

**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)

**DECLARATION OF DR. MARC MAURER IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, Marc Maurer, do hereby declare that:

1. I am over eighteen years of age and am competent to make this Declaration.
2. My business address is 200 East Wells Street at Jernigan Place, Baltimore, Maryland 21230.
3. I am legally blind and have been my entire life.
4. I received a bachelor's degree from Notre Dame University in 1974 and a J.D. from the University of Indiana School of Law in 1977.
5. I am the President of the National Federation of the Blind, a position I have held since 1986.
6. The National Federation of the Blind was founded in 1940 by a number of individuals notably including Jacobus tenBroek, a blind constitutional scholar, whose works, such as The Antislavery Origins of the Fourteenth Amendment, later published under the title Equal Under Law, The Right of the Disabled to Live in the World: Disability and the Law of Torts, and

Prejudice, War and the Constitution, have had a major influence on the development of civil rights. Dr. tenBroek founded the NFB in the belief that there are effective nonvisual alternatives for most educational, quotidian and workplace tasks and that with equal opportunity, the blind can be full participants in all aspects of society. Today, the NFB, with affiliates in all 50 states, Puerto Rico, and the District of Columbia, consists of more than 50,000 blind people, their families and friends.

7. Every year, the National Federation of the Blind offers significant scholarship to blind college and graduate students in disciplines as varied as chemistry, engineering, physics, history and law. While many of these students prosper according to their talents and commitment to their studies, they compete under a severe handicap. That handicap is not a lack of sight, but a lack of access to information in a world in which information is the key to success. In a world in which the bulk of intellectual capital was contained in printed text, access was limited by considerations of cost, labor, resources and the low incidence of blindness in the population. When it became possible for that intellectual capital to be available in a digital format, a format that does not require sight to get at the content, there was, for the first time the opportunity that the blind could get at the same information with the same facility and to the same degree as the sighted. To date, however, other than in the instance of the University of Michigan Library, that possibility has not yet been realized.

Significance of the HathiTrust Digital Library Scans to the Blind

8. As early as 1931, when Congress passed the Pratt-Smoot Bill, separate libraries for the blind emerged in the United States to create and offer recordings of print books and braille copies. However, given the production time involved to make such alternative copies, only a

small fraction of the world's books were available to us. As the technology to make digital books became possible, the system of separate libraries for the blind remained in place.

9. Today, the only accessible digital books available, other than those for purchase through Apple iBooks and KNFB Blio, are the library collections of Learning Ally, Bookshare, and the National Library Service for the Blind and Physically Handicapped (NLS). These libraries receive paltry funding and must perform much handwork to re-format the digital book files they receive from publishers or scan from print into accessible e-books that the blind can use.

10. Because the capacity and funding of these specialized libraries are so limited, they can make accessible only a small fraction of the titles available each year to the population at large. To appeal to the broadest audience, the libraries predominantly select the most popular titles. All together, the number of accessible books currently available to the blind for borrowing is a mere few hundred thousand titles, a minute percentage of the world's books. In contrast, the HDL contains more than ten million accessible volumes.

11. Access to the HDL scans would do far more than increase exponentially the textual information available to the blind; it would transform the opportunities for blind students and scholars to conduct research independently—a critical aspect both of modern education and the development of new ideas. Because today's blind students in higher education cannot independently conduct scholarly library research, they are at a severe disadvantage compared to their sighted peers. Rather, blind students have access, at most, to required reading. Even then, the blind student must generally first search to see if an accessible copy is available from one of the specialized libraries for the blind. Since those collections contain few scholarly or academic materials, the blind student most often turns to his or her disabled students service office (DSS) to attempt to locate a digital file from the publisher or rip out the pages of a print book to scan,

OCR, and render into what becomes a poor-quality digital file of the book that can be difficult to read with a screen reader. Because the work involved to create these scans is time-consuming and the DSS offices are often overworked, it sometimes takes months or until the end of the semester for the student to actually receive the accessible material.

12. In late 2004, when I became aware that Google was making arrangements with major academic libraries to make digital copies of their collections – works never before available independently to the blind, at a volume never before available to the blind – I realized the revolutionary and equalizing potential the scope of such a project could have for the blind, particularly the blind scholar or student, and set out to ensure these works would be accessible to us.

13. After an initial inquiry to Google about accessibility did not yield a positive response, I determined to visit each of the academic libraries partnering with Google to press upon them the importance of accessibility. Our first stop, in early 2006, was the University of Michigan, where we were advised by John Wilkin and the library’s counsel, Jack Bernard, that it was the firm intention of the University of Michigan that the digital collection be available to the blind and they described how they envisioned that access would be triggered through certification of blindness by the DSS office.

14. In 2008, the University of Michigan advised that it had set up the infrastructure to begin to make the collection available to blind students and invited us to the campus for a demonstration of how the system worked.

History of the Publishing Industry’s Lack of Interest in a Marketplace that Includes the Blind

15. For more than 20 years, the National Federation of the Blind has vigorously worked to ensure that digital information is rendered accessible on devices that are accessible.

16. In the 1980s, when DOS was first introduced, equal access by the blind to digital currently created information was simpler. Through our Research and Development Committee, we developed screen access technology, the speaqualizer, that could obtain and render aurally the information on the screen. In those days, computer screens displayed text and the screen access software simply read aloud the text information and navigational markers, such as paragraphs and page numbers, behind the screen.

17. When DOS was overtaken by Windows, we lost much of the access we had previously achieved. We fought and worked with developers to ensure that Windows technology would be compatible with screen access software and, though we won that battle, we continue to face barriers when developers create inaccessible websites, software programs, and now, mobile applications and devices.

18. With respect to books and printed materials, the proliferation of digital information and technology held great promise for the blind. Previously, when books were available only on ink and paper, the blind could only access these materials if they were converted to braille or read aloud by a human reader in person or by recording.

19. In the late 1980s, George Kerscher, a blind then-university student and now expert in accessible book technology, created the first publicly available e-book. The e-book was fully accessible to the blind. He later developed the DAISY standard to ensure that the digital content of publisher files could be read by everyone, including the blind.

20. In the late 1990s, the first commercially available e-books entered the marketplace, including e-readers from Microsoft and Adobe. While the underlying content of the books would have been accessible to us, the interfaces on which they were offered, were not. Thus the blind were locked out of these books.

21. As, over the years, the e-book marketplace grew, publishers and authors continued to exclude us, adding digital rights management software that further excluded us from the content or locked the content for use on inaccessible devices.

22. After Amazon announced the launch of the Kindle e-book reader, a completely inaccessible device, I convened at the NFB headquarters a summit of stakeholders to discuss commercially feasible solutions that would be accessible to the blind and people with print disabilities. The attendees included publishers such as the American Association of Publishers, the Association of Educational Publishers, university presses, companies in the business of file conversions, such as Overdrive, distributors, including Amazon, and other involved parties such as Bookshare and Reading for the Blind and Dyslexic (now Learning Ally).

23. The publishers and distributors largely expressed their belief that a marketplace of the blind and print disabled was too insignificant to justify making their content accessible in the mainstream marketplace. They told us they were more concerned about possible piracy if books were made accessible to screen access software than they were about the benefits of making a mainstream e-book marketplace accessible.

24. Around the same time, I also met with university publishers to persuade them to offer their digital catalogs for sale in accessible formats.

25. In 2008, I, along with George Kerscher and our legal counsel Daniel Goldstein, met with representatives of Amazon to try to persuade them of the commercial benefits of making the Kindle e-book reader accessible. We told them how the addition of text-to-speech on the Kindle would benefit everyone, from the dyslexic child in school to the business executive who after disembarking the plane, could continue reading his Kindle book in the rental car via text-to-

speech. To make the device accessible to the blind would only involve extension of text-to-speech to the menus, controls, and navigational infrastructure.

26. Subsequently, Amazon released the Kindle 2, which added text-to-speech to the content, but not to the navigational structure. As a result, we could not use it. We could not independently turn on the text-to-speech function, purchase books, select the books we wanted to read, or start, stop or otherwise navigate through a book.

27. Immediately after the release of the Kindle 2, however, we faced an even larger battle. The Authors Guild protested Amazon's deployment of text-to-speech software to read the content on the Kindle 2. They argued that reading a book out loud through text-to-speech requires the specific permission of the copyright holder. The Authors Guild also expressed a concern that text-to-speech could inhibit the development of the market for audio books. On February 24, 2009, the New York Times ran an op-ed piece by Roy Blount, Jr., President of the Authors Guild, which escalated media attention on the issue.

28. In response to increasing pressure from authors and publishers, Amazon announced only a few days later that it would modify its system so that authors and publishers could turn off text-to-speech on a title-by-title basis.

29. The NFB quickly worked to convene a coalition of disability groups, the Reading Rights Coalition, representing the more than 15 million Americans with print disabilities. The Coalition grew to include more than 30 national and international organizations.

30. Through the NFB's legal counsel, Daniel Goldstein, the Reading Rights Coalition, sent a letter to the six publishers who then provided e-books for the Kindle 2, asking each of them to allow their books to be read on the device with text-to-speech and explaining that the coalition would engage in a national public education campaign in hopes of reversing the stance of the

authors and publishers who had demanded disabling text-to-speech for the content of their Kindle books.

31. We then, through Mr. Goldstein, initiated a dialogue with Paul Aiken, executive director of the Authors Guild, to discuss the effect of its actions on the print-disabled community and the market benefits that would flow to the authors if it welcomed the 15 million new customers who cannot consume or easily consume print books.

32. In response Mr. Aiken proposed a separate registration system for people with print disabilities, whereby a blind or print-disabled person would register as disabled and receive a code that would override the disablement of text-to-speech on the Kindle 2.

33. After consulting with the coalition, Mr. Goldstein explained why a registration system is an unworkable and unacceptable solution. Mr. Aiken responded, offering the possibility of making text-to-speech e-books available at an additional cost. The Coalition unanimously agreed that a “disability tax” was also not an acceptable solution and declined to offer any other proposals.

34. The NFB and the Reading Rights Coalition promptly convened a protest in which we picketed the headquarters of the Authors Guild in New York City. We put together a petition, which obtained thousands of signatures, demanding that text-to-speech stay on, and we leaned on authors for support.

35. Our efforts culminated in a statement issued by the White House with agreement from the NFB, the Authors Guild and AAP that digital books should be accessible. However, two publishers continued to keep the text-to-speech turned off for the content of their books.

36. In May 2009, Amazon released the Kindle DX without adding any accessibility for the blind. Amazon marketed the Kindle DX as an e-book reader for academic and student use. Six

universities announced a pilot program in which they would deploy the inaccessible Kindle device to students. We promptly filed a federal court complaint against Arizona State University and administrative complaints against the other universities with the Departments of Justice and Education against the universities for violating their obligations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. These complaints and the lawsuit ended in agreements to terminate use of the Kindle DX and to prohibit future programs involving inaccessible e-book reading technology.

37. While Amazon later released the Kindle 3 with some additional accessibility features, it lacked the navigational facility required to make the device usable. Subsequent e-reader devices released by Amazon, including the Kindle Fire, are completely inaccessible to the blind.

38. Meanwhile, Barnes & Noble's Nook became a significant e-book reader in the marketplace and completely ignored accessibility in both its device and online platforms.

39. The options for mainstream access in the marketplace are very slim today. Only Apple's iPad and iBooks and the KNFB reader platform are fully accessible.

40. The history is clear that publishers and authors have never considered the market for books for the blind to be commercially significant. I have not seen any evidence that this trend has reversed. There is no potential market of significance at this time for books for the blind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 6/27/2012



Marc Maurer