

Edward H. Rosenthal
Jeremy S. Goldman
FRANKFURT KURNIT KLEIN & SELZ, P.C.
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

**OBJECTIONS AND RESPONSES OF THE INDIVIDUALLY NAMED
PLAINTIFFS TO DEFENDANT-INTERVENORS' FIRST SET OF
INTERROGATORIES AND FIRST REQUEST FOR THE
PRODUCTION OF DOCUMENTS**

The individually named Plaintiffs in the above-captioned action ("Plaintiffs") hereby submit, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Courts for the Southern Districts of New York (the "Local Rules"), the following objections and responses to Defendant-Intervenors' First Request for the Production of Documents ("Requests").

GENERAL STATEMENTS

A. Plaintiffs incorporate by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a

REDACTED

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. *State the sales revenue for each of the last five years for sales to the blind of digital copies of all titles for which you hold a copyright. Identify all documents and communications related to these sales.*

RESPONSE:

Plaintiffs object to this Request on the ground that it is overbroad, unduly burdensome and seeks information not relevant to any claim or defense in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection or any General Objections, Plaintiffs respond that by tradition and industry practice, authors generally do not receive royalties for the licensing and sale of works distributed in specialized formats exclusively for use by the blind or other persons with disabilities. Furthermore, 17 U.S.C. § 121 specifically permits the reproduction of copyrighted literary works by one or more “authorized entit[ies]” in “specialized formats exclusively for use by blind or other persons with disabilities.” Accordingly, for the purposes of this litigation, Plaintiffs are not

claiming that any revenue or other earnings of any kind were generated or are expected to be generated in whole or part by the reproduction or distribution by Defendants of copies of Plaintiffs' work(s) for use by blind or other visually disabled person. In addition, Plaintiffs refer to documents previously produced to Defendants in this action, which will be made available to Defendant-Intervenors upon request.

REDACTED

REDACTED

5. *If you contend that the actions of Defendants have affected the market for digital books in fully accessible formats made available for library lending to persons who cannot access print, state all facts that support this contention.*

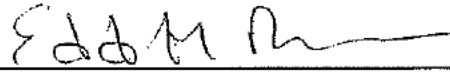
RESPONSE:

See Response to Request No. 1. In addition, Plaintiffs object to this Interrogatory on the ground that it seeks information in the possession of Defendants and/or third parties. Plaintiffs further state that they have not identified any specific, quantifiable past harm, or any documents relating to any such past harm, suffered as a result of the actions of Defendants in making books in fully accessible formats available for library lending to persons who cannot access print versions of such books.

REDACTED

Dated: New York, New York
May 8, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: 

Edward H. Rosenthal
Jeremy S. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel. (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

TO: Daniel F. Goldstein, Esq. (admitted *pro hac vice*)
Laura Ginsberg Abelson, Esq. (admitted *pro hac vice*)
Brown, Goldstein & Levy, LLP
120 Baltimore Street, Suite 1700
Baltimore, MD 21202
Tel: (410)-962-1030
Fax: (410)-385-0869
Email: dfg@browngold.com
labelson@browngold.com

Robert J. Bernstein, Esq.
The Law Office of Robert J. Bernstein
380 Lexington Avenue, 17th Floor
New York, NY 10168
Tel: (212)-551-1068
Fax: (212)-551-1001