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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DEEP9 CORPORATION,

11 Plaintiff,

12 v.

13 BARNES & NOBLE, INC., et al.,

14 Defendants.

CASE NO. C11-0035JLR

ORDER ON DEFENDANTS'  
MOTION FOR COSTS

15 Before the court is Defendants' motion for costs (Dkt. # 278). The court has  
16 considered the motion, all submissions filed in support and opposition thereto, the  
17 applicable law, and the balance of the record. For the reasons stated below, the court  
18 GRANTS in part and DENIES in part the motion and awards Defendants a total of  
19 \$40,503.01 in costs against Plaintiff.

20 On September 21, 2012, the court granted Defendants' motion for summary  
21 judgment and entered judgment in favor of Defendants. (Dkt. ## 276, 277.) Pursuant to  
22 Federal Rule of Civil Procedure 54(d)(1), Defendants, as the prevailing parties, are

1 entitled to an award of costs. Fed. R. Civ. P. 54(d)(1) (“Unless a federal statute, these  
2 rules, or a court order provides otherwise, costs—other than attorney’s fees—should be  
3 allowed to the prevailing party.”). Although Plaintiff asserts that it is within the  
4 discretion of the court to defer its ruling on Defendants’ motion for costs while an appeal  
5 is pending,<sup>1</sup> costs are ordinarily taxed upon entry of judgment. *See* Fed. R. Civ. P. 54.  
6 The court finds no reason to defer its ruling here. Accordingly, the court orders the  
7 following with regard to the costs Defendants have requested:

- 8       1. **Deposition Transcripts:** The court awards \$28,070.85 for the cost of  
9       deposition transcripts necessarily obtained for use in this case, *see* 28 U.S.C. §  
10       1920(2);
- 11       2. **Photocopying costs:** The court awards \$12,432.16 in photocopying costs, but  
12       declines to award \$4,500.00 for professional graphics support with regard to  
13       exhibits Defendants used at the summary judgment hearing; and
- 14       3. **Electronic Transcript:** The court declines to award \$268.25 for an electronic  
15       transcript of the summary judgment hearing.

16 Pursuant to the foregoing, the court GRANTS in part and DENIES in part

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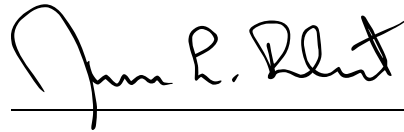
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21       <sup>1</sup> *See, e.g.,* Fed. R. Civ. P. 54 Notes of Advisory Committee on Rules – 1993 (“If an  
22 appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its  
ruling on the motion, or may deny the motion without prejudice.”)

1 Defendants' motion for costs (Dkt. # 278). The court further ORDERS that Defendants  
2 are awarded costs in the total amount of \$40,503.01 against Plaintiff.

3 Dated this 28th day of December, 2012.

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6 JAMES L. ROBART  
7 United States District Judge  
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