

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| THE AUTHORS GUILD, INC., et al., | : |
| | : |
| Plaintiffs, | : |
| | : |
| - against - | : |
| | : |
| HATHITRUST, et al., | : |
| | : |
| Defendants. | : |
| | : |
| -----X | |

Index No. 11 Civ. 6351 (HB)

DECLARATION OF FAY WELDON

I, Fay Weldon, 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 novelist, short-story writer, essayist and playwright. I am also a professor of creative writing at Brunel University in London and have served as the Chair of Judges for the Booker Prize for Fiction.

The Works At Issue

3. I am the sole author and copyright owner of each work listed on Exhibit A hereto (hereafter referred to as the “Works”). True and correct copies of the copyright registrations for the twenty-two of my Works that are registered with the U.S. Copyright Office are attached hereto as Exhibit B.
4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of my Works, 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 my Works. I never assigned to any third party the copyright to the Works.

Unauthorized Uses Of My Works

5. It has come to my attention that print copies of my Works were copied without my permission when they were 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 my Works. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of my Works.

Harm Resulting From Defendants’ Use Of My Works

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 my Works 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. One difference between Mr. Stiles and me is that (as described below) I have not yet chosen to make certain of my available in digital form, as shown in the attached Exhibit A. This difference does not, however, change the fact that Defendants’ actions are causing and threatening to cause damage to me and to the value of my Works. Moreover, certain of my Works are available for sale in digital form at online retailers such as Amazon.com and others, as shown in the attached Exhibit A.

8. I believe that I am entitled to determine whether, when and under what circumstances my Works are scanned, digitized, copied and used. Defendants’ insistence that the new, complex, technologically-enabled uses they intend to make of my Works 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. While many of my Works are not yet available in digital form, I reserve the right to license the creation of digital versions of these Works when I choose to.

9. Defendants argue that uses of my Works that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of my Works 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 my Works, 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 my work, or offered to purchase one or more additional copies for their library collections.

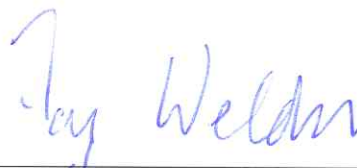
10. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. When I have licensed the digital rights in certain of my works, for example to Amazon for sale on the Kindle, my representatives have been careful to ensure that I obtained appropriate financial benefits and other contractual protections. When Defendants make digital copies without my consent and without a contract, I am rendered powerless to dictate terms as to how my Work 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.

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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: Shottesbury, Dorset, England
June 25th, 2012



FAY WELDON