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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS, INC., GRAPHIC ARTISTS GUILD, PICTURE ARCHIVE COUNCIL OF AMERICA, INC., NORTH AMERICAN NATURE PHOTOGRAPHY ASSOCIATION, PROFESSIONAL PHOTOGRAPHERS OF AMERICA, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, AMERICAN PHOTOGRAPHIC ARTISTS, LEIF SKOOGFORS, AL SATTERWHITE, MORTON BEEBE, ED KASHI, JOHN SCHMELZER, SIMMS TABACK AND GAIL KUENSTLER TABACK LIVING TRUST, LELAND BOBBE, JOHN FRANCIS FICARA, AND DAVID W. MOSER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE INC.

Defendant.

Civil Action No. 10 CV 2977 (DC)

ECF Case

DEFENDANT GOOGLE INC.'S ANSWER TO PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

Defendant Google Inc. (“Google”) answers Plaintiffs’ Second Amended Class Action Complaint as follows:

NATURE OF THE ACTION

1. Google admits that the Second Amended Complaint purports to make claims for copyright infringement and to seek relief therefor. Google denies the remaining allegations of this paragraph.

2. Google admits that, among other activities, it operates an Internet search engine that, among other things, provides links to commercial and non-commercial Internet websites. Google denies the remaining allegations of this paragraph.

3. Google admits that it has entered into agreements with several libraries (including those of the Universities of Michigan, Wisconsin, and California and Stanford University) to digitally scan and create a searchable index of the words in many books in their collections, and that it will retain a digital scan of such books. Google admits that, through the Google Books Partner Program and related programs, publishers may request that Google host their books and periodicals. Google denies the remaining allegations of this paragraph.

4. Google admits that at least some of the books and periodicals included in Google Books contain photographs, illustrations, graphic art, and other images protected by copyright law. Google admits that it has digitized and stored books provided by libraries and publishers. Google denies the remaining allegations of this paragraph.

5. Google denies the allegations of this paragraph.

6. Google denies the allegations of this paragraph.

7. Google denies the allegations of this paragraph.

8. Google denies that the Lead Plaintiffs are adequate class representatives. Google is without knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

9. Google denies the allegations of this paragraph.

10. Google denies the allegations of this paragraph.

11. This paragraph consists of legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

JURISDICTION AND VENUE

12. Google admits the allegations of this paragraph.

13. Google admits the allegations of this paragraph.

14. Google admits that this Court has personal jurisdiction over Google.

15. Google admits that venue is proper in this District.

PARTIES

THE ASSOCIATIONAL PLAINTIFFS

16. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

17. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

18. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

19. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

20. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

21. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

22. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

23. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

THE INDIVIDUAL PLAINTIFFS

24. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

25. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

26. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

27. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

28. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

29. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

30. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

31. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

32. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

33. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

34. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

35. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

36. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

37. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

38. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

39. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

40. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

41. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

42. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

DEFENDANT

43. Google admits the allegations of this paragraph.

44. Google admits that it operates a large Internet search engine, and that it receives revenue from advertising.

45. Google admits that it has digitized books and periodicals so that users can search their text online, and that some of those books and periodicals were submitted to Google by their publishers for hosting. Google denies the remaining allegations of this paragraph.

CLASS ACTION ALLEGATIONS

46. This paragraph consists of legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

47. This paragraph purports to establish a defined term, to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

48. This paragraph purports to establish a defined term, to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

49. This paragraph purports to establish a defined term, to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

50. This paragraph purports to establish a defined term, to which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

51. Google denies the allegations of this paragraph.

52. Google denies the allegations of this paragraph.

53. Google denies the allegations of this paragraph.

54. Google denies the allegations of this paragraph.

55. Google denies the allegations of this paragraph.

56. Google denies the allegations of this paragraph.

57. Google denies the allegations of this paragraph.

ALLEGATION COMMON TO ALL CLAIMS FOR RELIEF

58. Google admits that it operates a large Internet search engine, and that it receives revenue from advertising.

59. Google admits that it has entered into agreements with several libraries (including those of the Universities of Michigan, Wisconsin, and California and Stanford University) to digitally scan and create a searchable index of the words in many books in their collections, and that it will retain a digital scan of such books. Google denies the remaining allegations of this paragraph.

60. Google admits that, through the Google Books Partner Program and related programs, publishers may request that Google host their books. Google denies the remaining allegations of this paragraph.

61. Google admits that, through the Google Books Partner Program and related programs, publishers may request that Google host their periodicals. Google denies the remaining allegations of this paragraph.

62. Google admits that it has scanned over twelve million books. Google denies the remaining allegations of this paragraph.

63. Google denies the allegations of this paragraph.

64. Google is without knowledge or information sufficient to admit or deny the allegations of the first sentence of this paragraph, and on that basis denies them. Google denies the remaining allegations of this paragraph.

65. Google denies the allegations of this paragraph.

- 66. Google denies the allegations of this paragraph.
- 67. Google denies the allegations of this paragraph.
- 68. Google denies the allegations of this paragraph.
- 69. Google denies the allegations of this paragraph.

CAUSES OF ACTION

COUNT ONE

Copyright Infringement, 17 U.S.C. § 501
(By Individual Plaintiffs And Certain Class Members Only)

70. This paragraph consists of an incorporation by reference, which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

71. Google is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

72. Google is without knowledge or information sufficient to admit or deny the allegations of the first sentence of this paragraph, and on that basis denies them. Google denies the remaining allegations of this paragraph.

- 73. Google denies the allegations of this paragraph.
- 74. Google denies the allegations of this paragraph.
- 75. Google denies the allegations of this paragraph.

COUNT TWO

Injunction
(By All Plaintiffs)

76. This paragraph consists of an incorporation by reference, which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

- 77. Google denies the allegations of this paragraph.
- 78. Google denies the allegations of this paragraph.
- 79. Google denies the allegations of this paragraph.
- 80. Google denies the allegations of this paragraph.
- 81. Google denies the allegations of this paragraph.
- 82. Google denies the allegations of this paragraph.
- 83. Google denies the allegations of this paragraph.
- 84. Google denies the allegations of this paragraph.

COUNT THREE

Declaratory Judgment
(By All Plaintiffs)

85. This paragraph consists of an incorporation by reference, which no response is required. To the extent a response is deemed required, Google denies the allegations of this paragraph.

- 86. Google denies the allegations of this paragraph.
- 87. Google denies the allegations of this paragraph.

PRAYER FOR RELIEF

88. Google denies that Plaintiffs are entitled to the requested relief, or to any relief whatsoever.

JURY DEMAND

- 89. Google demands a trial by jury in this action on all issues so triable.

DEFENSES

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action because Plaintiffs lack statutory and Article III standing to bring this action.

THIRD DEFENSE

Plaintiffs' claims and/or the remedies sought are barred by the First Amendment to the United States Constitution.

FOURTH DEFENSE

Plaintiffs' claims are unsuitable for class treatment pursuant to Federal Rule of Civil Procedure 23.

FIFTH DEFENSE

Google's use of and activities with respect to books and periodicals that are subject to copyright are subject to one or more of the limitations on 17 U.S.C. § 106 set forth in 17 U.S.C. §§ 107-122.

SIXTH DEFENSE

Some or all of the Plaintiffs' claims are barred or subject to dismissal for failure to comply with renewal, notice, and registration requirements, and with other necessary formalities.

SEVENTH DEFENSE

Some or all of the copyrights on which Plaintiffs rely have been forfeited or abandoned.

EIGHTH DEFENSE

Some or all of Plaintiffs' works or portions thereof are not original.

NINTH DEFENSE

Some or all of Plaintiffs' works or portions thereof are in the public domain.

TENTH DEFENSE

Some or all of Plaintiffs' claims are barred by the merger doctrine.

ELEVENTH DEFENSE

Some or all of Plaintiffs' works or portions thereof constitute unprotectable ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries.

TWELFTH DEFENSE

Some or all of Plaintiffs' works or portions thereof constitute scenes a faire.

THIRTEENTH DEFENSE

Some or all of Plaintiffs' claims are barred because Plaintiffs have engaged in copyright misuse and have unclean hands.

FOURTEENTH DEFENSE

Some or all of Plaintiffs' claims or some or all of the relief sought for such claims are barred by the doctrines of waiver, estoppel, laches, or acquiescence, or by the applicable statute of limitations.

FIFTEENTH DEFENSE

Google has a license to scan, copy, and/or display some or all of Plaintiffs' works or portions thereof.

SIXTEENTH DEFENSE

Some or all of Plaintiffs' claims are barred because Plaintiffs do not own the asserted exclusive rights for some or all of the works.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Google is protected by one or more of the DMCA Safe Harbors in 17 U.S.C. § 512.

WHEREFORE, Defendant Google Inc. respectfully prays the Court as follows:

1. That the Court dismiss the Complaint;

2. That the Court deny certification of the proposed class;
3. That Plaintiffs recover nothing of Google;
4. That the Court deny Plaintiffs' request for injunctive and declaratory relief;
5. That the costs of this action, including reasonable attorneys' fees, be taxed against Plaintiffs pursuant to 17 U.S.C. § 505 or other applicable law; and
6. That the Court grant Google such other and further relief as the Court deems just and proper.

Dated: March 25, 2013

Respectfully submitted,

By: /s/ Joseph C. Gratz

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