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December 29, 2011

VIA HAND DELIVERY

The Honorable Harold Baer, Jr.
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: The Authors Guild, et al. v. Hathitrust, et al.
Civil No. 11 CV 6351 (HB) (JLC)

Your Honor:

We are attorneys for the defendants in the above-referenced action. We submit this letter pursuant to Rule 5 A of Your Honor's Individual Rules of Practice to inform the Court that last night the defendants filed a motion for judgment on the pleadings seeking dismissal of certain of Plaintiffs' claims for lack of subject matter jurisdiction.

The motion seeks dismissal of plaintiffs' claims asserted on behalf of unidentified members of various U.S. and foreign trade associations. As set out in the motion, these "Associational Plaintiffs" lack standing to assert copyright infringement claims for unidentified works in which their unidentified members allegedly hold copyright.

Further, defendants' seek dismissal of plaintiffs' claims that any distribution and display of copyrighted works in connection with the University of Michigan's "Orphan Works Project" will infringe Plaintiffs' copyrights. As set out in detail in the motion, plaintiffs lack standing to assert such claims and, additionally, their claims are not ripe. This is because, among other reasons: (1) no works have been made available yet through the Orphan Works Project; (2) the University of Michigan withdrew its previous orphan works candidates and is in the process of creating a more robust process to identify orphan works candidates; and (3) defendants have committed to providing plaintiffs 120-days advance notice before any works are made available through the Orphan Works Project.

Based on the deadlines set forth in Local Civil Rule 6.1(b), defendants expect that the motion will be fully briefed on January 18, 2012. In accordance with Your Honor's Individual Rules, we will furnish the Court with courtesy copies of the motion after it is fully briefed. Defendants respectfully request oral argument on the motion.

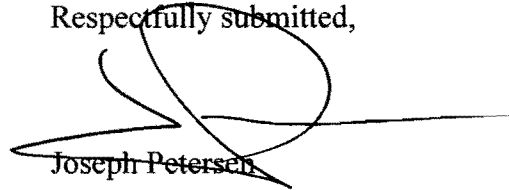
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We thank the Court for its attention to this matter.

Respectfully submitted,


Joseph Petersen

cc: Ned Rosenthal, Esq. (counsel for Plaintiffs)
Robert J. Bernstein, Esq., Dan Goldstein, Esq. (counsel for Proposed Intervenor)

1/2/12
If all parties to this m/v
are in accord ~~that~~ I can hear
argument the first 10 days of March
& I will be in touch as to your most
convenient date - otherwise the motion
will be decided w/o O/A - let me know
on or before Friday 1/6/12
SO ORDERED
Harold Baer Jr.
USDC

IF ALL PARTIES TO THE M/D ARE IN ACCORD I CAN HEAR ARGUMENTS THE FIRST 10 DAYS OF MARCH & I WILL BE IN TOUCHE AS TO THE MOS CONVENIENT DATE - OTHERWISE THE MATTER WILL BE DECIDED WITH OUT ORAL ARGUMENT - LET ME KNOW ON OR BEFORE FRIDAY 1/6/12.