access
 5 to that virtual copy?
 6 MR. PETERSEN: Objection to form.
 7 BY MR. GOLDMAN:
 8 Q. And you can answer by reference to the sheet to
 9 the extent it helps or you can answer if you have
 10 your own personal knowledge.
 11 A. Stipulating that virtual copy is not a term that
 12 has any meaning in our context, and that we
 13 understood it to be somebody who was permitted to
 14 read the materials, these -- they're given
 15 specific permission to read the materials. The
 16 categories of people are my staff, copyright
 17 reviewers at Michigan and at partnering
 18 institutions, staff who perform quality review at
 19 Michigan, and the unnamed persons who have print
 20 disabilities.
 21 Q. There's also listed on here people with a title
 22 orphan works investigators, is that --
 23 A. That is true.
 24 Q. -- a separate category of people?
 25 A. That is a separate category of people.

1 JOHN P. WILKIN
 2 Q. Are there any others that you might have left
 3 off? By reference to the list, you can look at
 4 the list to help you.
 5 A. I will look at the list.
 6 Q. And I'm not quizzing you, I just want to know
 7 whether I got all the categories.
 8 A. Staff from the copyright office generally,
 9 digitization staff, some catalogers, and I believe
 10 that covers it.
 11 Q. And can we refer to this group of people as
 12 people with privileged access to the materials;
 13 is that a fair -- or if you can characterize it
 14 differently, that's fine, I just want a way to
 15 refer to these people?
 16 MR. PETERSEN: Objection to form.
 17 How would you characterize?
 18 A. I believe that that's the term that was used by my
 19 staff in putting together this.
 20 BY MR. GOLDMAN:
 21 Q. You said that these privileged users have
 22 specific permission to read materials, are they
 23 limited in which materials they are permitted to
 24 view?
 25 MR. PETERSEN: Objection to form.

1 JOHN P. WILKIN
 2 If you can answer.
 3 A. No, they are not limited in which materials they
 4 can view.
 5 BY MR. GOLDMAN:
 6 Q. They can view any work that's stored in the
 7 HathiTrust Digital Library; is that right?
 8 A. They can view any work that's stored in the
 9 HathiTrust Digital Library.
 10 Q. Can they download any work that's stored in the
 11 HathiTrust Digital Library?
 12 MR. PETERSEN: Objection to form,
 13 compound.
 14 MR. GOLDMAN: Where's the compound?
 15 MR. PETERSEN: Variety of individuals,
 16 some may have different rights to do certain
 17 things than others.
 18 BY MR. GOLDMAN:
 19 Q. Well, if that's the case, then let me know.
 20 A. With very few exceptions, I would say five, and
 21 setting aside the students and faculty who have
 22 print disabilities, these individuals are
 23 permitted to read works from a specific location,
 24 a specific IP address that is from his or her desk
 25 as part of his or her work, and can read one page

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at a time after authenticating to the system, that is, he or she must come from his or her desk, must authenticate to the system, and then can read or download one page at a time as part of doing his or her work.

Q. So it is possible to download one page at a time, correct?

A. It is.

Q. After the user has been authenticated on the system, correct?

A. After the user has been authenticated coming from a specific work station.

Q. And who manages the list of privileged users?

MR. PETERSEN: Objection to form.

But you can answer.

A. Again, that's Phil Farber as mentioned earlier, and I must give permission for the addition of any -- any user, individuals who leaves their employment or are removed from the list, and we review the entire list periodically.

BY MR. GOLDMAN:

Q. How often do you review the list?

A. I believe we review the list quarterly.

Q. So does that mean -- sorry, you were one of the

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people on this list of privileged users, correct?

A. That's right.

Q. Do you have access to read privileged material at home?

MR. PETERSEN: Objection to form.

A. Restate the question. Do I have access to read?

BY MR. GOLDMAN:

Q. Privileged material at home?

A. What do you mean by privileged material?

MR. PETERSEN: I don't think that's a term we've used.

BY MR. GOLDMAN:

Q. Do you have access to read copyrighted material that hasn't been authorized for use at home?

A. I do not.

MR. PETERSEN: Just please note my objection to form on that for the record.

BY MR. GOLDMAN:

Q. If we turn back to the technological profile.

A. Yes.

Q. And you turn back one page to the fifth page.

A. Uh-huh.

Q. The last line says API batch export.

A. Yes.

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Q. And it says under that entry or next to that entry, formats stored in a repository are exported through the data API, what does that mean, if you know?

MR. PETERSEN: Objection, foundation.

A. I would be guessing. I have an informed guess.

MR. PETERSEN: That's blurry. If it's a guess or speculation, you shouldn't guess or speculate.

BY MR. GOLDMAN:

Q. It's not important enough to this deposition to ask, so it's fine. I apologize for jumping around, but if you turn the page and go back to the security section, and the last line says policy, on the next page it says management, right?

A. Why don't we start from the -- what page number?

Q. Sure.

A. JW6.

Q. It's JW6, page 6.

A. Okay.

Q. The last line of the page reads policy.

A. Uh-huh.

Q. And it continues management on the next page.

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A. Yep.

Q. And the entry says: HathiTrust adheres to the information technology security policies of the University of Michigan Library, where it is hosted. The University Library participates in distributed organizational model where units across the university (of which it is one) have prime responsibility for planning and managing security within their units, coordinated by campus information Technology Security Services. Can you explain that to me? Are you able to explain that to me to the extent you can?

MR. PETERSEN: Do you know?

A. I do. Keeping in mind again that this is a foreign framework, a framework that is not designed to describe what we do and to which we were providing information. This is a fairly garbled, and you see some of the syntax there and case, noun, verb agreement statement that says: We have policies and we're part of a larger university that has policies that govern what we do. There's a reference to a now defunct organization responsible for security, it's now -- these are now handled by IIA.

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BY MR. GOLDMAN:

Q. Who supervises security for HathiTrust?

MR. PETERSEN: Objection to form.

But if you can answer, please.

A. It's a -- it's a compound answer. A lot of people are responsible for security. Primary security is handled by the Core Services Unit and the staff that you see listed as system administrators, Cory Snavelly, for C-O-R-Y, S-N-A-V-E-L-Y, the manager of that unit who reports to me and is accountable to me, and I am accountable to Paul Courant.

BY MR. GOLDMAN:

Q. Are you aware of any audits that have been performed on the HathiTrust security at University of Michigan?

A. I am.

Q. Can you tell me about those audits?

MR. PETERSEN: Objection to form.

Calls for a narrative.

If you can understand and can briefly summarize.

A. We undergo an audit procedure as a unit at the university and we designate areas that we would give particular scrutiny to and we designated

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HathiTrust as an area that we would give particular scrutiny to. So we have a general audit framework and we may delve into an area with more specific analysis, as we did with HathiTrust.

BY MR. GOLDMAN:

Q. And when was the last time an audit was performed on HathiTrust?

MR. PETERSEN: If you recall, just to lay a foundation as you sit here.

A. I believe it was late last year.

BY MR. GOLDMAN:

Q. And were there any problems identified in that audit?

MR. PETERSEN: Objection to form, vague.

A. We are committed to a process of continuous improvement in our security and we always identify things that we can improve. In that process we identified things that we thought we could improve.

BY MR. GOLDMAN:

Q. What were some of things that you thought you could improve following that audit?

MR. PETERSEN: You want him to try to

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recall? I'm sure you must have a document in mind.

MR. GOLDMAN: I don't, so I want him to try to recall.

A. I don't have a specific recollection of things that -- I could -- I could provide details on.

BY MR. GOLDMAN:

Q. Do you have a more general understanding of areas in which you wanted to improve?

MR. PETERSEN: Objection to form.

A. I recall, for example, the need to document procedures that we have now well established.

BY MR. GOLDMAN:

Q. What type of procedures?

MR. PETERSEN: Objection to form.

But if you can answer.

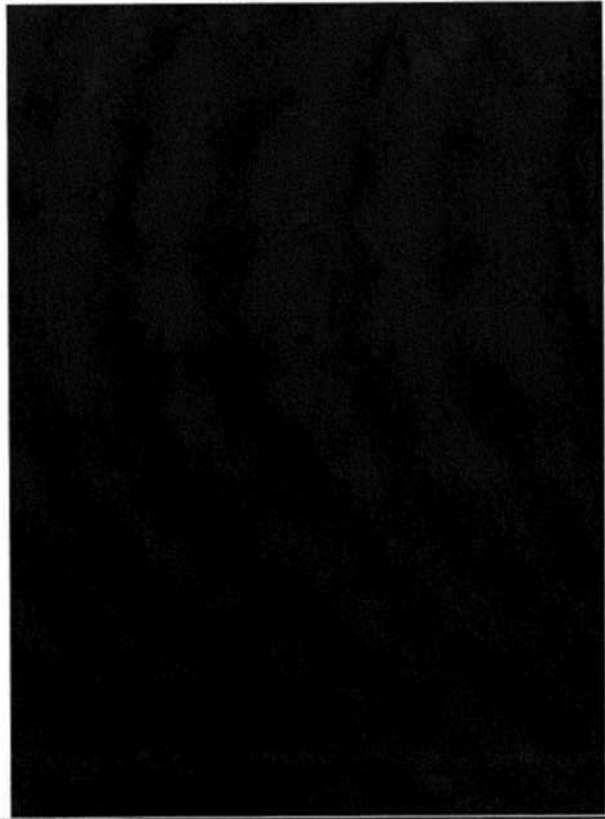
A. I don't recall. I would turn to the document for my guidance on that.

BY MR. GOLDMAN:

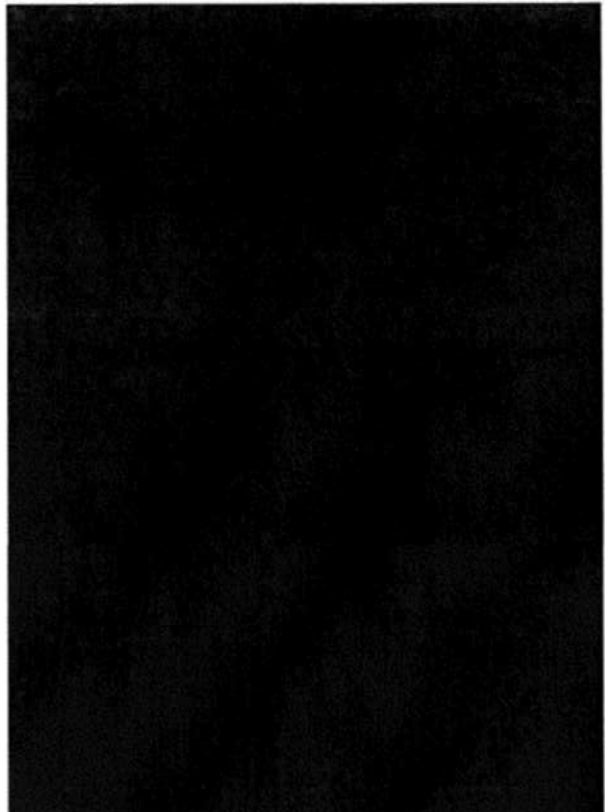
Q. Maybe next time.

A. I'm not asking you to turn to the document, I'm saying that that's how I manage my work.

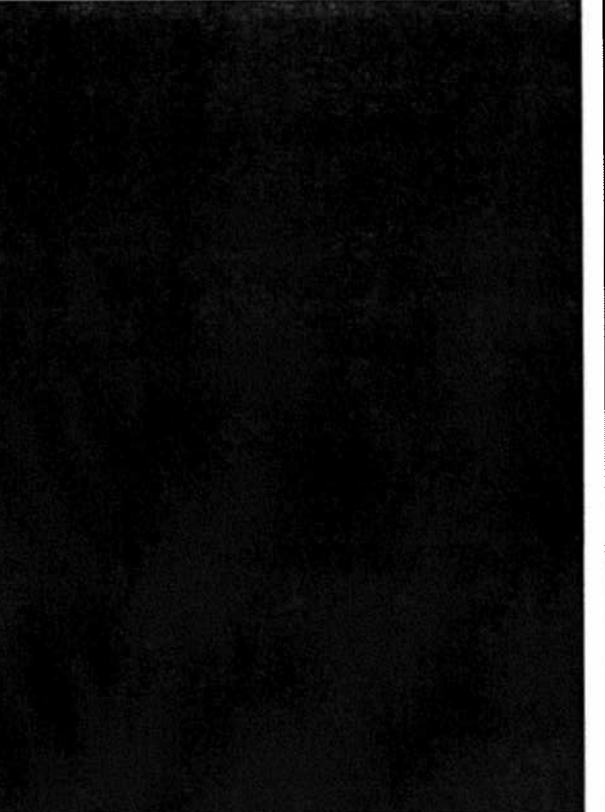
Q. Yeah, I understand. I understand. Thank you.



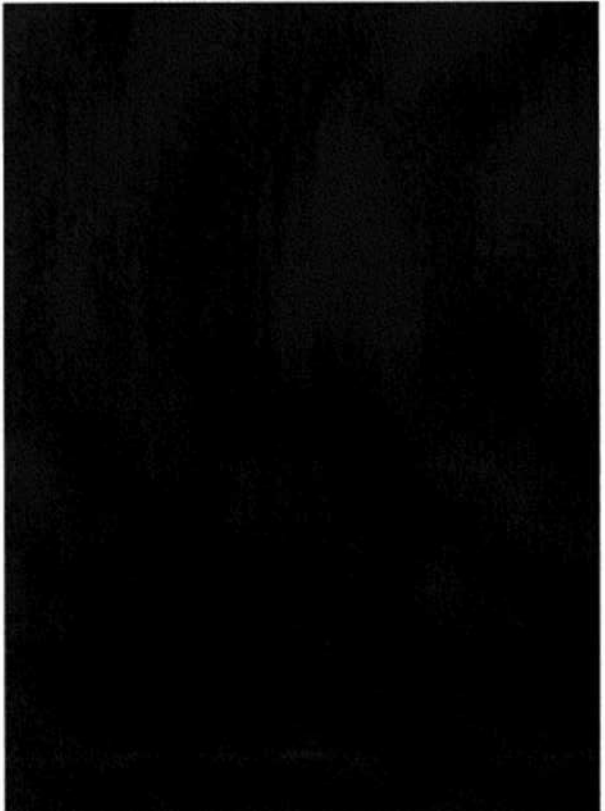
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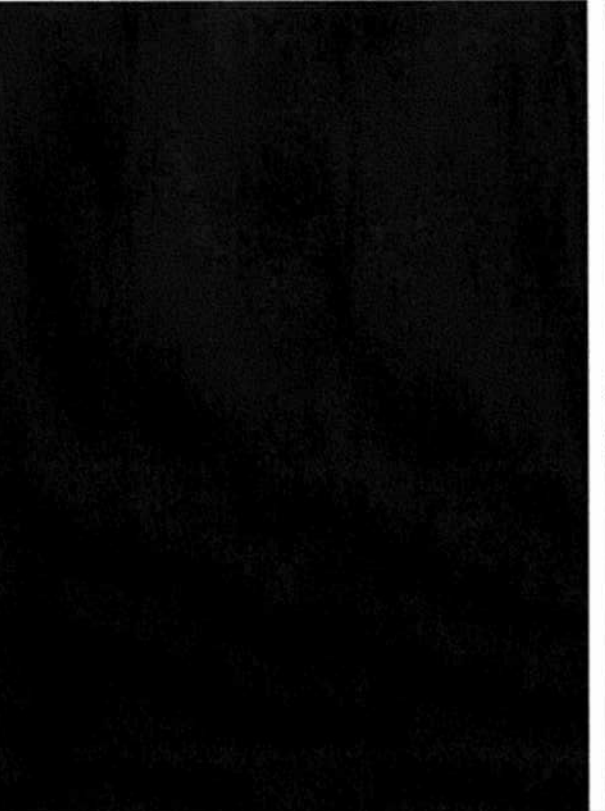
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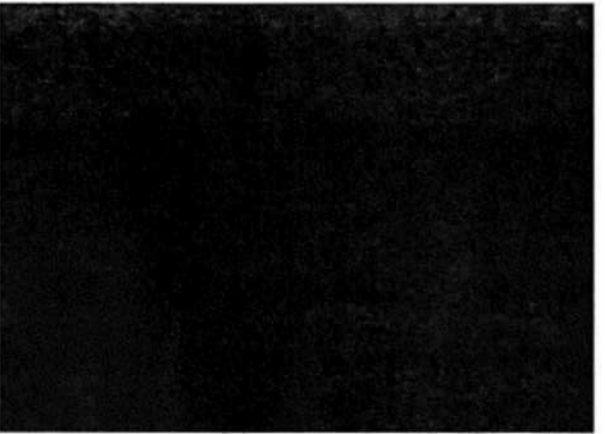
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MR. PETERSEN: I think we've been going about an hour, a good spot for a break?

MR. GOLDMAN: Okay. Let's try to do a quick one.

MR. PETERSEN: Sure.

MR. GOLDMAN: Because I want to try to get wrapped up here. I'm not up to wrapping up, so I --

MR. PETERSEN: False hope.

MR. GOLDMAN: I wish. I'm sorry, I would like to finish as quickly as possible.

(Recess taken at 3:44 p.m.)

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(Back on the record at 3:52 p.m.)

BY MR. GOLDMAN:

Q. Okay. Do you believe that a member of HathiTrust could save costs by participating in HathiTrust?

MR. PETERSEN: Objection to form.

A. Save costs in what?

BY MR. GOLDMAN:

Q. In any way?

MR. PETERSEN: Same objection.

A. It's pretty broad, but yes. A contributing partner will get the storage and digital preservation work done more cost effectively. A sustaining partner has a framework for shared -- shared interests through their participation that will ultimately allow them to save money, for example, in, we hope, shared print storage.

BY MR. GOLDMAN:

Q. Now, what do you mean by cost savings with print storage?

A. Most libraries, certainly research libraries and many academic libraries have large storage, print storage facilities with volumes that are little used, unused and it's often the same volumes across institutions. We need to insure that the

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print is preserved and we can do it more cost effectively and we can do it better, for example, with climate control, perhaps mass deacidification, we can do it more effectively.

BY MR. GOLDMAN:

Q. Do you believe that there are opportunities for member institutions to reduce the number of books that they acquired by virtue of the fact that there is a shared digital repository?

MR. PETERSEN: Objection to form.

But you can certainly answer.

A. Yeah, in my opinion that's never been the case, I've been asked about that and I've said no.

BY MR. GOLDMAN:

Q. Have other people thought that might be the case?

MR. PETERSEN: Objection to form. Also speculation.

A. I don't think -- right.

BY MR. GOLDMAN:

Q. Are you aware of anyone who has expressed the opinion that that is the case?

A. I'm not aware of any credible collection development person who believes that that's the case, we don't buy anything less now than we did

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2 before we began digitization unless there's less
3 available on the market.

4 Q. But do you believe there's a potential for that
5 to occur in the future?

6 MR. PETERSEN: Objection to form.

7 A. I don't.

8 MR. GOLDMAN: This is going to be JW7.

9 MARKED FOR IDENTIFICATION:

10 DEPOSITION EXHIBIT JW7

11 3:55 p.m.

12 BY MR. GOLDMAN:

13 Q. There is a document entitled HathiTrust
14 Constitutional Convention Opening Presentation,
15 HathiTrust Past, Present and Future, John Wilkin,
16 HathiTrust Executive Director. I'm going to ask
17 you to take a look at this document and tell me
18 whether you recognize it.

19 A. This looks like my opening remarks at the
20 Constitutional convention.

21 Q. And these are remarks that you prepared?

22 A. That's right.

23 Q. You wrote this document?

24 A. I wrote this document.

25 Q. I will ask you to turn to page 6 where it talks

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2 MR. PETERSEN: It might be a
3 definitional issue in terms of the search
4 functionality, so just make sure you get a full
5 record.

6 A. Thank you.

7 BY MR. GOLDMAN:

8 Q. When you said users with print disabilities, who
9 is considered a user with a print disability?

10 MR. PETERSEN: Objection to form,
11 objection, foundation.

12 BY MR. GOLDMAN:

13 Q. To the extent that you know?

14 MR. PETERSEN: Who makes those
15 determinations or --

16 MR. GOLDMAN: We might get to that.

17 A. Well, persons who are certified to have print
18 disabilities is the simple answer to that
19 question. We don't make those determinations.

20 BY MR. GOLDMAN:

21 Q. Who makes those determinations?

22 A. An office for -- for services -- Office of
23 Services For Students With Disabilities, OSSD.

24 Q. Do you know whether a student who has, for
25 example, a learning disability would be able to

1 JOHN P. WILKIN

2 about -- where the title is Uses of in-Copyright
3 Materials.

4 A. Uh-huh.

5 Q. And on the next page it lists -- there's a -- a
6 list of three -- three areas. Well, I'm going to
7 ask you to explain, in what ways has HathiTrust
8 made use of in-copyright materials, and again,
9 you can use this as a reference or you can do it
10 based on your own knowledge.

11 MR. PETERSEN: Objection to form.

12 A. HathiTrust at the University of Michigan has begun
13 to provide services to users with print
14 disabilities by combining authentication and
15 authorization of those individuals, and providing
16 to them a tailored view of the materials designed
17 for use with screen readers and other forms of
18 devices. We have also begun to provide limited
19 access to some in-copyright materials not
20 available on the market where the work is damaged
21 or deteriorating or is gone from the University of
22 Michigan collection.

23 BY MR. GOLDMAN:

24 Q. Anything else?

25 A. Those are the two that I'm aware of.

1 JOHN P. WILKIN

2 gain privileged access to these -- to materials
3 on HathiTrust?

4 A. I don't know. We do rely on that office which is
5 charged with making those determinations.

6 Q. So you don't know -- you don't know exactly
7 which -- which types of people or which
8 disabilities will permit someone to have access;
9 is that correct?

10 A. That's right. Assuming print disabilities in our
11 conversations would then make that clear.

12 Q. What is the process by which a person receives
13 authentication through that office?

14 MR. PETERSEN: Objection, I think he
15 just disclaimed knowledge of those processes or
16 decision making, but to the extent you --

17 BY MR. GOLDMAN:

18 Q. Well, I'm leaving out the decision as to which
19 particular person will get access, but once a
20 person is deemed to be print disabled, how does
21 it come about that that person obtains access to
22 materials in HathiTrust?

23 MR. PETERSEN: If you know.

24 A. I do. And there are -- it's authentication and
25 authorization. Individuals have credentials which

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1 JOHN P. WILKIN
 2 are their identity and their privileges for
 3 access, and they're able to sign on at the
 4 University of Michigan which provides access to a
 5 suite of services like their financial information
 6 and e-mail. That is the authentication process
 7 and then that's matched up against a database of
 8 people, those people who are said reported or
 9 noted to have those disabilities. That's the
 10 authorization piece.
 11 BY MR. GOLDMAN:
 12 Q. Now, if a person has the proper credentials, does
 13 he or she have access to view the image files or
 14 only the full text of the work?
 15 MR. PETERSEN: Objection to form.
 16 A. A person certified to have print disabilities has
 17 access to view the text, and that's the primary
 18 means of accessing the work. We do also provide
 19 access to the image files to have them, for
 20 example, enlarged. They're one at a time and
 21 deemed to be ancillary, secondary to the text.
 22 BY MR. GOLDMAN:
 23 Q. HathiTrust does -- does HathiTrust make material
 24 available through an API mechanism?
 25 MR. PETERSEN: Objection to form,

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1 JOHN P. WILKIN
 2 Q. Which part is not -- which part would you like me
 3 to?
 4 MR. PETERSEN: I think the question
 5 would be broader than one page at a time, do you
 6 mean?
 7 BY MR. GOLDMAN:
 8 Q. The full text of an entire work?
 9 MR. PETERSEN: Object to form.
 10 But you can answer.
 11 A. Can they download the full text one page at a
 12 time?
 13 BY MR. GOLDMAN:
 14 Q. No, can they download the full text of an entire
 15 work at the same time?
 16 MR. PETERSEN: Objection.
 17 A. Are you asking if they can download the OCR?
 18 BY MR. GOLDMAN:
 19 Q. Yes, I am.
 20 A. Yes, they can.
 21 Q. Is there any location based limitations on users
 22 with print disabilities accessing HathiTrust?
 23 MR. PETERSEN: Objection to form.
 24 But you can answer.
 25 A. There are limitations.

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1 JOHN P. WILKIN
 2 objection, foundation. Objection, vague.
 3 A. We do have a data API through which we make some
 4 content available.
 5 BY MR. GOLDMAN:
 6 Q. If a person with credentials, and let's take for
 7 example a person with print disability
 8 credentials.
 9 A. Uh-huh.
 10 Q. Can a person with print disability credentials
 11 obtain access to HathiTrust data through the data
 12 API?
 13 MR. PETERSEN: Objection to form.
 14 A. No.
 15 BY MR. GOLDMAN:
 16 Q. Why not?
 17 A. We don't make that possible. That's the simplest
 18 answer, we designed a service for them.
 19 Q. Do users with print disability credentials have
 20 the ability to download one page at a time?
 21 A. They do.
 22 Q. Do they have the ability to download the full
 23 text of a document?
 24 A. Can you be specific? I think I know what you're
 25 asking, but if you could --

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1 JOHN P. WILKIN
 2 BY MR. GOLDMAN:
 3 Q. And what are those limitations?
 4 A. We restrict access to IP addresses in the United
 5 States.
 6 Q. Other than that, are there any restrictions?
 7 A. Not that I recall.
 8 Q. Is that -- is that program -- and by program I
 9 mean, making certain works available to users
 10 with print disabilities, does that program only
 11 exist for UM students at this point?
 12 A. It only exists for UM students for some works at
 13 this point.
 14 Q. What do you mean by for some works?
 15 A. If we do not own the work in print, we do not
 16 provide access to the work for the student.
 17 Q. Are there plans to extend this program to other
 18 universities?
 19 MR. PETERSEN: Objection to form.
 20 A. Would you rephrase the question?
 21 BY MR. GOLDMAN:
 22 Q. Are there plans to make -- are there plans to
 23 allow users with print disabilities at other
 24 universities to access works on HathiTrust that
 25 originate from their university libraries?

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A. We hope to provide that access. I couldn't say there are plans. We hope to provide that access and we have -- we have provided specifications on the infrastructure and what would be necessary to configure it at other institutions. There are no plans at this time.

Q. Now, prior to the launch of HathiTrust, was there a program through which University of Michigan provided access -- provided access to digital copies of works to people with print disabilities?

MR. GOLDMAN: Objection to form.

A. I'd have a hard time with the chronology, the precursor to HathiTrust and books may or may not have had that functionality, but I know we were working on that functionality. I don't recall when we deployed it and when HathiTrust emerged distinctly from M Books.

BY MR. GOLDMAN:

Q. How did the system under M Books work?

MR. PETERSEN: Which --

BY MR. GOLDMAN:

Q. Let me actually withdraw that and ask --

A. Yeah.

JOHN P. WILKIN

request by a person; is that right?

A. That's my understanding.

Q. On a case-by-case basis?

A. On a case-by-case basis.

MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

Q. And how does the system work now with HathiTrust for users with print disabilities?

A. Well, I think it needs to be said that the experience for the print disabled user is like the experience of a person without disabilities, that is, where you can walk into the library and use a book on the shelf. They can now, if we have the book digitized and online, use the book on that virtual shelf. They've authenticated and if we own a copy in print, they then have access to it. Their experience is much more similar. They have some of the advantages of their counterparts who don't have disabilities.

BY MR. GOLDMAN:

Q. And how does -- how does access to the HathiTrust copy help them with their disability?

MR. PETERSEN: Objection to form.

A. I think you'd have to rephrase the question for

JOHN P. WILKIN

Q. -- prior to the Google MDP, was there a system under which University of Michigan rented access to digital copies of works to people with print disabilities?

A. There were services at the University of Michigan that provided access to persons with print disabilities.

Q. And how did those services work?

A. Typically -- well, certainly I don't have any direct experience of them.

Q. So to the best of your knowledge?

MR. PETERSEN: As long as you're not speculating or guessing.

A. Yeah, to the best of my knowledge, a student would acquire a book, a copy of a book and take it to the office, the OSSD, and scan the book, sheet fed, typically it meant the loss of the book at the same time. A library book may be -- may have been borrowed and used on a flatbed scanner, one page at a time, which -- which was also problematic in terms of the care and handling of the book, but it was one book at a time.

BY MR. GOLDMAN:

Q. And the digital copy was made in response to a

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me.

BY MR. GOLDMAN:

Q. Okay. What -- does it provide, for example, text to speech or some other mechanism to help the person read the book?

A. The form that we provide to them is designed to work well with devices like text to speech, JAWS, for example, or digital Braille devices. We have worked with users and those devices to ensure that they have something that provides them with reading capability for those devices.

Q. Turning to the second category of uses of in-copyrighted works that you mentioned --

A. Uh-huh.

Q. -- which I believe refer to Section 108 uses, could you tell me what you meant by that second category, and by a second category I'm referring to --

MR. PETERSEN: Yeah, it mischaracterizes the testimony. I don't believe the witness ever mentioned anything to do with Section 108.

MR. GOLDMAN: I apologize then.

BY MR. GOLDMAN:

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1 JOHN P. WILKIN

2 Q. Let's just turn to the exhibit which was marked

3 JW7 and go to page 7 again, and the second point.

4 A. Number 2.

5 Q. Number 2, it says again using the holdings

6 database and shibboleth.

7 A. Yes, good job.

8 Q. We will soon be able to provide access to works

9 that meet Section 108 criteria, i.e., that the

10 work is damaged, deteriorating, lost or stolen

11 and is not available on the market at a

12 reasonable price. Could you explain what you

13 mean by that?

14 MR. PETERSEN: Objection to form.

15 A. How we provide access?

16 BY MR. GOLDMAN:

17 Q. Well, let's start with this, under what

18 circumstance -- yes, let's start with that. How

19 will the university or how will HathiTrust

20 provide access to works that meet Section 108

21 criteria?

22 MR. PETERSEN: Objection to form.

23 A. Yeah. For books that are damaged and deteriorated

24 beyond use, usable form or are missing from our

25 collections, when we cannot find a copy on the

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1 JOHN P. WILKIN

2 MR. PETERSEN: Objection, compound. I

3 don't even know if you can understand that

4 question, but I really can't understand it at all.

5 Talking about a particular work, it would have

6 been the determination when it was made. I don't

7 understand, are you talking about a timing issue

8 to when it's viewed in full access mode or?

9 BY MR. GOLDMAN:

10 Q. Are these -- when are these determinations made

11 and let's start with this. Were these -- was

12 there a determination made as to whether a

13 particular work is damaged or deteriorated?

14 MR. PETERSEN: Across the entire

15 library holdings?

16 MR. GOLDMAN: Across the entire

17 library.

18 MR. PETERSEN: Objection to form, it's

19 incomprehensible.

20 BY MR. GOLDMAN:

21 Q. You told me that you mentioned there were certain

22 books that were damaged or deteriorating,

23 correct?

24 A. Yes.

25 Q. At what point in time is it determined whether

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1 JOHN P. WILKIN

2 market at a reasonable price, at the University of

3 Michigan we provide to authenticated users and

4 users in the library reading capability one page

5 at a time for as many copies of the print work as

6 the library held. So for example, if we had a

7 copy of a work X which was no longer in our

8 collection because it had deteriorated to the

9 point where it was no longer usable and we

10 withdrew it and we found no suitable replacement

11 copies for that work in the library, one

12 simultaneous user would be able to read one page

13 at a time of that work on a computer.

14 BY MR. GOLDMAN:

15 Q. At what point in time is a determination made as

16 to whether a particular work is damaged or

17 deteriorated?

18 MR. PETERSEN: Objection to form,

19 objection to the extent it calls for a legal

20 conclusion.

21 A. At what point in time did the category works that

22 we use here, did we make that determination on the

23 work?

24 BY MR. GOLDMAN:

25 Q. Yes.

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2 those books are damaged or deteriorating?

3 A. Many -- at many junctures in our work that

4 determination is made. In the case of handling

5 those books, in the case of users requesting a

6 book for circulation, it may be determined that

7 the book is not usable without the book falling

8 apart.

9 Q. And linking to our discussion from earlier

10 today --

11 A. Uh-huh.

12 Q. -- when that determination is made, is it the

13 practice of UM to apply an OPB attribute to the

14 work in the HathiTrust Rights Database?

15 MR. PETERSEN: Objection to form,

16 objection, mischaracterizes his testimony.

17 MR. GOLDMAN: I don't think so. Just

18 let him answer.

19 MR. PETERSEN: He testified earlier

20 today about other processes that would go into

21 that determination including searching of

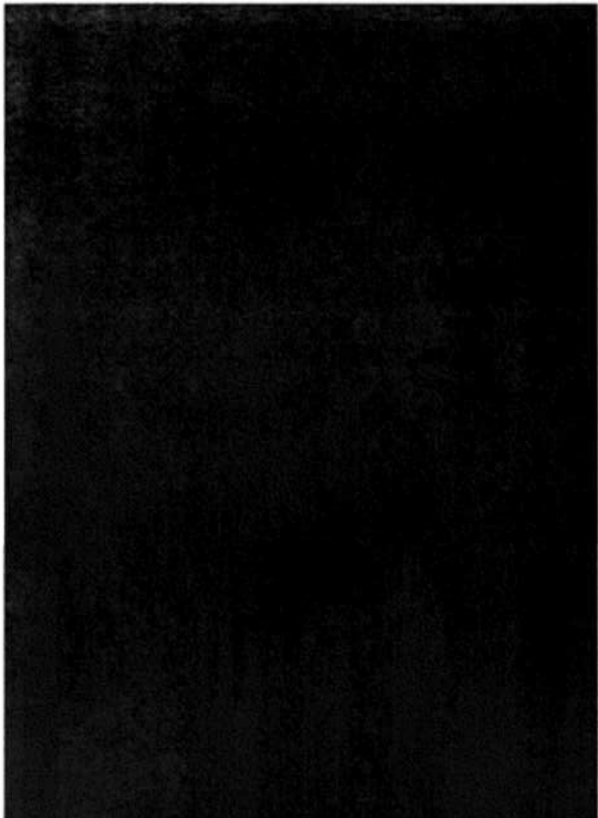
22 databases to see if it's commercially available,

23 an unused copy. So there's all of that packed

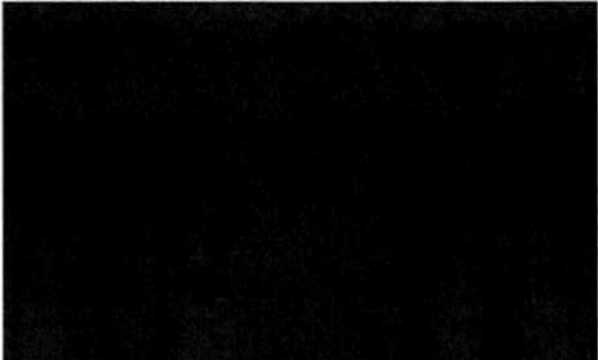
24 into it. I just want to make sure that we --

25 MR. GOLDMAN: Okay. Okay.

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Q. Now, in this -- in this paper that you wrote, it says we will soon be able to provide access, and then it continues. Is UM currently providing that access?
A. U of M is currently providing that access to users at the University of Michigan.
Q. And who makes the determination whether a work is damaged, deteriorating or lost or stolen?
MR. PETERSEN: Again at the university, I assume. Object to form.
A. Right, again it depends on the book. But it would be -- it would be staff qualified in any of those areas, there are preservation and conservation staff who make treatment decisions, but if a work

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JOHN P. WILKIN
is lost or stolen, that's something that gets registered in the catalog when the work is no longer in the collection.
BY MR. GOLDMAN:
Q. And is it the same group of people that determined that a -- that a replacement copy is not available on the market at a reasonable price?
A. No, those are technical services staff who are responsible for acquisitions, that is, by acquisitions we mean acquiring materials for the library's collection.
Q. Okay.
MR. GOLDMAN: Let's mark this JW8.
MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT JW8
4:21 p.m.
BY MR. GOLDMAN:
Q. So what I've marked as JW8 is a document entitled Supplemental Response to Plaintiff's First Set of Interrogatories to Defendant Mary Sue Coleman. Could you take a look at this and let me know whether you've seen it before?
A. I have.

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JOHN P. WILKIN
Q. Okay. And did you help gather information for this document?
A. I helped gather information for the preparation of this document.
Q. I'd like to turn your attention to page 4.
A. Uh-huh.
Q. And it's the middle paragraph, and it says -- the second to last and last sentence I'll read and then I have some questions about that. It says: The university has entered into written agreements with four companies, EBSCO Publishing, Inc., Ex Libris, Ltd., OCLC Online Computer Library Center, Inc., and ProQuest, LLC, that make digital databases and related search capabilities available to specified educational institutions. They're called search entities. Under these agreements, the search entities obtain binary index files from the university through secured network transmission for the limited purpose of search only.
A. We should -- I think we need to do a little bit of parsing here. Search entities the way you read it seemed to apply to educational institutions, it applies to those companies, okay?

JOHN P. WILKIN

Q. Yes. I understood that, but thank you for the clarification. I'll ask this question in a general manner and we can unpack it if it's helpful, but what is -- what is inside the binary index file that is provided to these search entities?

MR. PETERSEN: I'm just going to object to form.

But you can certainly answer.

A. The position of words in texts, the position of words in texts that are being indexed.

BY MR. GOLDMAN:

Q. So the index file does not contain the OCR full text of a work?

A. It does not contain the OCR full text of a work.

Q. Okay. Sorry, go ahead.

A. Yes. It's a subtle and complicated distinction that I think is worth trying to understand. The OCR is read to register positions, so all the words are read by a machine that registers their positions. So all the words in the OCR are read and their positions are noted in the binary index data. But there is no continuous string that represents the OCR from the text. Is that a

JOHN P. WILKIN

meaningful distinction?

Q. Yes, like if there was an extraordinarily comprehensive index to a book that had every single word that was mentioned on the book and then showed the page and where on the page it was listed, is that a fair description?

A. That's a fair metaphor analogy, and then imagine we did that with many books and you corresponded that, it said in this book on that page.

MR. GOLDMAN: I'm going to mark this as JW9, you'll see I'm tearing off the last page of this for everyone because it got appended to the last page by mistake.

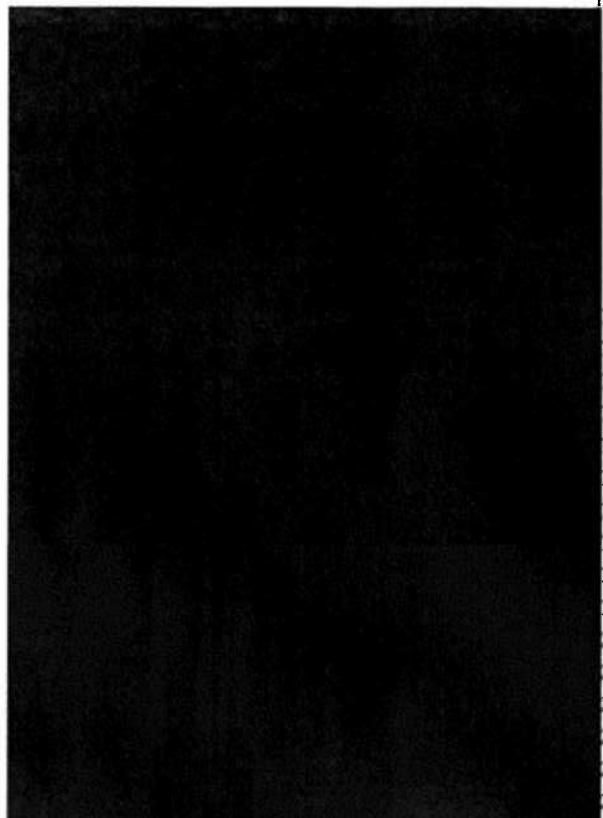
A. Should I keep this open now, JW8?

BY MR. GOLDMAN:

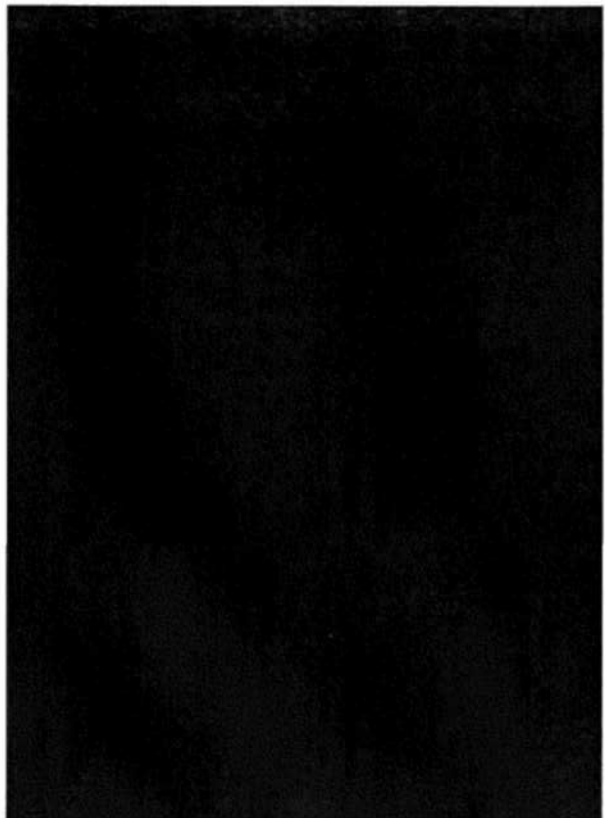
Q. You can close it.



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MR. GOLDMAN: Let's take five minutes and I will look things over.

(Recess taken at 4:33 p.m.)

(Whereupon Ms. Roach leaves the room.)

(Back on the record at 4:38 p.m.)

BY MR. GOLDMAN:

Q. I would like to go back to a document entitled HathiTrust Rights Database, I don't know if you remember which number it is, though.

MR. PETERSEN: HathiTrust Rights Database.

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JOHN P. WILKIN

MR. GOLDMAN: Database, yeah, we definitely looked through it.

A. JW3.

BY MR. GOLDMAN:

Q. There it is. JW3, thank you. And again, if you turn to the second page where there's use cases.

A. Right.

MR. PETERSEN: I'm sorry, just give me one second just to find it.

A. Sure.

MR. PETERSEN: I got it.

BY MR. GOLDMAN:

Q. If you look to the seventh use case on this list.

A. Uh-huh.

Q. It says orphaned copyright work and then there's a parenthetical that says: Note: Although all of these use cases are hypothetical, this one depends on legislation that has not -- that has not been passed.

A. Yes.

Q. Do you know who wrote this?

A. I don't. I don't.

Q. Have you reviewed this before?

A. Yes.

JOHN P. WILKIN

1 Q. What -- so do you know what's meant by this
 2 parenthetical?
 3 A. Let me read it, reread it.
 4 Q. Reread the parenthetical?
 5 A. No, I'm sorry, the parenthetical? Just the
 6 parenthetical?
 7 Q. Just the parenthetical.
 8 A. Let me read the whole thing.
 9 Q. Sure. You know what, why don't we read it for
 10 the record so that's clear.
 11 A. Yeah, sure, uh-huh.
 12 Q. It follows after the parenthetical, Alfredo
 13 Candia Guzman, Bolivia: un experimento counmista
 14 en la America, published in Bolivia in the late
 15 1950s, is reformatted as part of a topical
 16 conversion effort. Although, based on its
 17 bibliographic information, parenthetical, see use
 18 case number 1, the volume enters the collection
 19 as an in-copyright text and access is restricted,
 20 our research determines that the author has died
 21 and the publishing house no longer exists. The
 22 volume is classified as an orphaned copyright
 23 work, parenthetical, attribute name equals orph,
 24 end parenthetical, with noted due diligence,
 25

JOHN P. WILKIN

1 Q. You're aware of Michigan's participation or --
 2 you're aware that Michigan announced its
 3 participation in something called the Orphan
 4 Works Project, correct?
 5 A. I am.
 6 Q. And wouldn't works have been made available under
 7 the -- under the Orphan Works Project in the same
 8 manner that's described here but without any
 9 legislation having been passed?
 10 MR. PETERSEN: Objection to form,
 11 objection, mischaracterizes the record.
 12 A. Not at all.
 13 BY MR. GOLDMAN:
 14 Q. And why is that?
 15 A. There, you know, I can't recall when this was
 16 written, but it's bound to be years ago. It
 17 doesn't resemble in any way what we documented and
 18 publicized as the controls under which we would
 19 make works available. It talks about worldwide
 20 access, we didn't plan to do that. It doesn't
 21 talk about the access controls based on print
 22 holdings. We do that. It does not resemble in
 23 any way what was proposed and further the Orphan
 24 Works Project is primarily about the
 25

JOHN P. WILKIN

1 parenthetical, reason name equals ddd, end
 2 parenthetical, and put online with access open to
 3 the world.
 4 A. Yep.
 5 Q. Do you know what was meant by the initial
 6 parenthetical that reads although all of these
 7 use cases are hypothetical, this one depends on
 8 legislation that has not been passed?
 9 MR. PETERSEN: Objection to form,
 10 objection to the extent it calls for a legal
 11 conclusion and caution the witness not to divulge
 12 any attorney-client privileged information.
 13 Subject to those objections, you can
 14 certainly answer.
 15 A. Keep in mind that the rights database was meant to
 16 be a flexible framework to support a number of
 17 types of use cases. The writer put together a
 18 hypothetical based on -- a hypothetical situation
 19 about passage of legislation, probably a
 20 hypothetical legislation, in fact, as legislation
 21 had not been passed, and described circumstances
 22 under which access would be -- would be provided
 23 to the work in question.
 24 BY MR. GOLDMAN:
 25

JOHN P. WILKIN

1 identification of works. The access to those
 2 works never took place, it's speculative.
 3 BY MR. GOLDMAN:
 4 Q. Are you -- the Orphan Works Project was
 5 suspended; is that right, or let me rephrase
 6 that.
 7 A. Yeah.
 8 Q. There came a time when Michigan announced that it
 9 was not going to list candidates for the Orphan
 10 Works Project anymore; is that right?
 11 A. That's right.
 12 Q. And is there a process occurring at this time to
 13 make adjustments to the procedures that are part
 14 of the Orphan Works Program -- Orphan Works
 15 Project?
 16 MR. PETERSEN: Objection to form.
 17 A. To the determination process?
 18 BY MR. GOLDMAN:
 19 Q. Yes.
 20 A. There is continuing -- there is continuing review
 21 of the process with scrutiny given to the
 22 reliability of the determinations.
 23 Q. The -- Michigan announced that there were errors
 24 found in the process that had been previously
 25

JOHN P. WILKIN

applied; isn't that correct?

A. That is correct.

Q. And what errors had been found in that process?

MR. PETERSEN: If you recall.

A. The errors were -- I would characterize them as errors of execution of management, steps -- steps that we had designed were not followed, and that requires closer -- closer management. I believe that the process was a good process and that listing the works gave those works the kind of attention that helped us to identify works that in some cases were not orphan works, that's a success. But we can always improve the process.

BY MR. GOLDMAN:

Q. When you say by listing the works, do you mean posting them on the HathiTrust website?

A. The candidates on the HathiTrust website.

Q. And were they posted anywhere else?

A. To my knowledge, they were posted -- deliberately posed in two places, others may have reposted them, but they were posted -- to my knowledge, they were posted on the University of Michigan's website and the Orphan Works Project website and on the HathiTrust website.

JOHN P. WILKIN

candidate list exists on the University of Michigan or HathiTrust website?

MR. PETERSEN: Objection to form.

BY MR. GOLDMAN:

Q. Or do you have any confidence that an author or a copyright holder would know that this list exists?

MR. PETERSEN: Same objection.

A. I have confidence that we -- so the list doesn't exist first of all, right, so --

BY MR. GOLDMAN:

Q. When did it exist?

A. Well, when it did I think it -- it's funny too because it was an emerging process. We had planned to publicize the list in many places. We asked the Authors Guild if we could include the reference to the list in their publication. We were in the process of securing an advertisement in Publishers Weekly, explore the possibility of an advertisement in the New York Times. It's hard for me to see this as a static question with an answer, a list that does not exist any longer and with a process that didn't take place to publicize the list. I believe that we could have made the

JOHN P. WILKIN

Q. Now, the Orphan Works Project was initially examining works in the 1923 to 1964 time period, that were published in the 1923 to 1964 time period; is that right?

A. 1923 to 1963 time period, U.S. works.

Q. So how -- what -- how old would the authors be of those works today?

MR. PETERSEN: Objection, form, objection, calls for speculation.

BY MR. GOLDMAN:

Q. Can you answer it?

A. There's no way to answer that. For example, the author could have died years before 1923, and have been 100 years old at the time. There's no way to answer that question.

Q. What's the youngest that an author could be that published a work during that time period?

MR. PETERSEN: Objection, same objection, calls for speculation.

A. I don't know.

BY MR. GOLDMAN:

Q. Let me ask -- let me ask a different question. How do you have any confidence that a person would know that this list exists, that the

JOHN P. WILKIN

list well known.

MR. ROSENTHAL: What was the last word?

A. I believe that we could have -- Jeremy's question --

MR. PETERSEN: Well known.

MR. ROSENTHAL: I'm sorry.

A. Yes.

BY MR. GOLDMAN:

Q. Do you know how many -- on the list of -- from the list of candidates that were posted on Michigan's website, how many of those candidates were wrongly identified as orphan candidates?

MR. PETERSEN: Objection to form.

A. I don't know.

BY MR. GOLDMAN:

Q. How many did University of Michigan find out about?

A. I don't know.

Q. Have any decisions been made about changes that will be made to the determination process as part of the Orphan Works Project?

MR. PETERSEN: Objection to form, objection to the extent it was asked and answered.

A. I think what I said before is true, we continue to

JOHN P. WILKIN

review the process. We continue to subject it to scrutiny internally for reliability and continue to refine the process with that in mind.

MR. GOLDMAN: Okay. I have no further questions.

MR. PETERSEN: Great. I have very brief questioning.

EXAMINATION

BY MR. PETERSEN:

Q. Mr. Wilkin, thank you so much for all your time here today. As you may recall, you answered a few questions earlier today concerning what was marked previously as PC8, and if you want to take a moment to retrieve that document, that would be great. Do you recall some of your earlier testimony concerning what was marked as PC8?

A. I do.

Q. And do you remember the concept of profit, I believe, was discussed and used in connection with PC8; is that correct?

MR. GOLDMAN: Objection to form.

A. I heard the word profit used in conjunction with the budget.

BY MR. PETERSEN:

JOHN P. WILKIN

Q. Does the word profit in the context of this document or in the context of the HathiTrust have any meaning such as it would to a for-profit commercial enterprise?

MR. GOLDMAN: Objection to the form, vague.

A. The word profit doesn't have any meaning with regard to the enterprise which is a nonprofit enterprise and where we give -- we give through the governance process continuing attention to ensuring that we only take in enough money to run the enterprise, no less than it takes to run the enterprise and that the monies secured are for designated projects consistent with the enterprise.

BY MR. PETERSEN:

Q. So this is a nonprofit enterprise, correct?

A. This is a nonprofit enterprise at the University of Michigan.

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

////

JOHN P. WILKIN

MR. GOLDMAN: Thank you.

(The deposition was concluded at 4:52 p.m. Signature of the witness was not requested by counsel for the respective parties hereto.)

WITNESS SIGNATURE

DATE:

JOHN P. WILKIN

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.

DATED:5/7/12

KATHRYN L. JANES, CSR-3442
Notary Public,
Wayne County, Michigan.
My Commission expires: October 22, 2016

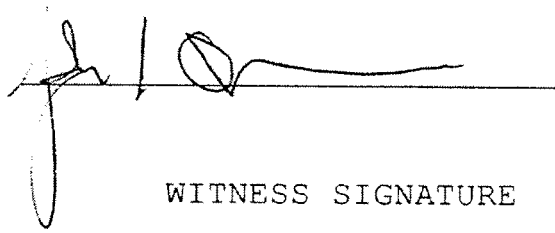
1 NAME OF CASE:
2 DATE OF DEPOSITION:
3 NAME OF WITNESS:
4 Reason Codes:
5 1. To clarify the record.
6 2. To conform to the facts.
7 3. To correct transcription errors.
8 Page _____ Line _____ Reason _____
9 From _____ to _____
10 Page _____ Line _____ Reason _____
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JOHN P. WILKIN

MR. GOLDMAN: Thank you.

(The deposition was concluded at 4:52 p.m.
Signature of the witness was not requested by
counsel for the respective parties hereto.)

A handwritten signature in cursive script, appearing to read "John P. Wilkin", is written over a horizontal line. The signature is positioned to the left of the text "WITNESS SIGNATURE".

WITNESS SIGNATURE

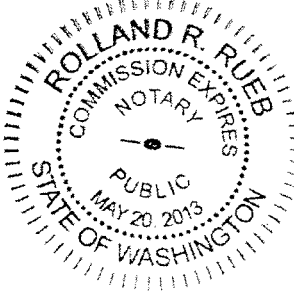
DATE:

attachment to page 248A

STATE OF WASHINGTON, }
 County of San Juan } ss. ACKNOWLEDGMENT - Individual

On this day personally appeared before me John P Wilkin to me known
 to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that he
 signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of June, 2012



Rolland R Rueb
 Notary Public in and for the State of Washington,
 residing at Estwood
 My appointment expires May 20, 2013

STATE OF WASHINGTON, }
 County of _____ } ss. ACKNOWLEDGMENT - Corporate

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of
 Washington, duly commissioned and sworn, personally appeared _____
 _____ and _____ to me known to be the
 _____ President and _____ Secretary, respectively, of _____
 _____ the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary
 act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____
 authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

 Notary Public in and for the State of Washington,
 residing at _____
 My appointment expires _____

This jurat is page _____ of _____ and is attached to _____ dated _____.

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

2 DATE OF DEPOSITION: April 25, 2012

3 NAME OF WITNESS: John P. Wilkin

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 13 Line 21 Reason 3

9 From federal governing agency to federal government agency

10 Page 46 Line 15 Reason 3

11 From and finishing this line to and finish this line

12 Page 48 Line 20 Reason 3

13 From we spoke with Mr. Gosling to we spoke with -- Mr. Gosling

14 Page 85 Line 19, 23 Reason 3

15 From right's to rights

16 Page 90 Line 15 Reason 3

17 From Right's to Rights

18 Page 122 Line 17, 18 Reason 3

19 From signed contract to signed a contract

20 Page 124 Line 15 Reason 3

21 From technology and the library to technology in the library

22 Page 132 Line 5 Reason 3

23 From visit site to visit the site

24

25

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

2 DATE OF DEPOSITION: April 25, 2012

3 NAME OF WITNESS: John P. Wilkin

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page 141 Line 8 Reason 3

9 From Thank's to Thanks

10 Page 188 Line 2 Reason 3

11 From defendant's to Defendants'

12 Page 202 Line 25 Reason 3

13 From generally three years to generally every three years

14 Page 209 Line 9 Reason 3

15 From they acquired by virtue to they acquire by virtue

16 Page 235 Line 9 Reason 3

17 From that they forbade them to that they -- forbade them

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

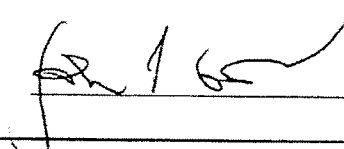
21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

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A				
Aaron (1)	account (3)	92:13	240:17	152:11 153:8,14,15
162:6	124:25 125:7 207:5	address (5)	agree (6)	155:11 203:25
ability (3)	accountable (2)	6:2 7:20 164:8 187:6	52:23 57:24 105:24	205:20 206:16
136:16 215:20,22	198:11,12	193:24	127:17 147:22	207:6
able (14)	accounting (1)	addressed (1)	161:15	analogy (1)
49:4 52:20 74:12	102:23	73:8	agreed (1)	231:8
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197:12 212:25	accurate (6)	adequately (1)	25:13,17,20,22 26:6	ancillary (1)
214:3 222:8 223:12	10:17,19,21 121:18	152:10	26:23 27:3,23 28:17	214:21
227:13	182:15,18	adheres (1)	30:4,10,17,20 31:18	and/or (1)
absolutely (1)	achieve (1)	197:3	45:11 57:5,19	187:4
189:13	176:24	adjustments (1)	106:17 134:19	Ann (10)
academic (1)	acid (10)	241:14	137:7,9 138:20	1:17 3:15 5:2 6:5
208:22	66:18,23,23 67:7,15	administration (2)	139:5,8 140:22	36:18 120:24 121:2
accepted (1)	67:21 105:15 106:8	179:13 203:13	141:11 142:12,14	121:7,14 158:5
16:19	106:9 107:8	administrative (5)	142:15,16 149:11	announced (4)
access (98)	acidic (1)	48:21,22,25 53:25	149:13 171:12	31:10 240:3 241:9,24
62:13 82:25 83:22	105:17	162:13	197:20 231:22	announcement (12)
85:21 86:16 95:19	acknowledges (1)	administrators (7)	232:4 233:6	31:15,20,25 34:23
104:18 132:11	14:15	183:8 190:4,5 198:9	agreements (2)	45:6,10,14 115:22
159:15 161:2,5,19	acquire (4)	203:8,17,20	229:12,18	118:17,18,20
161:20 162:3,6,7,8	79:17,22 81:16	Admission (2)	ahead (2)	122:20
162:15,17,21,23	219:16	72:13,18	201:22 230:17	answer (93)
164:2,13,24 166:13	acquired (3)	admit (1)	al (2)	8:20 14:21 15:10 30:5
166:19,19 167:4,7,9	79:22 206:14 209:9	74:2	1:5,10	32:7 47:18 48:16
167:11,15 168:10	acquiring (1)	adopt (1)	Alfredo (1)	50:24 51:17 52:17
169:16 172:22	228:12	149:4	238:13	53:2 55:22,23 60:13
173:4 176:4 177:17	acquisitions (5)	ads (1)	alkaline (1)	62:24 65:18 67:4
177:22,23 178:11	75:14,16 77:24	132:3	67:7	68:20 70:16 72:3
178:19,20,23,24	228:11,12	advantages (1)	alleged (1)	73:7 76:24 77:20,22
179:5,8,21 181:20	acronyms (1)	220:19	79:21	78:20 79:3 81:13
182:12 183:13,20	87:5	advertised (2)	allegedly (2)	82:2 83:9 84:6,24
184:4 187:3 188:21	acting (1)	79:17,20	78:16 79:11	85:12 86:2 87:23
189:23 190:25	148:23	advertisement (2)	ALLISON (1)	89:9 92:17 93:9,10
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