

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF LOUISE HEDBERG

I, Louise Hedberg, hereby declare as follows:

1. I am the Director of Sveriges Författarförbund (The Swedish Writers’ Union) (“SFF”), one of the plaintiffs in the above-captioned action.
2. I submit this declaration in support of Plaintiffs’ motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.
3. SFF is a non-profit organization with its principal place of business in Stockholm, Sweden. The SFF, first organized in 1893 as the Swedish Association of Authors, has more than 2,750 professional writers and translators as its members and is the leading organization for book authors in Sweden. In pursuit of its mission of securing its members’ rights to reasonable remuneration and working conditions, the SFF negotiates standard, minimum-terms agreements with book publishers, radio and television broadcasters, film producers and others on behalf of authors and translators. The SFF also defends freedom of expression and of the press by safeguarding the principles of the Swedish Freedom of the Press Act.

The Works At Issue

4. Upon information and belief, Defendants have digitized without authority many books by SFF members (the “SFF Works”), including at least one work by author Erik Grunstrom, who is the former Vice President of SFF and a plaintiff in the instant action.

Harm Resulting From Defendants’ Use Of The Works

5. The SFF agreed to join this lawsuit as an associational plaintiff after learning that print copies of SFF Works and millions of other copyrighted books were digitized and being used as part of the Google Library Project, and that Defendants planned to begin making digital copies of purported “orphan works” available for free.

6. I have reviewed the declarations of T.J. Stiles and Erik Grundstrom, who are authors and plaintiffs in this litigation. I agree with and incorporate by reference the description in those declarations of the various harms and potential harms that result from Defendants’ unauthorized digitization and use of copyrighted works. Those descriptions need not be repeated here in full, but can be summarized as follows.

7. *First*, each digital copy of an SFF Work that is created by Defendants without purchase or license represents a lost sale to the associated rightsholder. Defendants could have purchased a copy but instead had it scanned without compensating the copyright owner. SFF itself administers digital reproduction rights on behalf of many of its members, and SFF works closely with collecting societies in Sweden that manage the rights to thousands of additional works.

8. *Second*, Defendants’ storage of the SFF Works in an online digital repository exposes that property to security risks for which the rightsholders receive no commensurate remuneration. Unauthorized access to copyrighted books leading to widespread piracy would

gravely impact the market for those works. Although the Swedish market for electronic books is relatively undeveloped, there has recently been an immense amount of activity in this field, with authors, publishers, booksellers and libraries each making significant investments to optimize their relative position in the market when it finally emerges in full force. Hence, the risk of a project like HathiTrust causing a disturbance to the emerging markets for electronic books in Sweden is particularly troublesome.

9. *Third*, Defendants' various uses of the SFF Works undermine various licensing opportunities for rightsholders. For example, authors in Sweden routinely grant publishers the right to display one or two chapters of a book in order to promote sales of the book. Defendants' full-text search feature is comparable, but in that case there is no license and the service is not part of an effort to sell the books and provide revenue to the author. Defendants also permit the books to be used for non-consumptive research, an emerging field that represents another potential licensing stream for authors.

10. *Fourth*, Defendants' mass digitization and orphan works programs undercut opportunities for authors to generate royalty streams by entering into collective licensing agreements. For example, the National Library of Sweden entered into a memorandum of understanding ("MOU") with the SFF and the Swedish Publishers Association with the goal of creating a digital library that would make all works published in Sweden available to the public. The primary focus was on digitizing out of print works and works that had not yet been digitized. Rights would be cleared through an extended collective licensing agreement. The MOU contemplates that in exchange for granting rights to the National Library, authors would receive a set amount per work digitized, along with a copy of the digital file. A copy of a presentation summarizing the terms of the MOU in English is attached hereto as Exhibit A. Defendants have

undertaken similar activities as those discussed in the MOU, but they have not agreed to compensate authors for the use of their works or to provide any of the protections contained in the MOU.

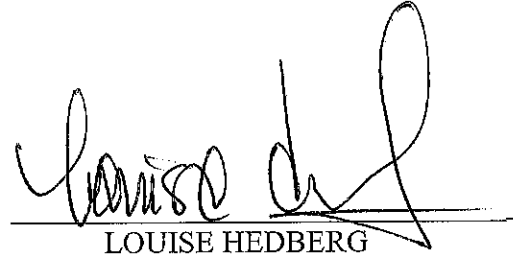
11. *Fifth*, making books available through the Orphan Works Project will directly undermine efforts to revive out of print books and will impact future sales of such books.

12. In short, Defendants activities have harmed or have the potential to cause enormous harm to the rights of authors.

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

Dated: Stockholm, Sweden
June 26, 2012



LOUISE HEDBERG

EXHIBIT A



National Library of Sweden

”Sweden’s Digital Library” – ECL a flexible model of rights clearance and making available

2011-03-31

Jerker Rydén
Chief Legal Adviser
National Library of Sweden

www.kb.se

AG 0004404



The Parties

- The following Parties have signed a MOU concerning the digitization of the Swedish literary heritage:
 - The Swedish Writers' Union,
 - The Swedish Publishers' Association,
 - The National Library of Sweden and
 - The Visual Arts Copyright Society in Sweden.

Principles

- The ambition is to create a digital library
 - all books published in Sweden should be made accessible
 - on-line to the public,
 - free of charge for the readers
- The Extended Collective License [ECL] is the best means to solve the copyright related issues.
- Cooperation with representatives for other right holders and producers.
- The National Library of Sweden must receive increased financial resources, through both private and state initiatives.



Out of Commerce

- The major focus will be to provide access to digitized books that are not available in print or have not been issued as an E-book.
- Access to the digital library will have to be adjusted. Conditions will vary from time to time.
- The best way to adapt the making availability of the Digital Library is for the Parties to negotiate an agreement [ECL] and modulate such an agreement when needed.



Different roles

- The National Library will digitize the books and provide access to them on the Internet
- To make the books available for research and educationally purposes
- But also in the interest of the general public to make the culture heritage of Sweden available to as many as possible
- The Parties agree that the Digital Library can provide a legitimate service where the market oriented publishing ends



Financing

- Additional financial means will be necessary
- Both private as well as government initiatives.
- Public Private Partnership will be essential to realize the digital library

”The Forties”

- A pilot project with a selection of Swedish poetry, prose and magazines
- A non-exclusive license for a period until a new ECL provision is introduced in the Copyright Act, and an agreement is concluded. However, the period will be at most three years.
- Gives the National Library a right to digitize and make the works in question available to the public via a web page.
- Remuneration – a symbolic sum of one SEK/work and the digital file.
- One purpose with the project – two identify obstacles and to define the roles of the stakeholders in a future ECL as well as features conducive for mass digitisation and making available

Features conducive for mass digitisation and making available

- Transparency / Heads Up
 - Give the stakeholders an opportunity to assess the commercial value of the work in question,
 - and the time to take necessary actions to put the work on the market, i.e. make the work commercially available
- Opt-Out
 - prohibition against the use of their works.
 - individual remuneration on the basis of the law

ECL

- An extended collective license applies
 - *when an agreement has been concluded concerning the exploitation of works pursuant to specific articles in the Sw. Copyright Act*
 - *with the organization that is most representative for, and best represents, the authors of the works in the field concerned that are being exploited in Sweden.*
- The extended collective license confers to the user the right to exploit works of the kind referred to in the agreement despite the fact that the authors of those works are not represented by the organization (*extended collective license effect*).



To digitise works in library collections and make them accessible on the Internet

- A new provision to the Sw. Copyright Act enabling libraries and archives to
 - digitise works in their collections and
 - make them accessible on the Internet
- The new provision does not rely on the material being previously published or otherwise previously made available to the public.
- Therefore it would also apply to manuscripts etc that has been donated by the rightsholder to the library with the intent that the material should be made available to the public

A special extended collective license

- An extended collective license applies also:
 - *when an agreement has been concluded in accordance with the conditions set out in the previous slide and relating to other exploitation of works and*
 - *the agreement relates to exploitation within a limited and well defined area,*
 - *the ECL effect is a precondition for the exploitation, and*
 - *the agreement is in writing and contains information that the agreement is intended to have an extended collective license effect.*

The Special ECL & PPP

- The Special ECL aim to
 - *facilitate rights clearance in connection with various forms of mass use of works and performances protected by copyright so as*
 - *to make the great repertoire available in organised form and*
 - *on terms that are acceptable to the users, authors and other right holders. See http://www.wipo.int/meetings/en/2010/wipo_cr_lic_ge_10/program.html*
- The EU and many national governments have been encouraging national libraries to enter into Public Private Partnerships (PPP) to facilitate the large scale digitization of the each library's Corpus.



The Special ECL & PPP

- These efforts are extremely costly, so the participation of a private partner is, in most cases, a prerequisite.
- Both the library as well as the private partner in these endeavors will need a license to disseminate the content.
- The Special ECL will be instrumental to enable PPP.

Important!

- Collective Management Organization (CMO) is representative
- CMO and users conclude an agreement on the basis of free negotiations.
- The agreement is by law made binding on non-represented rights holders. **But** non represented right holders have a right to:
 - prohibition against the use of their works.
 - individual remuneration on the basis of the law



Important!

- An agreement allows to legally use all materials,
 - without the possibility of receiving individual claims from "outsiders" or
 - having to face criminal sanctions

Out of Commerce - ECL

- **Issue:** The model is flexible and future-proof
- Rights-holder organizations negotiate with users the conditions for a particular use of works
- Agreement applicable to all right holders, even if they are not a member
- Possibility for "opt out"
- +: Both exclusivity and contractual freedom are respected