

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**DECLARATION OF JAMES SHAPIRO**

I, James Shapiro, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.

2. I am a Professor of English and Comparative Literature at Columbia University specializing in Shakespeare and the Early Modern period.

**The Work At Issue**

3. I am the sole author and copyright owner of the non-fiction work *Oberammergau: The Troubling Story of the World’s Most Famous Passion Play* (hereafter “*Oberammergau*”). A true and correct copy of the copyright registration for *Oberammergau* is attached hereto as Exhibit A.

4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of *Oberammergau*, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to *Oberammergau*. I never assigned to any third party the copyright to *Oberammergau*.

### **Unauthorized Uses Of My Work**

5. It has come to my attention that a print copy of *Oberammergau* was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with HathiTrust as “Defendants”) in partnership with Google, as part of the HathiTrust and/or Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of *Oberammergau*. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of *Oberammergau*.

### **Harm Resulting From Defendants’ Use Of My Work**

6. As an author who depends in large part on the value of my work to earn a living, I brought this action because the Defendants’ unauthorized digitization and use of *Oberammergau* has harmed or threatens to harm me in a number of ways.

7. I have reviewed the Declaration of T.J. Stiles and I agree with and incorporate by reference Mr. Stiles’ descriptions of the various harm and potential harm caused by the Defendants’ actions. *Oberammergau* is available for sale in digital form at online retailers such as Amazon.com and others.

8. I believe that I am entitled to determine whether, when and under what circumstances *Oberammergau* is scanned, digitized, copied and used. Defendants’ insistence that the new, complex, technologically-enabled uses they intend to make of *Oberammergau* should be permitted without my consent dangerously presupposes that copyright law does not give authors any right to control how their works are used and exploited in these contexts. To the best of my knowledge, this is not the law in the United States.

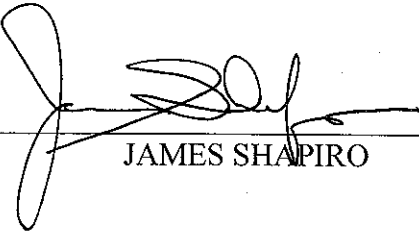
9. Defendants argue that uses of *Oberammergau* that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of *Oberammergau* or deprive me of licensing opportunities and therefore do not require my permission. This is not so. As the Declaration of T.J. Stiles points out, these kinds of uses represent a new market whose value is evidenced by Defendants' use of *Oberammergau*, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and copied. I believe that I have the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if I do decide to allow them. Defendants could have asked my permission to digitize *Oberammergau*, or offered to purchase one or more additional copies for their library collections.

10. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. Without such a contract, I am rendered powerless to dictate terms as to how *Oberammergau* may or may not be used. I also have no ability to insist that HathiTrust take security measures to protect my work. I have no power to ensure that the infringing copies of my work are truly in a "dark archive" that is not accessible for viewing or further copying. I have no assurance that Defendants' actual use of my work is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

***[The rest of this page intentionally left blank]***

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June 25, 2012



JAMES SHAPIRO

# **EXHIBIT A**



RE:

TX 5-234-556



115010333



115010333

EFFECTIVE DATE OF REGISTRATION

JUN 20 2000

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

OBERAMMERGAU: THE TROUBLING STORY OF THE WORLD'S MOST FAMOUS PASSION PLAY

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

NAME OF AUTHOR ▼

James Shapiro

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼  
1955

Was this contribution to the work a "work made for hire"?

Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country

OR { Citizen of ► USA  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼  
Entire text excluding brief quotes from other sources and one photograph

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country

OR { Citizen of ►  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

Yes  
 No

AUTHOR'S NATIONALITY OR DOMICILE  
Name of Country

OR { Citizen of ►  
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?  Yes  No  
Pseudonymous?  Yes  No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1999

This information must be given in all cases

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ► May

Day ► 23

Year ► 2000

Nation

USA

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

James Shapiro, c/o Anne Edelstein Literary Agency,  
404 Riverside Drive  
New York, NY 10025

APPLICATION RECEIVED

JUN 20 2000

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

JUN 20 2000

FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK ►

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8.

DO NOT WRITE HERE

**NOTE**

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person) whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

See instructions before completing this space

EXAMINED BY *dh*

FORM TX

CHECKED BY

CORRESPONDENCE  
Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a.  This is the first published edition of a work previously registered in unpublished form.
- b.  This is the first application submitted by this author as copyright claimant.
- c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ►

Year of Registration ►

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DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

Brief quotes from poetry; all photographs and illustrations except one are preexisting

a

6

See instructions  
before completing  
this space

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

Entire text excluding brief quotes from poetry and one photograph

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

Pantheon Books, a division of Random House, Inc.

19429

a

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CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Rebecca Heisman, Pantheon Books  
299 Park Ave., 7th Floor  
New York, NY 10171

b

Area code and daytime telephone number ► (212) 572-2706

Fax number ► (212) 572-6066

Email ► rheisman@randomhouse.com

CERTIFICATION\* I, the undersigned, hereby certify that I am the

Check only one ►

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of Pantheon Books

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Rebecca Heisman

Date ► June 19, 2000

Handwritten signature (X) ▼

*X Rebecca Heisman*

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Certificate will be mailed in window envelope to this address:

Name ▼	Rebecca Heisman, Pantheon Books
Number/Street/Apt ▼	299 Park Ave., 7th Floor
City/State/ZIP ▼	New York, NY 10171

YOU MUST

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

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As of July 1, 1999, the filing fee for Form TX is \$30.