

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., et al.,

Plaintiffs,

v.

HATHITRUST, et al.,

Defendants.

Case No. 11-cv-6351(HB)

**SUPPLEMENTAL DECLARATION OF JAMES FRUCHTERMAN
IN SUPPORT OF DEFENDANT INTERVENORS' OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

I, James Fruchterman, do hereby declare that:

Opinion

1. Based upon my experience with the Bookshare® online library for people with print disabilities, I believe that the risk of online piracy or unauthorized copying and distribution of works made fully available to individuals with print disabilities through the HathiTrust is minimal.

Facts Relied Upon

2. One of Benetech's primary programs is Bookshare, an online library that provides over 200,000 people with print disabilities in the United States access to more than 150,000 books and 150 periodicals that can be converted to braille, large print or synthetic speech. Originally created by a community of volunteers, Bookshare is a subscription-based service operated by Benetech. Bookshare has the capacity to create 2,000-3,000 accessible digital books per month.

3. Bookshare's collection includes a large quantity of bestsellers, many of which become available just hours after they are released to the public. Bookshare receives most new books in digital formats directly from publishers under permission agreements.

4. With the knowledge and consent of these publishers, Bookshare employs a seven-point digital rights management plan ("DRM") to protect its digital copies from illegal copying. The DRM is sometimes referred to as "social" DRM because its goal is to make online "piracy" socially unacceptable.

5. Under point 1 of the DRM, only blind and other persons with print disabilities (and agencies, such as schools, serving such individuals) are permitted to download copyrighted books. These users must register with Bookshare and supply proof of a qualifying disability from an appropriate professional.

6. Point 2 of the DRM entails a contractual agreement between Bookshare and its users forbidding violations of copyright law. The agreement warns users that any violation will result in a loss of access to Bookshare and that other legal consequences may follow. Attorneys from the publishing industry reviewed and were given the opportunity to suggest changes to the agreement.

7. Point 3 requires that all copyrighted materials bear a notice informing the user that the copy is for that individual's use only. The notice also identifies the copyright owner and the date of the original publication.

8. Pursuant to point 4, Bookshare encrypts a requested book for a given user, and the files are delivered through secure/encrypted channels.

9. Once a Bookshare reader has received a book and decrypted it, however, it is in a format that permits copying. This is intended primarily to permit use by assistive technology devices, such as Braille notetakers, but it is technically possible to redistribute copies to third parties.

10. Point 5 requires all copyrighted material downloaded to be fingerprinted as part of the encryption process so that the identity of the authorized user is contained within the decrypted material in a difficult-to-find fashion. This way, if a user illegally redistributes material downloaded from Bookshare and we have access to a copy, it is possible to confirm both that the materials came from Bookshare and which user was responsible.

11. Under point 6, all transactions, encryption codes, and fingerprints are stored in a database enabling Bookshare to track any abuse to the source. Users are informed of the existence of this database as part of Bookshare's privacy program, and are informed of the limitations of the use of this data (it will only be used to respond to abuse problems, and not for marketing or other purposes).

12. Finally, point 7 calls for a security watch program that monitors all transactions and automatically limits any user whose account downloads more than a fixed number of titles in a given month, typically 100 titles. In addition, Bookshare regularly searches the web for illegal copies of content originating from Bookshare user downloads and suspends the account of users found to have been the source of such content. In addition, Bookshare issues take-down notices to the websites hosting such content.

13. Generally, Bookshare identifies fewer than ten instances of unauthorized distribution of its digital books each year. This is a very low number considering the popularity of the bestsellers in our collection and the more than one million downloads in a typical year.

14. The individuals responsible for the few unauthorized copies typically are not seasoned internet pirates seeking to profit. Rather, they are individuals who have acted without commercial intent and often by mistake.

15. On the spectrum of security measures employed by distributors of digital books, Bookshare's security measures are less strong than most. Nevertheless, because of relatively low levels of piracy and the barriers created by strong security measures, many in the publishing industry are considering abandoning their more restrictive security measures in favor of security models closer to our social DRM plan.

Dated:

JULY 17, 2012



James Fruchterman