

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., ET AL.,

Plaintiff,  
Index no. 11 Civ. 6351 (HB)

VS.

HATHITRUST, et al.,

Defendants.

-----X

\*\*C O N F I D E N T I A L\*\*

DEPOSITION  
OF  
PAT CUMMINGS  
Tuesday, May 22, 2012  
1114 Avenue of the Americas  
New York, New York

Reported by:  
AYLETTE GONZALEZ, CLR  
JOB NO. 49735

1  
2 DATE: May 22, 2012  
3 TIME: 9:57 a.m.  
4  
5  
6 Deposition of PAT CUMMINGS, held at the  
7 offices of KILPATRICK TOWNSEND & STOCKTON, LLP,  
8 1114 Avenue of the Americas, New York, New  
9 York, 10036, pursuant to NOTICE, before  
10 AYLETTE GONZALEZ, a Certified LiveNote  
11 Reporter and Notary Public of the State of  
12 New York.  
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2 A P P E A R A N C E S:  
3  
4 KILPATRICK TOWNSEND & STOCKTON  
5 Counsel for Defendant  
6 1114 Avenue of the Americas  
7 New York, New York 10036  
8 BY: JOSEPH PETERSEN, ESQ.  
9  
10  
11  
12 FRANKFURT KURNIT KLEIN & SELZ  
13 Counsel for Plaintiff  
14 488 Madison Avenue  
15 New York, New York 10022  
16 BY: JEREMY GOLDMAN, ESQ.  
17  
18  
19  
20 ALSO PRESENT:  
21 JAN CONSTANTINE, The Authors Guild, Inc.  
22  
23  
24  
25

1 CONFIDENTIAL-PAT CUMMINGS  
2 P A T C U M M I N G S, called as a  
3 witness, having been first duly sworn by a  
4 Notary Public of the State of New York, was  
5 examined and testified as follows:  
6 EXAMINATION BY  
7 MR. PETERSEN:  
8 Q. Good morning, Ms. Cummings. My  
9 name is Joe Petersen. I'm counsel for the  
10 libraries in the HathiTrust matter.  
11 Could you please state your name  
12 and address for the record.  
13 A. Pat Cummings. 28 Tiffany Place,  
14 Brooklyn, New York 11231.  
15 Q. And have you ever been deposed  
16 before?  
17 A. No.  
18 Q. Let me give you a quick rundown on  
19 the rules. I'll be asking a series of  
20 questions. My goal isn't to trick you at all.  
21 If you don't understand the question, please  
22 let me know, and I'll rephrase the question.  
23 Is that clear?  
24 A. Yes.  
25 Q. And just -- the Reporter is taking

1 CONFIDENTIAL-PAT CUMMINGS  
2 down everything you say here this morning and  
3 so, just give her time to take it down, try  
4 not to talk over me. I will try not to talk  
5 over you. Although, sometimes I will fail at  
6 that, I will assure you.  
7 But she can't take down when we're  
8 both speaking. Is that clear?  
9 A. Okay.  
10 Q. How long have you been a writer?  
11 A. About 30 years.  
12 Q. And does that include professional  
13 writer?  
14 A. That's professional writing.  
15 Q. And where did you go to college?  
16 A. Pratt Institute in Brooklyn.  
17 Q. What year did you graduate?  
18 A. 1974.  
19 Q. And what did you study at Pratt?  
20 A. Communication design.  
21 Q. And did you become a writer shortly  
22 after graduating from Pratt?  
23 A. No, I illustrated.  
24 Q. And who did you -- what kind of  
25 work did you illustrate?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Picture books, children books.  
 3 Q. Were you a freelance illustrator?  
 4 A. Yes.  
 5 Q. Were you associated with any  
 6 companies at that point in time?  
 7 A. I published with several. I --  
 8 associated in that way, I was published by  
 9 them.  
 10 Q. And other than professional writer,  
 11 have you had any other jobs since graduating  
 12 from Pratt in 1974?  
 13 A. Yes.  
 14 Q. What other jobs have you had?  
 15 A. Well, now I teach children book  
 16 writing and illustrating. And I did a lot of  
 17 consulting and speaking at conferences. So, I  
 18 get paid as, you know, a public speaker.  
 19 Q. I see. And you say you teach. Is  
 20 that at a particular school?  
 21 A. At Pratt and at Parsons, part of  
 22 the New School.  
 23 Q. And you say you speak at  
 24 conferences. What types of conferences do you  
 25 speak at?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 I mean, different people who were going to be  
 3 in the books. And so, I interviewed them.  
 4 I would either call them up, check  
 5 out their books and read what they've done or  
 6 just check them out on the internet, look at  
 7 their biographies.  
 8 Q. Is this for the Talking with  
 9 Artists Series?  
 10 A. For Talking with Artists and for  
 11 Talking with Adventures.  
 12 Q. What sort of individuals were  
 13 included in those books?  
 14 A. Talking with Artists was all  
 15 children book illustrators. Talking with  
 16 adventures was anybody who had done something  
 17 adventurous, like Jane Goodall, Robert  
 18 Ballard, who found the Titanic. People like  
 19 that.  
 20 Q. And I think you referred, a few  
 21 moments ago, you did some research on the  
 22 internet; is that correct?  
 23 A. Yes.  
 24 Q. Could you tell me more about that?  
 25 What type of research have you done on the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. I just did one Friday in -- it's  
 3 usually librarians, teachers. Sometimes I  
 4 speak at libraries or schools. I speak to a  
 5 lot of kids and sometimes professional  
 6 organizations like SCBWI, and I've done things  
 7 for the Authors Guild as well.  
 8 Q. When you're writing a book or  
 9 planning on speaking at a conference, do you  
 10 do any sort of research in connection with  
 11 those activities?  
 12 A. Yes. I don't usually have to do  
 13 much research. I might research if there's  
 14 going to be other speakers on the panel. But  
 15 the research that I do is limited because it's  
 16 usually talking about my own books. That's  
 17 why I've been invited.  
 18 Q. And when you're writing your own  
 19 books, do you do any research in connection  
 20 with them?  
 21 A. Sometimes.  
 22 Q. And what types of research do you  
 23 do?  
 24 A. I did several non-fiction books and  
 25 I had to do research on different speakers --

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 internet?  
 3 A. Well, for talking with adventurers,  
 4 I needed to identify who was adventurous or we  
 5 were trying to put together a list of people.  
 6 And so, I was looking for scientists,  
 7 explorers, people like that.  
 8 And so, I had to do some research  
 9 to find -- I just literally would type in  
 10 something like adventurers, you know, and see  
 11 what came up.  
 12 Q. Into a search engine?  
 13 A. Probably Google. It's been a  
 14 while, but it was probably Google.  
 15 Q. Would that same answer apply for  
 16 the Talking with Artists?  
 17 A. Probably, but I didn't have to do  
 18 much research on that. I mean, I knew who I  
 19 was going after and I knew how to contact  
 20 them.  
 21 Q. In addition to the search engine  
 22 research you just mentioned, did you do any  
 23 other online type of research in connection  
 24 with writing Talking with Adventurers?  
 25 A. I must have. I can't remember

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 doing much research. I got -- usually, I got  
 3 most of the information directly from the  
 4 person. But, I mean, I didn't research their  
 5 field or anything. Do you know what I mean?  
 6 I took it from them.  
 7 Q. And once you called down the list  
 8 to a few names, did you do research concerning  
 9 those particular adventurers in terms of books  
 10 written about those individuals?  
 11 A. Yes.  
 12 Q. What how did you access those types  
 13 of books?  
 14 A. Usually, I went to Amazon just to  
 15 see what the list of their books was and just  
 16 see reviews and things like that. I might  
 17 have checked some out.  
 18 Q. Checked some out, meaning,  
 19 purchased through Amazon? Oh, checked them  
 20 out through the library?  
 21 A. The library, yes. Actually checked  
 22 the books out and took a look at them.  
 23 Q. Which library do you use?  
 24 A. Well, right now I use Carroll  
 25 Gardens Library in Brooklyn. But at the time

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Well, it's one stop to find out  
 3 what books of theirs are in print.  
 4 Q. And once you have a list of books  
 5 that you want to take a look at, what do you  
 6 do next in your research?  
 7 A. Well, like I said, it's been a  
 8 while. But I actually took out some of the  
 9 books because I wanted to actually take a look  
 10 at them.  
 11 Q. And when you checkout books, do you  
 12 checkout hardcopies, do you check it out  
 13 digitally?  
 14 A. It was hardcopies. These books  
 15 were done maybe in the '90s.  
 16 Q. You anticipated my next question.  
 17 Do you continue to use -- that's good. That  
 18 makes things go quicker.  
 19 Have you done research more  
 20 recently than the '90s?  
 21 A. I've done research, not for any  
 22 books.  
 23 Q. And what types of research have you  
 24 done?  
 25 A. I've been researching for like,

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 that I was doing the research for that, I'm  
 3 trying to remember where I was living.  
 4 It might have been the Donnell. I  
 5 used the Donnell a lot. That's closed now.  
 6 Q. And when you're using those  
 7 libraries, how do you find the books within  
 8 the library?  
 9 A. I'm a little old school, and I  
 10 would probably go to books in print. Now I  
 11 use -- I would use the internet.  
 12 Q. Tell me how you would use the  
 13 internet to find the books?  
 14 A. Well, most of the libraries have a  
 15 database that you can search and find what  
 16 they have in their collection.  
 17 Q. And so, this is searching digitally  
 18 the library's collection?  
 19 A. I would search their catalogs, yes.  
 20 Q. Is that helpful to you in your  
 21 research?  
 22 A. Helped me organize what I would be  
 23 looking for, yes.  
 24 Q. And why is it -- how did it help  
 25 you organize what you were looking for?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 there was a project that I didn't sell or that  
 3 I did sell that hasn't been published, let me  
 4 put it like that. I think it's been killed.  
 5 I did research about the same  
 6 thing, identifying people that I wanted to put  
 7 in the book.  
 8 Q. Does that project have a working  
 9 title?  
 10 A. It was 101 African-Americans -- I  
 11 can't remember the rest of it.  
 12 It was 101 African-American of  
 13 Note; something like that.  
 14 Q. And does the title, the working  
 15 title, describe the subject matter, I take it?  
 16 A. Yes, it was biographies.  
 17 Q. Did you do research in connection  
 18 with that project?  
 19 A. Yes.  
 20 Q. What type of research did you do  
 21 for that project?  
 22 A. That one mostly identified papers  
 23 and books and used Wikipedia a lot, just to  
 24 get birthdays and things like that.  
 25 Q. And in terms of your online

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 research, in addition to Wikipedia, were there  
 3 ever online resources that you used?  
 4 A. There were a lot. There were a  
 5 lot. I would look at things from the  
 6 Smithsonian, and I'd look at Google images, if  
 7 I needed maps or something like that.  
 8 Sometimes there's historic information in  
 9 archives that I would find. But I didn't --  
 10 you know, I had collection and collections of  
 11 papers, but I don't know any specific  
 12 characters that I collected information on.  
 13 Q. What period of time was this?  
 14 A. I think it was around 2001, 2002.  
 15 Q. And where does that project  
 16 currently stand?  
 17 A. It's sorts of been tabled. That  
 18 was a project I was doing with my father and  
 19 he died. It's sort of been tabled.  
 20 Q. Have you prepared a manuscript?  
 21 A. No, it was in the process of being  
 22 prepared.  
 23 Q. And was the online research that  
 24 you did helpful to you in that project?  
 25 A. It was helpful in targeting facts

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. To the best of your knowledge, does  
 4 the Schomburg library digitize their  
 5 collection?  
 6 A. I don't know.  
 7 Q. Have you ever been involved, as  
 8 either a Plaintiff or Defendant, in any  
 9 copyright litigation, other than this one?  
 10 A. No.  
 11 Q. Has anyone ever threatened you with  
 12 copyright litigation?  
 13 A. No.  
 14 Q. Have you ever threatened anyone  
 15 with copyright litigation?  
 16 A. No.  
 17 MR. GOLDMAN: Object to the form.  
 18 Q. How did you come to be named as a  
 19 Plaintiff in this lawsuit?  
 20 MR. GOLDMAN: Objection to the  
 21 form.  
 22 A. I was asked if I would be  
 23 interested in participating in this, as my  
 24 books were effected. I didn't realize they  
 25 had been. I didn't know about it. And when I

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 about the people that were going to be  
 3 involved. But we ended up doing most of the  
 4 research at the Schomburg.  
 5 Q. I'm sorry; could you spell that?  
 6 A. S-C-H-O-M-B-U-R-G.  
 7 Q. And what is the Schomburg?  
 8 A. A library in Harlem that houses a  
 9 collection on African-American studies.  
 10 Q. And in terms of how do you locate  
 11 materials within that collection?  
 12 A. Again, you know, pretty old school.  
 13 I would go there and look in the card catalog  
 14 there. They may have had it online. I'm sure  
 15 they had it online. I would identify, give a  
 16 note to the librarian and she would bring them  
 17 out. There were things on the reference  
 18 shelves, I could pick it out.  
 19 Q. Does the Schomburg ever digitize  
 20 any portion of their collection, either public  
 21 domain or in copyright works?  
 22 MR. GOLDMAN: Objection to the  
 23 form.  
 24 Q. When I say "digitized," do you know  
 25 what I mean when I use that term?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 was read a list of the books of mine that had  
 3 been involved, I was shocked and very willing  
 4 because I wanted to protect them.  
 5 Q. Who asked you?  
 6 A. Paul Aiken.  
 7 Q. Whose Mr. Aiken?  
 8 A. He's the director of the Authors  
 9 Guild.  
 10 Q. And what time period was this?  
 11 A. It was last year. My memory is not  
 12 great, but it was, I believe, last year some  
 13 time.  
 14 Q. And did Mr. Aiken explain to you  
 15 the purposes for which your works were  
 16 digitized by the libraries?  
 17 MR. GOLDMAN: Objection to the  
 18 form.  
 19 A. I don't recall a lot of  
 20 explanation. I recall being shocked and  
 21 bothered, but I don't remember him going into  
 22 great detail at that time about what was  
 23 involved.  
 24 Q. Did you ask him what they were  
 25 doing -- what the libraries were doing with

1 CONFIDENTIAL-PAT CUMMINGS  
2 the digitized works?

3 A. I don't remember. I don't remember  
4 if I asked him.

5 Q. As you sit here today, are you  
6 aware of the limited uses put by the libraries  
7 to digitize works?

8 MR. GOLDMAN: Objection to the  
9 form.

10 A. I'm aware that they've scanned my  
11 work. I'm not necessarily aware -- I don't  
12 know exactly what the plan is.

13 Q. So, you have no understanding, as  
14 you sit here today, as to the types of uses  
15 put by the libraries to those digitized works?

16 MR. GOLDMAN: Object to the form;  
17 misstates testimony.

18 A. I don't -- I don't know what their  
19 plan is, but I wouldn't say I have no  
20 understanding of it. I know what's capable --  
21 I mean, what's possible, and that's what  
22 worries me.

23 Q. Well, that's a fair point. But  
24 that aside, in terms of your plans, but I'm  
25 not speaking to that, I'm speaking to what the

1 CONFIDENTIAL-PAT CUMMINGS  
2 who would pay the lawyers' fees?

3 MR. GOLDMAN: Objection to the  
4 form.

5 And at this time, Pat, I just want  
6 to caution you that to the extent that  
7 you had any discussions with Jan  
8 Constantine, who is general Counsel,  
9 or myself, regarding this or any other  
10 matter, those are protected by the  
11 attorney/client privilege.

12 To the extent that your answer  
13 involves advice that you received from  
14 Jan or myself, or anyone else at my  
15 firm, you should not disclose that.

16 If you can answer the question without  
17 disclosing that information, you may  
18 do so.

19 THE WITNESS: Okay.

20 A. What was the question again?

21 Q. The question is: Are you paying  
22 your own legal fees in this action?

23 MR. GOLDMAN: You can answer.

24 A. No.

25 Q. Whose paying your legal fees in

1 CONFIDENTIAL-PAT CUMMINGS  
2 libraries are currently doing. At this point

3 in time, do you have any understanding of the  
4 use made by the libraries with respect to the  
5 digitized works in the HathiTrust Corpus?

6 MR. GOLDMAN: Object to the form;  
7 lacks foundation.

8 A. I don't know what uses they're  
9 making of it.

10 Q. Do you have any knowledge as to  
11 whether or not those -- your works are  
12 available to someone who accesses the  
13 HathiTrust Corpus? Are those works available  
14 in full text?

15 MR. GOLDMAN: Object to the form.

16 A. I don't know.

17 Q. Have you ever used the HathiTrust  
18 website?

19 A. No.

20 Q. Have you ever seen the HathiTrust  
21 website?

22 A. No.

23 Q. Turning back in time to when  
24 Mr. Aiken approached you concerning this  
25 lawsuit, was there any discussion concerning

1 CONFIDENTIAL-PAT CUMMINGS  
2 this action?

3 A. I don't actually know.

4 Q. Are you familiar with a project  
5 that's often referred to as the Google Books  
6 Project?

7 A. I don't know it by that time. I  
8 know that Google is scanning books.

9 Q. And do you know of any  
10 understanding as to when that project began?

11 A. No.

12 Q. Do you have any knowledge or  
13 understanding of the litigation commenced by  
14 the Authors Guild, and others, against Google  
15 with respect to the Google Books Project?

16 A. Yes.

17 Q. Do you know how long about? Not  
18 talking about -- how long has that action been  
19 pending?

20 A. Again, my memory is not great, but  
21 I remember talking about it last year.

22 Q. But that action has been pending  
23 for some time now, years; is that correct?

24 A. My memory is that it was like  
25 sometime last year that I became aware of it.

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. And you serve as the secretary on  
3 the Authors Guild?

4 A. Yes, I do.

5 Q. How long have you served as the  
6 secretary on the Authors Guild?

7 A. Okay; even there, I'm not really  
8 sure. It's been about ten years.

9 Q. But the first you became aware of  
10 the Google action was last year?

11 MR. GOLDMAN: Objection to the  
12 form. That's not what she said. She  
13 said she didn't recall.

14 A. I don't recall the exact time. I  
15 know that it was at a meeting of the Authors  
16 Guild, Counsel, that I heard about it.

17 Q. So, as you sit here, that action  
18 could have been filed two years ago or five  
19 years ago?

20 A. Could have been two years ago. My  
21 memory is that it was some time last year.

22 Q. What types of works do you author?

23 A. I do everything from board books to  
24 mostly picture books. They're mostly picture  
25 books for elementary school children. I've

1 CONFIDENTIAL-PAT CUMMINGS

2 Q. About how many books have you  
3 written?

4 A. I've illustrated and written about  
5 35. Maybe of those, maybe 15 I wrote.

6 Q. So there are times when you  
7 illustrate works written by other authors?

8 A. Yes. When I started, I was doing  
9 other people's stories mostly.

10 Q. How about in the past, say,  
11 15 years, did you mostly illustrate your own  
12 works?

13 A. It's mostly my own work.

14 Q. Are there any exceptions to that?  
15 You have illustrated the works of others?

16 A. In the last 15 years, yes, I'm sure  
17 I have.

18 Q. Any come to mind?

19 A. I did one called Squashed In The  
20 Middle by Elizabeth Winthrop. That was about  
21 five or six years ago.

22 Q. And it's Elizabeth Winthrop,  
23 W-I-N-T-H-R-O-P?

24 A. Um-hum.

25 Q. Was that work published?

1 CONFIDENTIAL-PAT CUMMINGS

2 done one teen novel and worked on a middle  
3 grade novel.

4 Q. When you say "board books," what do  
5 you mean by that?

6 A. For very young toddlers that are  
7 hard, hard books, maybe about 14 pages. The  
8 ones that they can chew on.

9 Q. And are picture books intended for  
10 the same audience?

11 A. No, slightly older. More like four  
12 to maybe eight-year old.

13 Q. Then teen novels are  
14 self-explanatory. Then books for middle  
15 school?

16 A. Middle grade. That's like ten-year  
17 old audience.

18 Q. Have your works tended to skew one  
19 particular type over another, the majority  
20 board books versus picture books; do you  
21 gravitate in one particular type of work?

22 MR. GOLDMAN: Objection to form.  
23 You can answer that.

24 A. The majority are picture books.  
25 The majority are middle or elementary school.

1 CONFIDENTIAL-PAT CUMMINGS

2 A. Yes, that was Greenhill.

3 Q. Who is Elizabeth Winthrop?

4 A. She's an author.

5 Q. Where does she live?

6 A. I think she lives in New York. I  
7 don't really know her. I met her, but I don't  
8 know her.

9 Q. And do you own the copyrights of  
10 the works that you author?

11 MR. GOLDMAN: Objection to the  
12 form.

13 A. Yes.

14 MR. GOLDMAN: My objection is to  
15 the extent it calls for a legal  
16 conclusion.

17 Q. I'm going to mark, as Exhibit 1 --  
18 maybe we can call it PC-1.

19 A. Excuse me. That wasn't Greenville.  
20 It was Clarion, C-L-A-R-I-O-N.

21 MR. GOLDMAN: Referring to the  
22 publisher?

23 THE WITNESS: Of Squashed In The  
24 Middle.

25 (Exhibit PC-1, three pages of the



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1 CONFIDENTIAL-PAT CUMMINGS  
 2 website of Pat Cummings, marked for  
 3 identification, as of this date.)  
 4 Q. Ms. Cummings, I ask you to take a  
 5 look at what I marked as Exhibit 1.  
 6 Do you recognize it?  
 7 A. Yes.  
 8 Q. What is it?  
 9 A. It's my very crusty website.  
 10 Q. You say "crusty" --  
 11 A. It hasn't been updated in a while.  
 12 Q. This is a collection of works you  
 13 authored or illustrated, correct?  
 14 A. Yes.  
 15 Q. Are there any works you authored or  
 16 illustrated that do not appear on this list?  
 17 A. Yes.  
 18 Q. Would that be recent works or older  
 19 works or some combination of the two?  
 20 A. There's a recent book that I was  
 21 part of. It was several illustrators who  
 22 worked on it by Bloomsbury called Our Children  
 23 Can Soar. That's not on here yet, and  
 24 everything else is here.  
 25 Q. Are all of these works still in

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Do you work with publishers in  
 3 connection with the distribution of your  
 4 works?  
 5 A. No.  
 6 MR. GOLDMAN: Object to the form.  
 7 A. No.  
 8 Q. So, do you self publish your works?  
 9 A. No.  
 10 Q. Do you have publishers for your  
 11 works?  
 12 A. Yes.  
 13 Q. And what publishers do you have?  
 14 A. I work with HarperCollins, Henry  
 15 Holt, which is now Macmillan. I published  
 16 with Simon & Schuster, with Clarion Books,  
 17 which is part of Houghton Mifflin, National  
 18 Geographic. I've done some books with  
 19 Scholastic, but they're educational books that  
 20 aren't on here. Those aren't on here.  
 21 Q. Do you currently have any  
 22 publishing agreements in force with any  
 23 publishers?  
 24 MR. GOLDMAN: Objection to the  
 25 form and to the extent it calls for a

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 print?  
 3 A. No.  
 4 Q. Which works are still in print?  
 5 MR. GOLDMAN: Objection to the  
 6 form and objection to the extent it  
 7 calls for a legal conclusion.  
 8 If you can answer that to the best  
 9 of your understanding, then you may go  
 10 ahead.  
 11 A. Unfortunately, I don't always know.  
 12 The publishers don't always tell me when a  
 13 book goes out of print. I'm pretty sure, I  
 14 think, Squashed In The Middle is still around  
 15 and Ananse. Talking with Adventurers, I  
 16 believe. Talking with Artists, at least  
 17 Volume I, possibly Volume III. I think  
 18 Carousel, in paperback form. Clean Your Room,  
 19 Harvey Moon is definitely still in print. I'm  
 20 not sure about the others. Just Us Women, in  
 21 paperback maybe.  
 22 Q. Are there any others that are still  
 23 in print?  
 24 A. I don't know. I honestly don't  
 25 know.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 legal conclusion.  
 3 A. You mean contracts, am I under  
 4 contract?  
 5 Q. Yes.  
 6 A. Yes.  
 7 Q. And what publishers are you under  
 8 contract with?  
 9 A. HarperCollins and Houghton Mifflin.  
 10 And well, it gets -- this is the thing, the  
 11 book that wasn't finished, the one that I was  
 12 doing with my dad, that was with Hyperion.  
 13 Q. That project is no longer going  
 14 forward?  
 15 A. It's sort of tabled. When last I  
 16 spoke to them, they were still interested in  
 17 pursuing it, but we had to revise the  
 18 agreement because of his death, and that has  
 19 never happened.  
 20 Q. Why do you have two current  
 21 publishers, HarperCollins and Houghton  
 22 Mifflin, do they publish different kinds of  
 23 works?  
 24 MR. GOLDMAN: Objection to the  
 25 form and vague and ambiguous.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 If you understand the question,  
 3 you can answer it.  
 4 A. As a freelance illustrator, I  
 5 worked with several publishers and just found  
 6 it economically necessary to work with a lot  
 7 of publishers. If they had a good project,  
 8 that's who I worked with.  
 9 Q. And are you currently authoring any  
 10 books for HarperCollins? Are you in the  
 11 process of writing any books that you  
 12 anticipate will be published by HarperCollins?  
 13 MR. GOLDMAN: Objection to the  
 14 form.  
 15 A. No.  
 16 Q. Same question for Houghton Mifflin?  
 17 A. Yes.  
 18 Q. Are you in the process of creating  
 19 a work?  
 20 A. Not creating.  
 21 Q. The same answer, meaning, no?  
 22 A. The project that I'm doing with  
 23 them, I've authored.  
 24 Q. What projects is that?  
 25 A. It's called Ananse and the Monster.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Jimmy Lee Did It.  
 3 Q. So, Jimmy Lee Did It was made  
 4 available in digital form?  
 5 A. Yes.  
 6 Q. What point in time was that?  
 7 A. I don't remember. I never saw a  
 8 copy. I just remember it being on one of my  
 9 statements.  
 10 Q. Jimmy Lee is one of those works  
 11 that's no longer in print; is that correct?  
 12 A. Correct.  
 13 Q. Who was the publisher of Jimmy Lee?  
 14 A. That was it was HarperCollins, but  
 15 that was originally William Morrow, I think,  
 16 that did it. And then they were bought by  
 17 HarperCollins.  
 18 Q. What time period was this?  
 19 A. '80s, mid '80s.  
 20 Q. Are any of your works in the format  
 21 where they can be accessed by individuals with  
 22 print disabilities, say, for example,  
 23 individuals that are blind?  
 24 A. I don't know.  
 25 Q. To the best of your knowledge, are

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. If you could spell that for the  
 3 record?  
 4 A. Ananse and The Monster.  
 5 Q. Ananse and The Monster?  
 6 A. Yes.  
 7 Q. And has that been publish?  
 8 A. No, it hasn't been finished.  
 9 Q. When do you anticipate that will be  
 10 finished?  
 11 MR. GOLDMAN: Objection to the  
 12 form.  
 13 A. Him, my editor, my mother, they all  
 14 ask me that. I'm slow. I'm slow. Hopefully  
 15 soon. I'm rather slow.  
 16 Q. In what formats are your works  
 17 distributed?  
 18 A. Picture books, hard cover and,  
 19 occasionally, paperback.  
 20 Q. How about digital format?  
 21 A. I'm only aware of a digital -- one  
 22 digital form for one of my books.  
 23 Q. What digital form is that? I'm  
 24 sorry what -- I'll withdraw that question.  
 25 What work does that relate to?

1 CONFIDENTIAL-PAT CUMMINGS  
 2 those works available in a format that can be  
 3 accessed by individuals with print  
 4 disabilities?  
 5 MR. GOLDMAN: Objection; asked and  
 6 answered.  
 7 A. I don't know. I honestly don't  
 8 know.  
 9 Q. Ms. Cummings, you're a member of  
 10 the Authors Guild; is that right?  
 11 A. Yes.  
 12 Q. How long have you been a member?  
 13 A. Okay, probably -- I don't  
 14 actually -- probably since early '90s.  
 15 Q. And you're also secretary of the  
 16 Authors Guild?  
 17 A. Yes.  
 18 Q. Could you describe for me what are  
 19 the functions of the secretary of the Authors  
 20 Guild?  
 21 A. I attend the meetings and I do not  
 22 have to keep records. I attend the meetings.  
 23 Q. You said you do not have to keep  
 24 records?  
 25 A. I don't have to actually record at

1 CONFIDENTIAL-PAT CUMMINGS  
 2 the meetings. I have to review the minutes.  
 3 Q. And who actually prepares the  
 4 minutes?  
 5 A. Who does prepare the minutes? I'm  
 6 not sure.  
 7 Q. What is the Authors Guild?  
 8 A. It's a collection of authors who  
 9 they came together to protect authors' rights.  
 10 It's an organization that was established to  
 11 protect authors' rights.  
 12 Q. When was it established?  
 13 A. I do not know that either. I think  
 14 it was back in -- I think it's about 40 years  
 15 old.  
 16 Q. And approximately how many members  
 17 does the Authors Guild have?  
 18 A. I think there's at least 13,000;  
 19 20,000, I'm not sure. I don't know.  
 20 Q. Does the Authors Guild purport to  
 21 speak on behalf of all authors?  
 22 MR. GOLDMAN: Objection to the  
 23 form.  
 24 A. I don't know actually. I do know  
 25 we're having our 100th anniversary. So, it

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. On 32nd Street.  
 3 Q. You said a couple of times a year?  
 4 A. Two or three. If there's a need to  
 5 have a special meeting, we'll have a special  
 6 meeting, if there's a particular issue.  
 7 Q. Forgive me if I asked this already,  
 8 how long have you been secretary at the  
 9 Authors Guild?  
 10 A. It's probably longer than ten  
 11 years. I am not good with dates, but I have  
 12 been with them for a long time. I think since  
 13 the '90s.  
 14 Q. And have you held any other office  
 15 or types of roles at the Authors Guild other  
 16 than secretary?  
 17 MR. GOLDMAN: Objection to the  
 18 form. Lacks foundation.  
 19 A. No.  
 20 Q. How does the Authors Guild get  
 21 members? How does someone become a member of  
 22 the Authors Guild?  
 23 MR. GOLDMAN: Objection to the  
 24 form.  
 25 A. As far as I know, people just

1 CONFIDENTIAL-PAT CUMMINGS  
 2 must be a hundred years old.  
 3 Q. In addition to reviewing the  
 4 minutes, do you have any other  
 5 responsibilities as secretary of the Authors  
 6 Guild?  
 7 A. Occasionally, I have to review  
 8 documents and sign them.  
 9 Q. Do you ever vote on decisions?  
 10 A. I vote on decisions, yes.  
 11 Q. How does that work; is it majority  
 12 rules or the board or a majority?  
 13 MR. GOLDMAN: Objection to the  
 14 form.  
 15 A. As far as I know, it's a  
 16 Robert's Rules of Order. There is a motion  
 17 that is made; people vote on it and it is  
 18 majority rules.  
 19 Q. How frequently does the Authors  
 20 Guild meet, the board of the Authors Guild  
 21 meet?  
 22 A. We meet several times a year.  
 23 Q. And where do the members meet?  
 24 A. Usually meet at the offices.  
 25 Q. And where are the offices?

1 CONFIDENTIAL-PAT CUMMINGS  
 2 apply. They have to have a certain number of  
 3 books or they have to have a book published  
 4 and then they're eligible to join.  
 5 And as far as I know, people find  
 6 the Authors Guild. Authors are looking for  
 7 help and looking for protection, and so they  
 8 find the guild.  
 9 Q. And are there dues payable from  
 10 members once they join the Guild?  
 11 A. Yes.  
 12 Q. And are they yearly dues?  
 13 A. They're annual dues.  
 14 Q. What is the amount of those dues?  
 15 A. I believe the entry amount is \$90,  
 16 and then you pay proportionate to your income.  
 17 Q. I see. And what proportion do you  
 18 pay to your income?  
 19 A. I don't know the exact amounts.  
 20 It's -- your income to a certain point might  
 21 be 120 or it might go up, but it doesn't -- I  
 22 don't know the exact numbers.  
 23 Q. Do you know what the highest amount  
 24 that someone might pay, some authors of a  
 25 blockbuster or multiple blockbuster? What is

1 CONFIDENTIAL-PAT CUMMINGS  
 2 the most --  
 3 A. I don't know.  
 4 Q. Could you give me an estimate? Is  
 5 it a thousand dollars a year?  
 6 A. No, I don't think it exceeds 300.  
 7 Q. Are there any other fees or dues  
 8 payable for members --  
 9 A. No.  
 10 Q. -- other than that yearly fee?  
 11 A. No.  
 12 Q. Does the Authors Guild, from  
 13 time-to-time, try to solicit actively -- try  
 14 to solicit new members?  
 15 A. I know that they will have  
 16 information in their newsletter about how to  
 17 join and people will find them that way, you  
 18 know, through passalong of the newsletter.  
 19 But active solicitations, do you mean like  
 20 newspaper ads and things?  
 21 Q. Or just any manner reaching out to  
 22 authors to induce authors to tell a member of  
 23 the Authors Guild.  
 24 MR. GOLDMAN: Objection to the  
 25 form.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. GOLDMAN: Objection to the  
 3 form.  
 4 A. Tends to be about the current  
 5 business of the Authors Guild or future  
 6 business. It would be about the benefit  
 7 coming up. For example, it would be about how  
 8 the Guild has helped members. How many --  
 9 there would be a report about how many have  
 10 been helped and in what way.  
 11 And they'll talk about whether or  
 12 not, you know, there are upcoming meetings and  
 13 panel discussions, things like that. Would be  
 14 planning.  
 15 Q. Has the board ever discussed the  
 16 HathiTrust lawsuit at those meetings?  
 17 A. Yes, yes.  
 18 Q. What was the nature of those  
 19 discussions?  
 20 A. We were informed about what had  
 21 happened in terms of the scanning of the books  
 22 and what it might mean to members.  
 23 Q. And who informed you of that?  
 24 A. I believe either Paul or Jan spoke  
 25 about what the nature of the suit was about.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. I'll ask it this way: Is it the  
 3 goal of the Authors Guild to increase its  
 4 membership?  
 5 A. Yes.  
 6 Q. How does the Authors Guild go about  
 7 trying to reach that goal?  
 8 A. Well, there are annual -- they  
 9 often have meetings that are open to the  
 10 public on topics -- literary topics. If the  
 11 public shows up, there's information available  
 12 for how to join.  
 13 That's one way of doing it. I know  
 14 I talk about them in my classes and encourage  
 15 my students, if they are published, to join.  
 16 Q. You referred a few moments ago the  
 17 meetings that are held of members of the board  
 18 at the Authors Guild, correct?  
 19 A. Yes.  
 20 Q. And they're held a couple times a  
 21 year?  
 22 A. Yes.  
 23 Q. What is typically discussed with  
 24 the nature of the discussions of those  
 25 meetings?

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. And at that point in time, was any  
 3 explanation given of the nature of the limited  
 4 uses made by the libraries of the digital  
 5 copies?  
 6 MR. GOLDMAN: Objection to the  
 7 form.  
 8 And, again, I'm going to caution  
 9 you not to reveal any -- the nature of  
 10 any communications that originated  
 11 from Jan Constantine, who is general  
 12 Counsel, to the extent she gave those  
 13 in the presence of the board of the  
 14 Authors Guild.  
 15 If it was -- so, if it was in  
 16 fact, Jan, I would caution you not to  
 17 reveal what they said. If it was Paul  
 18 at a meeting, you can talk about it.  
 19 A. Okay. Could you repeat the  
 20 question?  
 21 Q. Sure.  
 22 (Whereupon, the referred to  
 23 question was read back by the  
 24 Reporter.)  
 25 MR. GOLDMAN: I reiterate my

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 objection to the form of the question  
 3 as well.  
 4 A. I don't remember. I don't  
 5 remember.  
 6 Q. Do you recall if anyone asked?  
 7 A. I'm sure it was discussed. I don't  
 8 remember the details at all.  
 9 Q. I understand it's been some time or  
 10 maybe it hasn't. We can talk about when those  
 11 conversations were. I'm not asking you to  
 12 recall, you know, with encyclopedic memory  
 13 what was discussed.  
 14 Just generally, do you recall the  
 15 subject matter coming up of the types of  
 16 limited uses made by the libraries with  
 17 respect to those digitized works?  
 18 MR. GOLDMAN: I'm going to object  
 19 again to the form, specifically to the  
 20 use of the words, "limited uses."  
 21 MR. PETERSEN: Just object to  
 22 form.  
 23 MR. GOLDMAN: The word "limited  
 24 uses" is objectionable you keep using  
 25 it.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Bates label AG0003864 through '866,  
 3 marked for identification, as of this  
 4 date.)  
 5 BY MR. PETERSEN:  
 6 Q. I've just marked, as Exhibit PC-2,  
 7 a document Bates stamped AG '3864 through  
 8 '3866.  
 9 Ms. Cummings, if you can, take a  
 10 look at what I marked as Exhibit 2.  
 11 Ms. Cummings, do you recognize that  
 12 document?  
 13 A. No, I must have a copy of it  
 14 because I got all the minutes.  
 15 Q. So --  
 16 A. Yes, it is.  
 17 Q. It's the board minutes from the  
 18 September 15, 2011 meeting?  
 19 A. Yes.  
 20 Q. And that meeting took place in New  
 21 York?  
 22 A. Yes.  
 23 Q. At the Guild's offices?  
 24 A. Yes.  
 25 Q. But you did not prepare these

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. PETERSEN: Just object to  
 3 form.  
 4 A. The truth is, I don't remember any  
 5 discussion of limited anything. I remember  
 6 being told that the books were being scanned.  
 7 And I think the concern was the potential use,  
 8 but I don't remember any discussion of any  
 9 kind of limits.  
 10 Q. And no one asked what the uses  
 11 were; why the libraries were --  
 12 A. To the best --  
 13 Q. -- investing to the extent they did  
 14 in the digitization project?  
 15 MR. GOLDMAN: Object to the form.  
 16 Q. Did anyone ask why the digitization  
 17 was taking place?  
 18 A. I don't remember anyone asking.  
 19 MR. GOLDMAN: We've been going for  
 20 an hour. You want to take a quick  
 21 break?  
 22 MR. PETERSEN: Sure.  
 23 (Whereupon, at this time, a short  
 24 break was taken.)  
 25 (Exhibit PC-2, document bearing

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 minutes?  
 3 A. No, I don't prepare the minutes.  
 4 Q. Do you know who did?  
 5 A. At the time, it would be after --  
 6 probably Isabel. Isabel Howell.  
 7 Q. And this is a question I'll put to  
 8 your Counsel.  
 9 MR. PETERSEN: There's some  
 10 redactions to this document. What was  
 11 the basis for the redactions?  
 12 MR. GOLDMAN: These were  
 13 confidential Authors Guild matters  
 14 that had nothing to do with this  
 15 lawsuit in any way, shape or form.  
 16 MR. PETERSEN: That explains the  
 17 entirety of the redactions?  
 18 MR. GOLDMAN: Yes, that explains  
 19 the entirety.  
 20 Q. If I could direct you to the second  
 21 page of Exhibit 2, there's a statement that  
 22 says, "Mr. Aiken then reported on the  
 23 HathiTrust lawsuit in which writers unions in  
 24 Quebec and Australia had joined as plaintiffs.  
 25 He outlined the Guild's strategy for the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 suit."  
 3 Do you see that?  
 4 A. Yes, I do.  
 5 Q. You mentioned Mr. Aiken before.  
 6 Could you tell me his title?  
 7 A. The executive director of the  
 8 Authors Guild.  
 9 Q. What does executive director of the  
 10 Guild do?  
 11 MR. GOLDMAN: Object to the form.  
 12 You can answer to the extent you know.  
 13 A. As for as I know, he monitors all  
 14 the programs and he's, you know, he's the  
 15 executive director. He's in charge.  
 16 Q. The statement here says, "Mr. Aiken  
 17 outlined the Guild's strategy for the suit."  
 18 Do you see that?  
 19 A. Yes, I do.  
 20 Q. Who did Mr. Aiken say about the  
 21 Guild's strategy for the suit?  
 22 A. I know that the Guild was suing.  
 23 That's pretty much all I remember.  
 24 Q. So, you don't remember any strategy  
 25 discussion?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. GOLDMAN: Objection to the  
 3 form.  
 4 Q. And how did you participate?  
 5 A. I would have been there and voted  
 6 on whatever motions were made or had whatever  
 7 input -- whatever topics we discussed.  
 8 Q. Do you recall what motions were  
 9 made?  
 10 A. No.  
 11 Q. I'm going to mark, as PC-3, a  
 12 document Bates stamped AG '3867 through '3868.  
 13 (Exhibit PC-3, document bearing  
 14 Bates label AG0003867 through '868,  
 15 marked for identification, as of this  
 16 date.)  
 17 Q. Ms. Cummings, if you could, take a  
 18 look at what I marked as Exhibit 3.  
 19 MR. GOLDMAN: I'm going to object  
 20 to any line of questions relating to  
 21 this document as to Ms. Cummings. I  
 22 note that she's not listed as having  
 23 been in attendance at this meeting.  
 24 MR. PETERSEN: I'm planning on  
 25 asking her.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. No, I know that there was a --  
 3 there was discussion about the orphan works  
 4 and the problem with the orphan works. The  
 5 research that had been done by the HathiTrust  
 6 did not seem to be very thorough because  
 7 people who -- I know Paul told us people who  
 8 were on that list of orphan works were  
 9 easily -- not easily found, but several were  
 10 easily found by the Guild. And I believe that  
 11 part of the strategy was identifying some of  
 12 the people on that supposedly orphaned works  
 13 list.  
 14 And having shown that to the  
 15 HathiTrust and how, you know, how very simply  
 16 these people were found, that changed -- I  
 17 believe that changed something. You know what  
 18 I mean? That showed them that the research  
 19 hadn't been very thorough and I believe the  
 20 strategy -- part of the strategy was to expose  
 21 that the research had been pretty -- not  
 22 sloppy, but incomplete and inconclusive.  
 23 Q. Did you participate in the  
 24 September 15th meeting?  
 25 A. Yes.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Ms. Cummings, do you recognize  
 3 Exhibit 3?  
 4 A. As part of the memo -- as part of  
 5 the minutes that I would have gotten, yes.  
 6 Q. So, these are the minutes of a  
 7 meeting which appear to have taken place on  
 8 November 9, 2011?  
 9 A. Yes.  
 10 Q. Were you in attendance at that  
 11 meeting?  
 12 A. No.  
 13 Q. Do you recall why you would have  
 14 missed that meeting?  
 15 A. I teach. I was probably in class.  
 16 MR. PETERSEN: Could you mark this  
 17 as 4.  
 18 (Exhibit PC-4, document bearing  
 19 Bates label AG0003870 through '872,  
 20 marked for identification, as of this  
 21 date.)  
 22 Q. Ms. Cummings, if you could take a  
 23 look at what I marked as PC-4. Do you  
 24 recognize this document?  
 25 A. Yes.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. And what is it?  
 3 A. It's the minutes of the meeting of  
 4 December 6, 2011.  
 5 Q. Did you attend that meeting?  
 6 A. Yes.  
 7 Q. And did you participate in that  
 8 meeting?  
 9 A. Yes.  
 10 MR. PETERSEN: The same question  
 11 to Counsel, the basis for the  
 12 redactions on -- I'll just make this  
 13 generally so we don't have to go  
 14 through each one of the minutes.  
 15 The basis for the redactions is it  
 16 relates to material entirely  
 17 independent and unrelated to the  
 18 HathiTrust lawsuit; is that correct?  
 19 MR. GOLDMAN: That's correct.  
 20 Q. Ms. Cummings, are these minutes  
 21 accurate to the best of your knowledge?  
 22 A. Yes.  
 23 Q. Do you know who prepared these  
 24 minutes?  
 25 A. No.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 wouldn't impose too much on our time.  
 3 Q. Did he explain how he would try to  
 4 "avoid inconveniencing our plaintiffs?"  
 5 A. No, just that I took it to mean he  
 6 would be as respectful of our time as  
 7 possible. That we'd be called if needed.  
 8 Q. If I could turn your attention to  
 9 the second entry on this page, too, it says,  
 10 "Mr. Turow then invited questions from board  
 11 members."  
 12 Mr. Turow, meaning, Scott Turow?  
 13 A. Yes.  
 14 Q. What is Mr. Turow's role at the  
 15 Guild?  
 16 A. He's the president of the Guild.  
 17 Q. And is he involved in decisions  
 18 concerning the HathiTrust lawsuit?  
 19 A. To the extent that we all are, yes.  
 20 Q. It states, "A lively and varied  
 21 discussion followed covering the timing of the  
 22 HathiTrust and Google cases."  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. What was the nature of that

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. It wasn't yourself?  
 3 A. No.  
 4 Q. You did review them following the  
 5 meeting?  
 6 A. Yes.  
 7 Q. How soon after you have the meeting  
 8 are the minutes typically distributed?  
 9 A. Usually within a week.  
 10 Q. If I could direct your attention to  
 11 the second page of this exhibit, there's a  
 12 reference, Mr. Aiken added that the discovery  
 13 requests may be onerous, but the Guild will  
 14 work to avoid inconveniencing our plaintiffs,  
 15 including board members Pat Cummings, Roxana  
 16 Robinson and T.J. Stiles."  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. Do you have any understanding as to  
 20 what Mr. Aiken meant by that?  
 21 MR. GOLDMAN: Objection to the  
 22 form, to the extent you can answer.  
 23 A. At the time I believe that Paul  
 24 wanted to make sure that, you know, he  
 25 respects our time and that he was hoping it

1 CONFIDENTIAL-PAT CUMMINGS  
 2 discussion?  
 3 MR. GOLDMAN: I'm going to object  
 4 and again advise you to the extent  
 5 that that discussion included  
 6 statements from Jan Constantine, or  
 7 any other attorney that was present at  
 8 the meeting, that you should not --  
 9 not disclose those communications. To  
 10 the extent that you can answer  
 11 otherwise, you may do so.  
 12 A. Could you repeat the question?  
 13 Q. Sure. I'll just restate it. "A  
 14 lively and varied discussion followed covering  
 15 the timing of the HathiTrust and Google  
 16 cases."  
 17 Do you see that statement?  
 18 A. Yes.  
 19 Q. What was that lively and varied  
 20 discussion?  
 21 A. As far as I remember, we were just  
 22 advised that they were happening at the same  
 23 time, and I don't remember much more about it.  
 24 Q. The next statement says, "The  
 25 differing reactions to the HathiTrust case

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 from public and academic libraries."  
 3 Do you see that?  
 4 A. Yes.  
 5 Q. What was the nature of that  
 6 discussion?  
 7 A. I think we were advised of some  
 8 press about, you know, librarians reacting to  
 9 the Authors Guild lawsuit.  
 10 Q. And what specifically did you  
 11 discuss concerning that press?  
 12 A. I don't recall the specifics. I  
 13 recall thinking that -- being surprised that  
 14 librarians wouldn't understand the Guild's  
 15 position or that they were trying to spin it.  
 16 That's how I felt at the time.  
 17 Q. The next statement says, "The  
 18 common misconceptions about how many 'orphan  
 19 works' there really are."  
 20 Do you have any understanding as to  
 21 what that's referring to?  
 22 A. My understanding was at the time,  
 23 and is now, that what was being called "orphan  
 24 works" weren't necessary orphan works. And  
 25 that if they were so easy to identify, and

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. You say an extreme cherry-picked  
 3 item. What do you mean by that?  
 4 A. I mean that if you have a problem  
 5 with somebody taking your work, to say that  
 6 you're depriving blind people seemed to come  
 7 out of -- not left field, but seemed to be an  
 8 extreme situation that was not the intent of  
 9 the suit. And to the best of my memory, our  
 10 discussion was about how to present the  
 11 Guild's position publicly so that we were  
 12 representing ourselves in the manner that we  
 13 felt, you know, our issues to be, and not to  
 14 be defined.  
 15 Q. Would you agree with me that it's  
 16 beneficial to individuals with disabilities to  
 17 have access to the works that have been  
 18 digitized as part of the HathiTrust project?  
 19 A. No.  
 20 MR. GOLDMAN: Objection to the  
 21 form.  
 22 A. No.  
 23 Q. So, you do not believe the print  
 24 disabled should have access to those works?  
 25 MR. GOLDMAN: Objection to the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 those authors were currently working and had  
 3 agents and publishing, how could it -- it  
 4 didn't seem that it was that difficult to find  
 5 some of these, theoretically, orphan works.  
 6 Q. And the next statement says what  
 7 the Guild's public relations and social media  
 8 strategy should be, among other subjects. Do  
 9 you see that?  
 10 A. Yes.  
 11 Q. What was the nature of that  
 12 discussion concerning the Guild's public  
 13 relations and social media strategies?  
 14 A. To the best of my memory, we talked  
 15 about there was some discussion about how the  
 16 spin of the lawsuit by the HathiTrust was that  
 17 we were against blind people or something and  
 18 trying to prevent them from having braille  
 19 copies. It was something that it was  
 20 necessary to explain the Guild's position.  
 21 And I think that's what our discussion was  
 22 about. We felt the need to really explain the  
 23 position because that seemed to have been an  
 24 extreme cherry-picked item that was not at all  
 25 the intention of the suit.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 form.  
 3 A. No.  
 4 Q. I'm going to mark, as PC-5, a  
 5 document entitled, "Objections And Responses  
 6 of Plaintiff Pat Cummings To Defendants' First  
 7 Set Of Interrogatories And Request For The  
 8 Production of Documents."  
 9 (Exhibit PC-5, document entitled  
 10 "Objections And Responses Of Plaintiff  
 11 Pat Cummings to Defendants' First Set  
 12 Of Interrogatories And Requests For  
 13 The Production of Documents," marked  
 14 for identification, as of this date.)  
 15 MR. GOLDMAN: Is there a question  
 16 pending?  
 17 MR. PETERSEN: I'm waiting for  
 18 her, Ms. Cummings, to read the  
 19 document.  
 20 Q. Do you recognize Exhibit 5?  
 21 A. Yes.  
 22 Q. Have you seen it before today?  
 23 A. Yes.  
 24 Q. What is it?  
 25 A. Okay; it is the Objections And



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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Responses Of Plaintiff Pat Cummings To  
 3 Defendants' First Set Of Interrogatories And  
 4 Request For The Production of Documents.  
 5 Q. Great. If you could, turn to the  
 6 last page of that document.  
 7 Is that your signature?  
 8 A. Yes, it is.  
 9 Q. So, you verified these responses?  
 10 A. Yes. To the best of my knowledge,  
 11 yes.  
 12 Q. As you sit here today -- sorry, you  
 13 verified those responses on January 6th -- on  
 14 or about January 6th, 2012?  
 15 A. It sounds right, yes.  
 16 Q. As you sit here today, are those  
 17 responses still true and correct?  
 18 A. Yes, nothing's changed.  
 19 Q. There's a schedule attached to  
 20 Exhibit 5, correct?  
 21 A. What page?  
 22 Q. Schedule A looks to be about five  
 23 pages in.  
 24 Is Schedule A the list of your  
 25 works that you contend have been -- copyright

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. Do you see that?  
 4 And so, is that list meant to be  
 5 exhaustive? So, for example, maybe it's  
 6 easier to understand that question when put to  
 7 you in a specific. Clean Your Room, Harvey  
 8 Moon, the last date says, "1996 New York  
 9 Houghton Mifflin."  
 10 Does that mean the last time that  
 11 work was published was in 1996?  
 12 A. No, I don't think so. I think that  
 13 those are sub-rite sales, so it might have  
 14 been in an educational book. That might have  
 15 been the last time it was picked up for a  
 16 textbook.  
 17 Q. When you say "sub-rite sales," what  
 18 do you mean by that?  
 19 A. Sales to textbooks or sometimes  
 20 they do big books, you know, giant books for  
 21 teachers to use with little kids in whatever  
 22 form.  
 23 Here's an audio book, which I've  
 24 never seen. Usually, it's an educational  
 25 market that will pick up the books and use

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 have been infringed by my client, the  
 3 libraries?  
 4 A. Yes.  
 5 Q. So, it's a complete list?  
 6 A. As far as I know.  
 7 Q. Which of these works is still in  
 8 print?  
 9 A. Clean Your Room, Harvey Moon is  
 10 still in print. I believe Talking with  
 11 Artists, Volumen I is and Talking with  
 12 Adventurers.  
 13 Q. I'm sorry, the second one was?  
 14 A. Talking with Artists, Volume I and  
 15 Talking with Adventurers.  
 16 Q. So, the other works are now out of  
 17 print?  
 18 A. As far as I know. Like I said, I'm  
 19 not absolutely positive because Talking with  
 20 Artists, Volume II, I've never been notified  
 21 that it was out of print. Clouds is out of  
 22 print and Jimmy Lee Did It is out of print.  
 23 Q. And just so I'm interpreting the  
 24 chart correctly, there's a column that says,  
 25 "subsequent publications?"

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 them.  
 3 Q. So, Clean Your Room, Harvey Moon is  
 4 still in print, even though it says subsequent  
 5 publication, the last date is 1996?  
 6 A. I don't know. I know that the  
 7 paperback is still available. I'm not sure  
 8 about the hardcopy.  
 9 Q. Where's the paperback available?  
 10 A. It's HarperCollins book. No, I'm  
 11 sorry, Simon & Schuster.  
 12 Q. Are you still receiving royalties  
 13 on the sales of Clean Your Room, Harvey Moon?  
 14 A. Yes.  
 15 Q. How much have those royalties been  
 16 the last several years?  
 17 A. I don't know.  
 18 Q. Under a thousand dollars a year?  
 19 A. They may be more. I mean, it's my  
 20 better seller. But I'm not sure.  
 21 Q. You see in Schedule A next to Jimmy  
 22 Lee Did It, it says there's a column, "Most  
 23 recent publication hardcopy or electronic."  
 24 The answer is "electronic."  
 25 Do you see that?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. What is meant by that? How is  
 4 Jimmy Lee Did It distributed electronically?  
 5 Do you have any recollection?  
 6 A. I have no idea. Never saw a copy  
 7 of it.  
 8 Q. How do you know that it was  
 9 distributed electronically?  
 10 A. It showed up when I was reviewing  
 11 my royalty statements.  
 12 Q. Do you feel that you authorized the  
 13 publisher to distribute that work  
 14 electronically?  
 15 MR. GOLDMAN: Objection to the  
 16 form.  
 17 A. I don't doubt that I did.  
 18 Q. If I could direct your attention to  
 19 page 8 of Exhibit 5. Do you see the -- and  
 20 I'll read it for the record, but there's an  
 21 Interrogatory 6 which reads, "For each work  
 22 identified in response to Interrogatory No.  
 23 1, identify any harm that has occurred or is  
 24 expected to occur to any market or potential  
 25 market for that work by virtue of Defendants'

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 electronic sales, from digital sales. I've  
 3 got requests from publishers for digital  
 4 works. You know, digital rights that I  
 5 haven't granted because I want to know more  
 6 about the market before I actually enter it.  
 7 I stand to lose work by piracy. I  
 8 know that when things are on the internet,  
 9 they can get lifted very easy. I teach in  
 10 college. I see it happening all the time. I  
 11 stand to lose from sales of hard copies.  
 12 Libraries often reorder books or paperback.  
 13 They reorder books because children are very  
 14 hard on books. And so, the turnover in the  
 15 libraries is a little bit more rapid than an  
 16 adult book because kids eat them, tear them,  
 17 color in them. So, books get reordered a lot.  
 18 And without that turnover, your sales  
 19 definitely do drop.  
 20 Q. Okay. I know you testified earlier  
 21 that you weren't aware of the uses put to your  
 22 works by my client. But I'll represent to  
 23 you, and you could dispute this or Counsel can  
 24 dispute this, that's fine, for purposes of  
 25 these questions, I represent to you the uses

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 alleged conduct described in the First Amended  
 3 Complaint, including without limitation the  
 4 identification of (i) the market or potential  
 5 market at issue (by name and/or brief  
 6 description); (ii) any licensee or potential  
 7 licensee of the work within that market; and  
 8 (iii) all documents concerning the alleged  
 9 harm that has occurred or is expected to  
 10 occur."  
 11 Do you see that language?  
 12 A. Yes, I do.  
 13 Q. And do you see your response --  
 14 there's objections -- a series of objections  
 15 and then there's bullet points on the bottom  
 16 of page 8. And there's one further bullet  
 17 point on page 9. Do you see that?  
 18 A. Yes, I do.  
 19 Q. Did you prepare that language?  
 20 A. Not that specific language. I  
 21 don't speak in legalese. I would have said it  
 22 in more conversational terms.  
 23 Q. And what conversational terms would  
 24 you said it?  
 25 A. I stand to lose income from

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 are for purposes of preservation.  
 3 So, creating a dark archive copy  
 4 for which students can access the full content  
 5 and also allowing limited search  
 6 functionality. So, a scholar can go in, do a  
 7 word search and see if certain words appear.  
 8 It's almost like a digital card catalog. See  
 9 if certain words appear within your work and  
 10 then what the student would need to do is  
 11 check it out of the library or buy a copy of  
 12 your work.  
 13 And the third component of what my  
 14 clients are doing with your works is making  
 15 them accessible to people with certified print  
 16 disabilities. In that case, and only in that  
 17 case, and only in the rare case where a  
 18 student has a certified print disability will  
 19 a copy be available of your work to that  
 20 student. So, I'll make those representations  
 21 to you. And then I will ask you --  
 22 MR. GOLDMAN: I just want to  
 23 object to the characterization of what  
 24 the uses are. And I also object to  
 25 Mr. Petersen providing testimony when

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 this is supposed to be a deposition of  
 3 Ms. Cummings.  
 4 MR. PETERSEN: Then object to  
 5 form.  
 6 Q. So, Ms. Cummings, you testified a  
 7 few moments ago that you stand to lose income  
 8 from electronic digital sales. Again, just  
 9 based on the representations I made to you,  
 10 I'm not asking you to vouch for them. I know  
 11 you haven't -- you said you haven't reviewed  
 12 it. You don't know the uses.  
 13 Based upon the representations I  
 14 made to you, how do you stand to lose sales  
 15 based upon my clients' uses of your digitized  
 16 works?  
 17 MR. GOLDMAN: Objection to form.  
 18 Answer, if you can.  
 19 A. In my experience, particularly  
 20 because I work in colleges, I know that  
 21 students can get around a lot and I have seen  
 22 them download supposedly what is not  
 23 downloadable. You know what I mean? The  
 24 search engines on Amazon that supposedly limit  
 25 your access. You know, if you're patient, you

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. So, Amazon would have digitized  
 3 your works, correct?  
 4 MR. GOLDMAN: Objection to the  
 5 form.  
 6 A. My understanding is that there's  
 7 limited page numbers available. When I go on,  
 8 I can only see a couple of pages.  
 9 Q. But in order to make that copy --  
 10 in order to have that search inside  
 11 functionality, you are aware, are you not,  
 12 that Amazon would have had to have made a copy  
 13 of your -- digital copy of your entire work?  
 14 A. I was not aware of that.  
 15 MR. GOLDMAN: Objection to the  
 16 form.  
 17 Give me a chance to object. You  
 18 can answer.  
 19 Q. You were not aware that Amazon has  
 20 a digital copy of your works?  
 21 MR. GOLDMAN: Objection to the  
 22 form. Asked and answered.  
 23 A. No.  
 24 Q. Does it surprise you to learn that  
 25 Amazon has a digital copy of your work?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 can access quite a bit. And I don't know  
 3 enough about digital formats to feel that  
 4 once, you know, the bubbles are out of the  
 5 box, you can get them back in.  
 6 Q. Are you aware of any breaches of  
 7 securities on the systems maintained by my  
 8 clients?  
 9 A. No.  
 10 Q. And your works are available in  
 11 digital form now, correct?  
 12 A. As far as I know.  
 13 MR. GOLDMAN: Objection to the  
 14 form. And I don't know what you mean  
 15 by that.  
 16 So, if you can answer that, then  
 17 go ahead.  
 18 A. Except for the electronic version  
 19 of Jimmy Lee, which, like I said, I have not  
 20 seen a copy of. I don't know of any others.  
 21 Q. Are you aware that Amazon has a  
 22 search inside functionality --  
 23 A. Yes.  
 24 Q. -- on several of your books?  
 25 A. Yes.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. GOLDMAN: Objection to the  
 3 form.  
 4 A. Yes.  
 5 Q. Are you aware of -- have you asked  
 6 any questions about the security measures that  
 7 Amazon takes to protect the actual copy that  
 8 it has of your work?  
 9 MR. GOLDMAN: Objection to the  
 10 form.  
 11 A. No.  
 12 Q. You never asked your publisher?  
 13 A. I believe there was a time when I  
 14 first saw a couple of pages up there that I  
 15 may have asked one of my editors what the deal  
 16 was, but I don't believe that the editor had  
 17 that much information either. I was never  
 18 aware that they digitized an entire book, no.  
 19 Q. You summarized for me, in your own  
 20 words, what you perceive to be your harm as a  
 21 result of a library's digitization of your  
 22 works.  
 23 Was that list exhaustive? Is there  
 24 anything else you'd like to tell me on that  
 25 subject? And we can read back your answer, if

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 you'd like?  
 3 A. My concern is that this is a format  
 4 that hasn't been fully explored and that  
 5 because I have requests to do electronic  
 6 versions, digital versions of my work on my  
 7 desk, that I have not signed, and I feel like  
 8 I need to have more information before I allow  
 9 something like that because I do feel that  
 10 once you do it, it's out there.  
 11 Q. Are you aware that my clients  
 12 invited the Authors Guild to come out to look  
 13 at the security that was implemented to  
 14 protect the HathiTrust Corpus? Are you aware  
 15 that was ever made?  
 16 A. No.  
 17 Q. Was that ever communicated to you?  
 18 A. No.  
 19 Q. So just to make sure I'm clear and,  
 20 again, you summarized for me the harm that you  
 21 perceived results from my clients'  
 22 digitization of your works. I want to make  
 23 sure that your summary was exhaustive.  
 24 Are there any other types of harm  
 25 that come to your mind?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 with the orphan works when those people were  
 3 so easily identified.  
 4 Q. But you trust Amazon security?  
 5 A. No.  
 6 MR. GOLDMAN: Objection to the  
 7 form.  
 8 Q. And yet, you allow your works to be  
 9 distributed digitally in digital format  
 10 through Amazon, correct?  
 11 MR. GOLDMAN: Object to the form.  
 12 A. No, I didn't allow it.  
 13 Q. Your publisher allowed it on your  
 14 behalf?  
 15 MR. GOLDMAN: Objection to the  
 16 form.  
 17 A. I assume. I do not know. And  
 18 that's why I had asked them, what is up with  
 19 that. And I was told, it was a couple of  
 20 pages.  
 21 Most contracts that I've signed  
 22 have something about a percentage of your work  
 23 being made available for advertising. And I  
 24 was assuming that that was, you know.  
 25 Q. Did you ever ask anyone at the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. It's just the future loss of  
 3 potential income.  
 4 Q. How is that future loss of  
 5 potential income?  
 6 A. Well, if I have offers on my desk  
 7 to pay me for digital forms and they're being  
 8 done for no cost with no benefit to me  
 9 whatsoever, regardless of whose going to be  
 10 using them, or where they're going to sit, if  
 11 somebody makes a copy of my Rembrandt, I'm not  
 12 happy that it's sitting in their house even if  
 13 they don't do anything with it.  
 14 It's my work, and I don't like  
 15 having it out there without any control over  
 16 it and being exposed to what I believe to be a  
 17 potential pirating situation. Because of my  
 18 experiences, I have seen what people can get  
 19 off the internet. I have seen how people can  
 20 work around anything that is available  
 21 digitally can be accessed.  
 22 If people can crack the codes into  
 23 the CIA and break into Citibank's records, I'm  
 24 not really convinced about the HathiTrust  
 25 security, particularly after what was done

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 publisher how the Amazon search functionality  
 3 worked on your book?  
 4 A. No.  
 5 Q. I was going to do this later, but  
 6 this might be a good time to do it now since  
 7 we're talking about it.  
 8 I'm going to mark this as  
 9 Exhibit 6.  
 10 (Exhibit PC-6, digital copy of  
 11 Talking with Artists, marked for  
 12 identification, as of this date.)  
 13 Q. Ms. Cummings, you seem surprised by  
 14 Exhibit 6. Do you recognize it?  
 15 A. I recognize the cover of my book  
 16 and I recognize the pages. I did not know  
 17 this was on Amazon.  
 18 Q. You did not know that Amazon had a  
 19 digital copy of your work?  
 20 A. No, I did not.  
 21 Q. This is Talking with Artists?  
 22 A. Talking with Artists, Volume III.  
 23 Q. And this is one of the works you  
 24 told me is still published?  
 25 A. I don't know. I haven't been told

1 CONFIDENTIAL-PAT CUMMINGS  
 2 that it's out of print.  
 3 Q. Do you believe that the publisher  
 4 didn't have your authorization to authorize  
 5 Amazon to make this work digitally available  
 6 in this way?  
 7 MR. GOLDMAN: Objection to the  
 8 form.  
 9 A. I don't know.  
 10 Q. And you're telling me, as you sit  
 11 here today, you didn't know this work was  
 12 available in digital format through Amazon?  
 13 A. I did not know.  
 14 MR. GOLDMAN: Objection to the  
 15 form to that prior question.  
 16 Q. I'm going to mark, as PC-7, a  
 17 document entitled, "Objections and Responses  
 18 of Plaintiff, Pat Cummings, to Defendant's  
 19 Second Set of Interrogatories and Requests for  
 20 Production of Documents."  
 21 (Exhibit PC-7, document entitled  
 22 "Objections and Responses of Plaintiff  
 23 Pat Cummings to Defendants' Second Set  
 24 Of Interrogatories And Requests For  
 25 The Production of Documents," marked

1 CONFIDENTIAL-PAT CUMMINGS  
 2 asked you to identify works that were in print  
 3 and works that were out of print.  
 4 Do you need a moment to review this  
 5 interrogatory?  
 6 A. No.  
 7 Q. When you were determining if a work  
 8 was in print or out of print, what criteria  
 9 did you use? How do you determine if a work  
 10 is still in print?  
 11 MR. GOLDMAN: Object to the form.  
 12 And I also want to advise you, to the  
 13 extent your answer includes  
 14 communications from me or  
 15 Ms. Constantine regarding your  
 16 responses to these interrogatories,  
 17 you should try to not disclose those  
 18 or you should not disclose those.  
 19 If you could answer the questions  
 20 without disclosing that information,  
 21 you can do so.  
 22 A. Would you repeat the question?  
 23 Q. Ms. Cummings, you're an author.  
 24 You have an understanding when the work is in  
 25 print and out of print, of course, correct?

1 CONFIDENTIAL-PAT CUMMINGS  
 2 for identification, as of this date.)  
 3 Q. Ms. Cummings, if you could, take a  
 4 look at what I marked as PC-7.  
 5 And when you look up, I'll know  
 6 that you're ready to answer some questions  
 7 about it.  
 8 A. Ready.  
 9 Q. Do you recognize this document?  
 10 A. Yes.  
 11 Q. And did you verify the response in  
 12 this document --  
 13 A. Yes, I did.  
 14 Q. -- that's on the last page?  
 15 A. Yes.  
 16 Q. That's your signature?  
 17 A. Yes, it is.  
 18 Q. And it was executed on April 5,  
 19 2012?  
 20 A. Yes.  
 21 Q. Are the responses still true, as  
 22 you sit here today?  
 23 A. Yes.  
 24 Q. If you could turn to your response  
 25 to the first interrogatory, this interrogatory

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. What is that understanding?  
 4 A. My understanding is that if the  
 5 book is no longer being sold, then it's out of  
 6 print. But, unfortunately, I'm not always  
 7 advised when it goes out of print, so -- and I  
 8 also don't have an agent, and I also don't go  
 9 over my statements probably like I should.  
 10 So, I just have a general understanding the  
 11 book is no longer making money if I don't see  
 12 it on my royalty statements. Then I assume it  
 13 must be out of print if I haven't been told  
 14 otherwise. Sometimes I get paperwork, and  
 15 sometimes I don't.  
 16 Q. If I could turn your attention to  
 17 -- on page 6 -- I'm sorry, it was page 7. It  
 18 was a response to an interrogatory that was  
 19 asked on page 6. And we can go back and read  
 20 it for the record, if you think we need to,  
 21 the other portions of it.  
 22 But your response is subject to and  
 23 without waiving the foregoing objections,  
 24 Plaintiff identifies the following work on  
 25 Schedule A that has been distributed pursuant

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 to Plaintiff's authorization and digital  
 3 electronic or other machine-readable format at  
 4 any time since 2001.  
 5 That's Jimmy Lee Did It. And then  
 6 it says, "Plaintiff will conduct a reasonable  
 7 search and produce documents, if any,  
 8 concerning royalties generated from  
 9 distribution of the work(s) in electronic  
 10 format."  
 11 Have you done that search?  
 12 A. I did as much research as I could  
 13 when I was asked to provide the documents.  
 14 Q. And did you find any royalty  
 15 statements with respect to electronic  
 16 distribution of that work?  
 17 A. I don't remember. Whatever I  
 18 found, I turned over.  
 19 Q. Whatever you found, you turned over  
 20 to your lawyers. If it's not there, you  
 21 didn't find it?  
 22 A. Yes.  
 23 MR. PETERSEN: This might be a  
 24 good time to take a five-minute break.  
 25 MR. GOLDMAN: Sure.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Ms. Cummings, if you could, just  
 3 take a look at what I marked as Exhibit 8.  
 4 Let me know when you're ready.  
 5 A. I'm ready.  
 6 Q. Do you recognize this document?  
 7 A. Yes.  
 8 Q. What is it?  
 9 A. It's a royalty statement for Jimmy  
 10 Lee Did It for the period ending June 30,  
 11 2001.  
 12 Q. And we were trying to be, based  
 13 upon production that we received from your  
 14 Counsel, as complete as we could with respect  
 15 to each one of your works in suit find the  
 16 royalty statement to make sure that we had a  
 17 sense of what your royalties were on the  
 18 works.  
 19 Could you take a look at it and let  
 20 me know if you think it's a complete and  
 21 accurate summary, to the best of your  
 22 knowledge, as you sit here, of what the  
 23 royalties were?  
 24 A. It is.  
 25 MR. GOLDMAN: I'm sorry; royalties

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 (Whereupon, at this time, a short  
 3 break was taken.)  
 4 MR. PETERSEN: Just to put on the  
 5 record, during an off-the-record  
 6 discussion, Counsel for Plaintiffs  
 7 agreed with me to stipulate to the  
 8 admissibility and authenticity of  
 9 royalty reports concerning -- solely  
 10 concerning Ms. Cummings works that are  
 11 in suit.  
 12 Is that fair to say?  
 13 MR. GOLDMAN: That is, subject to  
 14 my review of the documents that you  
 15 mark as an exhibit.  
 16 MR. PETERSEN: Sure. If have you  
 17 any objections at that point, I'm sure  
 18 you'll let me know.  
 19 If we can have this marked as  
 20 Exhibit 8.  
 21 (Exhibit PC-8, document bearing  
 22 Bates label AG0002346 through '346,  
 23 marked for identification, as of this  
 24 date.)  
 25 BY MR. PETERSEN:

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 were as of the period ending June 30,  
 3 2001.  
 4 MR. PETERSEN: That's a good  
 5 clarification. I'm actually asking a  
 6 broader question. I just want to get  
 7 a sense -- I'd rather try to test your  
 8 memory as to what your royalties were  
 9 for each work. I'm hoping to kind of  
 10 trigger from these documents so we can  
 11 just talk, so I can have some sense  
 12 what the royalties were for each work.  
 13 My question is broader than that.  
 14 It's really, I can read it off the  
 15 documents, but I want to make sure  
 16 there's nothing missing here. If  
 17 Ms. Cummings can look at it and say,  
 18 yes, that sounds about right, those  
 19 were the royalties for those works.  
 20 Does that make sense with that  
 21 clarification.  
 22 A. Well, I have a question: Is this  
 23 the total royalties you mean for the book for  
 24 all time?  
 25 Q. Yes. I'm trying to get a sense --

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<p>1 CONFIDENTIAL-PAT CUMMINGS 2 this is what we found in your production. So, 3 we assume that you had a royalty statement, 4 you turned it over to us and said this would 5 give us -- if we wanted later to go back and 6 say these is the total royalties for Jimmy Lee 7 Did It, then we would be able to do that. 8 A. Then I would say probably not. 9 Q. And so what is missing? 10 A. Well, this -- these are the 11 sub-rites. This looks like sub-rite sales and 12 only the sub-rites and maybe paperback 13 royalties. Not even paperback royalties. 14 Maybe only the sub-rite sales? The book 15 itself, I mean, I remember one October getting 16 a check for like \$20,000 for the book, you 17 know. And so, I don't see that reflected here 18 anywhere. 19 Q. Is there a reason, do you know, if 20 you turned over those records to Counsel? 21 A. I don't have all my records. 22 That's just the bottom line. I found 23 everything that I had in my files. 24 Q. If you needed to recreate and talk 25 about what your royalties were for these</p>	<p>1 CONFIDENTIAL-PAT CUMMINGS 2 works, is there any way for you to do that? 3 A. I did it. That was what I did. I 4 pulled out all the records that I had. 5 Q. Right, but I guess my question is 6 slightly different. So, if I'm understanding 7 you correctly, there's certain documents you 8 do not have identifying the universe of 9 royalties, correct? 10 A. True. 11 Q. What I'm asking is: Is there any 12 way for you to find that information through 13 other means? 14 A. I might be able to get it from the 15 publisher. I don't know. I'm assuming that 16 if it exists, if the publisher has those 17 records, which they should, then I might be 18 able to request them. I never requested 19 backup. 20 Q. So, if I'm understanding correctly, 21 what I've marked at PC-8 is an incomplete 22 summary of the royalties you received in 23 connection with Jimmy Lee Did It? 24 A. It's complete for this period. But 25 I don't believe it represents the entire</p>
Page 84	Page 85
<p>1 CONFIDENTIAL-PAT CUMMINGS 2 income for this book. 3 Q. And what was the period of time in 4 which Jimmy Lee Did It was in print? 5 A. I don't know. Okay. To the best 6 of my memory, it came out -- I believe it came 7 out in the late '70s, early '80s. It says it 8 right on here. Release date was 9 September '85. 10 Q. And when did it cease being in 11 print? 12 A. I don't know. It came out from one 13 publisher and then another publisher picked up 14 the paperback. 15 Q. I think I don't follow you. You 16 said this is complete for that time period. 17 But I thought you said earlier that this only 18 relates to the subsidiary rights? 19 A. That's what it looks like when I 20 review it. What I'm seeing here listed are 21 sub-rite sales. 22 MR. PETERSEN: I'll note for the 23 record, we have requested documents 24 showing royalties paid to Ms. Cummings 25 in connection with each of the works</p>	<p>1 CONFIDENTIAL-PAT CUMMINGS 2 in suit, including Jimmy Lee Did It. 3 If there's any way to give us that 4 information, we reiterate that 5 request. It should have been produced 6 some time ago; to the extent she has 7 the ability to produce that to us. 8 This does seem to be incomplete based 9 upon -- 10 MR. GOLDMAN: I'll take that under 11 note and advisement. 12 Q. Ms. Cummings, do you have any 13 recollection of what your royalties would have 14 been from Jimmy Lee Did It? 15 A. No, I remember the \$20,000 payment, 16 because that was large, but that was the hard 17 cover, and I don't -- I don't see that 18 reflected here. 19 Q. When was the last time you would 20 have received any royalties in connection with 21 Jimmy Lee Did It? 22 A. I don't remember. Not much longer 23 after this, probably. It's been a while. 24 Q. And the reference to subsidiary 25 rights here, what specifically does that mean?</p>

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Sub-rite sales, in this case,  
 3 Sundance -- as far as I know, Sundance makes  
 4 big books that are used by teachers and  
 5 libraries in story time. So, they were the  
 6 huge versions of the book. And sometimes,  
 7 they have an educational component stuck in  
 8 them. That's Sundance. It looks like all  
 9 these sales are Sundance.

10 And the Harcourt, I'm not sure what  
 11 that was. That might have been an inclusion  
 12 in a textbook.

13 Q. I'm going to mark, as Exhibit 9, a  
 14 document Bates stamped AG 63 through AG 79?  
 15 (Exhibit PC-9, document bearing  
 16 Bates label AG0000063 through '079,  
 17 marked for identification, as of this  
 18 date.)

19 Q. Ms. Cummings, do you recognize  
 20 Exhibit 9?

21 A. Yes.

22 Q. What is it?

23 A. It's the contract for Talking with  
 24 Artists, Volume II.

25 Q. And is Talking with Artists one of

1 CONFIDENTIAL-PAT CUMMINGS  
 2 agreement is at an end and you have all  
 3 rights?  
 4 A. No. You usually have to request  
 5 them. I've requested and gotten letters in  
 6 return. And for some, I haven't. And I  
 7 believe I may have requested it and may or may  
 8 not have gotten it back. If it's in print in  
 9 any form, they might not want to give it back.

10 Q. So, you have no recollection if you  
 11 requested the rights back for Talking with  
 12 Artists II?

13 A. I don't recall. I don't think I  
 14 did because I didn't know for sure if it was  
 15 out of print.

16 Q. Did you search for those documents  
 17 in connection with the document request that  
 18 we served?

19 A. I looked for my files on Talking  
 20 with Artists. Everything is in the same  
 21 place. So, I looked through every page of  
 22 everything in the folder that I have on  
 23 Talking with Artists II.

24 Q. So, the absence of that sort of  
 25 reversion document saying that goes back --

1 CONFIDENTIAL-PAT CUMMINGS  
 2 the volumes out of print?

3 A. I believe so.

4 Q. You signed this agreement with the  
 5 publisher, Bradbury Press, Inc.?

6 A. Yes.

7 Q. They're affiliates of Macmillan?

8 A. No, now they're -- they are  
 9 affiliated with Macmillan, but now they're  
 10 Simon & Schuster.

11 Q. When about did you sign this  
 12 agreement?

13 A. October 1992.

14 Q. And is this agreement still in  
 15 enforce in your perspective?

16 MR. GOLDMAN: Objection to the  
 17 extent it calls for a legal  
 18 conclusion.

19 A. I don't know. I've gotten back  
 20 rights to some books. I don't know.

21 Q. What books have you gotten back  
 22 rights to?

23 A. I don't know.

24 Q. How does that work; does the  
 25 publisher sends you a letter saying the

1 CONFIDENTIAL-PAT CUMMINGS

2 A. Means I don't have it.

3 Q. You don't have?

4 A. I didn't get it.

5 Q. So, then your testimony is that you  
 6 don't believe you did -- you believe that the  
 7 publisher does not consider this contract to  
 8 be terminated. The publisher, as far as  
 9 you're aware, believes this publishing  
 10 agreement is still in force?

11 A. I don't know.

12 Q. But you haven't seen anything from  
 13 the publisher passing the copyright?

14 MR. GOLDMAN: Objection.

15 A. I don't know that. I don't know  
 16 which ones I have back and which ones I don't.  
 17 I provided whatever I had. I don't know that  
 18 I haven't requested it.

19 Q. I'm going to mark, as Exhibit 10, a  
 20 document Bates stamped AG '2365 through '2351.

21 (Exhibit PC-10, document bearing  
 22 Bates label AG0002365 through '351,  
 23 marked for identification, as of this  
 24 date.)

25 MR. PETERSEN: I won't make any



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1 CONFIDENTIAL-PAT CUMMINGS  
 2 representation as to what Bates  
 3 numbers it is. I think you're right,  
 4 it's not in sequence.  
 5 Q. But Ms. Cummings, if you can take a  
 6 look at what I marked as PC-10 --  
 7 A. Yes.  
 8 Q. -- you recognize it?  
 9 A. Yes.  
 10 Q. What is it?  
 11 A. Royalty statement from  
 12 Simon & Schuster for Talking with Artists,  
 13 Volume II.  
 14 Q. That's a work that is out of print?  
 15 A. As far as I know.  
 16 Q. And what date ranges was it in  
 17 print, if you recall?  
 18 A. Let me see if it's listed here.  
 19 From 2001 -- no, it was published in 1995.  
 20 Q. And do you recall when it would  
 21 have gone out of print?  
 22 A. No, because I'm not -- I'm still  
 23 not sure that it is. I don't recall ever  
 24 getting any statement that that was out of  
 25 print.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 of the sales.  
 3 Q. Runs from 2001 to the last page is  
 4 2009, right. So, it's in chronological order.  
 5 A. This doesn't really total all of  
 6 the sales, but it doesn't total the income.  
 7 So, I'd say for the sales figures,  
 8 it's correct, but I couldn't tell you the  
 9 total amount of the income.  
 10 Q. I'm not sure I follow that, though.  
 11 It gives you amount paid, say, for example, on  
 12 the first statement on page 1, "current period  
 13 total?"  
 14 A. Right.  
 15 Q. You're saying that's actually the  
 16 sales to the publisher as opposed --  
 17 A. No, that's the royalty payable to  
 18 me, but I'm saying I don't have a cumulative  
 19 total for the royalties for the book the whole  
 20 time it was published.  
 21 Q. Understood. All I'm trying to  
 22 figure out is what royalties were paid to you.  
 23 If I could have someone just add up each page  
 24 of this and come up with a figure, whatever it  
 25 is, take the time and add it all up, if that

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. When was the last time you received  
 3 a royalty statement in connection with this  
 4 work?  
 5 A. I don't remember. Several years.  
 6 Q. At least several years?  
 7 A. I don't know for a fact. It could  
 8 have been a couple of years.  
 9 Q. I'll ask you the same question I  
 10 asked you concerning Jimmy Lee Did It. Are  
 11 these the complete royalty statements with  
 12 respect to Talking with Artists, Version II?  
 13 MR. GOLDMAN: Objection to the  
 14 form.  
 15 A. It's all that I have, yes.  
 16 Q. When I say "complete," meaning if I  
 17 wanted to figure out what your total royalties  
 18 were in connection with this work, could I use  
 19 this document to do that?  
 20 A. This goes in reverse chronological  
 21 order, so the last page is the most current  
 22 one, right, the 2009?  
 23 Q. That appears to be right, but I  
 24 didn't assemble this.  
 25 A. I believe they give a running total

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 would be the figure or if there would be some  
 3 other statements that we don't have that would  
 4 show other monies payable to you.  
 5 A. No, this is the total that we have.  
 6 Unless I believe that some of the books if I  
 7 was missing a royalty period, I might have. I  
 8 don't even know. I have to ask. I don't know  
 9 if I indicated, you know, this six-month  
 10 period was missing.  
 11 Q. So let me put it to you this way:  
 12 When we talked about Jimmy Lee Did It, it was  
 13 apparent on the face that it related to  
 14 subsidiary rights. And you determined from  
 15 that that there were other statements  
 16 concerning hardcopy that weren't there. Are  
 17 there any, on their face, omissions from these  
 18 statements?  
 19 A. No.  
 20 Q. So, this appears to be a more  
 21 comprehensive summary of the royalties you  
 22 received?  
 23 A. Yes.  
 24 Q. Of the works in suit, what was your  
 25 best seller?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Probably Talking with Artists, the  
 3 first volume.  
 4 Q. When was that in print?  
 5 A. I think that came out in  
 6 1990-something-or-other; 1991, '92.  
 7 Q. And how long did that in print  
 8 status last?  
 9 A. I believe it's still in print.  
 10 Q. And when was the last time you  
 11 received a royalty statement with respect to  
 12 that work?  
 13 A. I get royalties in October. And  
 14 the last one I got was -- that's Simon -- no,  
 15 that's not -- yes, Simon & Schuster. They pay  
 16 in January and July. So, January would have  
 17 been the last statement.  
 18 Q. And could you ballpark for me the  
 19 total royalties you received in connection  
 20 with Talking with Artists?  
 21 A. No.  
 22 Q. Is it more than 50,000?  
 23 A. Yes.  
 24 Q. Is it more than a hundred thousand?  
 25 A. I don't know. I remember that the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Adventurers with the National Geographic  
 3 Society.  
 4 Q. It's an agreement you had with  
 5 National Geographic Society?  
 6 A. Yes.  
 7 Q. Is that agreement still in force?  
 8 A. As far as I know, yes.  
 9 Q. Turn to page 14. The signature  
 10 dates appear to be around September 1996; is  
 11 that correct?  
 12 A. Yes.  
 13 Q. Is that on or about the date that  
 14 this agreement was entered into?  
 15 A. Yes.  
 16 Q. And to the best of your knowledge,  
 17 is the agreement still in force?  
 18 A. Yes.  
 19 Q. What work does it concern?  
 20 A. Talking with Adventurers is a  
 21 collection of about, I think, a dozen  
 22 different scientists and adventurers for a  
 23 market -- like a second grade market.  
 24 Q. When was that work first published?  
 25 A. Must have been about 1998, '99.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 first year it earned more than 50,000.  
 3 Q. So, would it be safe to say  
 4 somewhere between 50,000 and a hundred  
 5 thousand?  
 6 MR. GOLDMAN: Objection to form.  
 7 She just said she doesn't know.  
 8 A. I don't know.  
 9 MR. PETERSEN: I'm just trying to  
 10 get her understanding, her  
 11 recollection, her memory.  
 12 Q. Put that aside for now.  
 13 I'm going to mark, as Exhibit 11, a  
 14 document entitled "National Geographic  
 15 Society," AG '27 through '42.  
 16 (Exhibit PC-11, document bearing  
 17 Bates label AG0000027 through '042,  
 18 marked for identification, as of this  
 19 date.)  
 20 Q. Ms. Cummings, if you to take a look  
 21 at what I marked as PC-11, do you recognize  
 22 this document?  
 23 A. Yes.  
 24 Q. What is it?  
 25 A. It's a contract for Talking with

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 I'm not sure.  
 3 Q. And do you still receive royalty  
 4 statements concerning this work?  
 5 A. I believe I do.  
 6 Q. When was the last time you recall  
 7 receiving a royalty statement?  
 8 A. It would have been in October. I  
 9 think they pay in October and -- April. It  
 10 would have been April.  
 11 Q. I'm going to mark, as Exhibit 12, I  
 12 won't try to do the Bates number, a document  
 13 entitled am National Geographic Society  
 14 royalty statement?  
 15 (Exhibit PC-12, document bearing  
 16 Bates label AG0002388 through '2408,  
 17 marked for identification, as of this  
 18 date.)  
 19 Q. Ms. Cummings, if you could, take a  
 20 look at what I marked as Exhibit 12. Is that  
 21 the last royalty you received that was 10  
 22 cents?  
 23 A. Yes. What was that December 11?  
 24 Oh, my goodness, yes.  
 25 Q. Do you recognize Exhibit 12?

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. What is it?  
 4 A. It's a royalty statement for  
 5 National Geographic.  
 6 Q. Does it appear to a complete  
 7 summary of the royalties to you received in  
 8 connection with Talking with Adventurers?  
 9 A. Yes.  
 10 Q. If we have someone tally up the  
 11 numbers, they would show the total that you  
 12 received in connection with that work?  
 13 MR. GOLDMAN: Which documents are  
 14 you referring to, Mr. Petersen?  
 15 MR. PETERSEN: 12.  
 16 MR. GOLDMAN: Exhibit 12 is a  
 17 number of royalty statements. Are you  
 18 referring to a specific one?  
 19 MR. PETERSEN: Same question as  
 20 before, I'm trying to get a sense of  
 21 total royalties in connection with  
 22 this particular works. That's how  
 23 we've organized this.  
 24 Q. My question is a simple one; if I  
 25 looked at this and tallied all the numbers up,

1 CONFIDENTIAL-PAT CUMMINGS  
 2 to the best of your knowledge, this would be a  
 3 fair summary of the royalties you received in  
 4 connection with this particular work?  
 5 A. Yes, probably. I know that there  
 6 were some periods missing for some books when  
 7 I was doing all the copying.  
 8 Q. Do you want to take a quick look  
 9 and see if it's one of those works?  
 10 A. I'm checking. Even if it isn't,  
 11 they seem to have a running total, a  
 12 cumulative total, so that would seem to be  
 13 accurate.  
 14 Q. If I understand that correctly, the  
 15 total gross earnings identified on the last  
 16 page Bates number '2408 of 15,479?  
 17 That would be the total royalties  
 18 you received in connection with this work?  
 19 A. Yes.  
 20 Q. Do you receive advances in  
 21 connection with your works?  
 22 A. Yes. Usually, yes.  
 23 Q. What is the size of the advances,  
 24 typically?  
 25 A. Oh, it varies 10 to 20,000, now. I

1 CONFIDENTIAL-PAT CUMMINGS  
 2 mean, these are older books. Some of them  
 3 were like \$6,000 advance.  
 4 Q. And in terms of the sales of your  
 5 works, is it fair to assume that the greater  
 6 number of sales occurs in the first few number  
 7 of years after publication?  
 8 A. Yes.  
 9 Q. Then they tail off?  
 10 A. Yes, with the exception of some  
 11 like Jimmy Lee. That was 20 years after the  
 12 book came out that I got the huge check.  
 13 Q. There's a reference to -- I'm just  
 14 taking -- the last page would be a good  
 15 example of it.  
 16 There's a reference here to  
 17 "Assigned to Robert Ballard. Assigned to Jane  
 18 Goodall."  
 19 Have you assigned particular rights  
 20 to Mr. Ballard or Ms. Goodall?  
 21 A. I structured the whole agreement so  
 22 that all the people who were in the book that  
 23 were profiled had rights to their own  
 24 sections.  
 25 Q. So, Ms. Goodall, as far as your

1 CONFIDENTIAL-PAT CUMMINGS  
 2 note, she gets a share?  
 3 A. She's making some money, yes.  
 4 Q. Just for the record, could you  
 5 identify Ms. Goodall?  
 6 A. Jane Goodall is a researcher, a  
 7 scientist, that studied chimpanzees in Africa  
 8 and runs a foundation, I believe.  
 9 Q. And how about Robert Ballard?  
 10 A. Roberts Ballard was the one who  
 11 identified -- discovered the Titanic.  
 12 Q. Were there other adventurers  
 13 identified in your work?  
 14 A. There was about a dozen, yes.  
 15 There was David Doubilet, whose an underwater  
 16 photographer and Dr. Johan Reinhard, a  
 17 mountaineer, a mountainist. And he found the  
 18 Peruvian Ice Maiden that they brought down the  
 19 mountains and have at the Smithsonian.  
 20 Several people. I can't remember all of them.  
 21 Michael -- I can't remember --  
 22 Michael Blakey. He's the one who was working  
 23 on the African burial ground and had drawers  
 24 full of bones. You know, that sort of thing  
 25 really fascinates second graders.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 So, it was a series of people that  
 3 were doing adventurous things. We used  
 4 Michael November vehicle from the Museum of  
 5 National History. He's a paleontologist. He  
 6 found the largest number of velociraptor bones  
 7 that one has ever found.  
 8 Q. So, they presumably have a share of  
 9 royalties as well?  
 10 A. They have the rights to their own  
 11 section. So, basing it on the same format I  
 12 use for Talking with Artists, I felt that the  
 13 individuals' life was their stories and they  
 14 should profit from any sales, any sub-rite  
 15 sales, of their own stories.  
 16 Q. Do you know why then their names  
 17 wouldn't be listed under the subsidiary  
 18 rights? Mr. Ballard's name and Goodall are  
 19 listed, but the other adventurers aren't.  
 20 A. They didn't make a sale. They  
 21 probably didn't make a sale.  
 22 Q. I'm not sure I follow.  
 23 A. Jane Goodall and Robert Ballard are  
 24 hugely recognizable, particularly for a school  
 25 market. Finding the Titanic was huge when the

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. So, the work here is entitled The  
 3 Day I Cleaned My Room, but that subsequently  
 4 became Clean Your Room, Harvey Moon?  
 5 A. Yes.  
 6 Q. When was that work published?  
 7 A. Probably 1989 or 1990.  
 8 Q. I believe you testified you believe  
 9 it's still in print?  
 10 A. Yes, the paperback at least.  
 11 Q. Have you received royalty  
 12 statements concerning this work?  
 13 A. I would have received them in  
 14 January, yes.  
 15 Q. So is this the agreement you had  
 16 with Bradbury Press concerning that work?  
 17 A. Yes.  
 18 Q. Is it still in force, in your  
 19 opinion?  
 20 A. Yes, it's with Simon & Schuster  
 21 now.  
 22 Q. Do you recall when entered into  
 23 this agreement? You can use the last page to  
 24 trigger your memory.  
 25 A. 1987. This is not dated.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 movie came out. So, he probably -- a lot of  
 3 companies wanted to reprint his story.  
 4 Q. So, that means that a chapter about  
 5 Ms. Goodall was reproduced somewhere else and  
 6 would have gotten royalties, but the other  
 7 adventurers may not have had that particular  
 8 chapter reproduced?  
 9 A. Right.  
 10 Q. We could mark, as Exhibit 13, a  
 11 document Bradbury Press, Inc. Appears at the  
 12 top?  
 13 (Exhibit PC-13, document bearing  
 14 Bates label AG0000011 through '026,  
 15 marked for identification, as of this  
 16 date.)  
 17 Q. Ms. Cummings, if you could take a  
 18 look at what I marked as PC-13 and let me know  
 19 when you've had a chance to look at it.  
 20 A. Okay.  
 21 Q. Do you recognize this document?  
 22 A. Yes.  
 23 Q. And what is it?  
 24 A. It's the contract for Clean Your  
 25 Room, Harvey Moon.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. You recall signing this agreement?  
 3 A. No, but --  
 4 Q. You believe you did?  
 5 A. I did. I recognize my signature.  
 6 Q. The agreement itself, on the first  
 7 page, is dated 11 of December 1987. So that  
 8 would have been the date it was entered into?  
 9 A. Yes.  
 10 Q. You could mark, as Exhibit 14, a  
 11 document Bates stamped AG '2479 through AG  
 12 '2485?  
 13 (Exhibit PC-14, document bearing  
 14 Bates number AG0002479 through '485,  
 15 marked for identification, as of this  
 16 date.)  
 17 Q. Ms. Cummings, do you recognize  
 18 Exhibit 14?  
 19 A. It looks like a page from Amazon  
 20 with my book on it.  
 21 Q. And it's concerning Clean Your  
 22 Room, Harvey Moon, correct?  
 23 A. Yes.  
 24 Q. It says, "click to look inside?"  
 25 A. Yes.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Do you recall authorizing anyone to  
 3 have the look inside functionality added to  
 4 your book?  
 5 A. No.  
 6 Q. Do you believe your publisher  
 7 authorized that?  
 8 MR. GOLDMAN: Objection to form.  
 9 A. I don't know.  
 10 Q. Does it surprise you to learn that  
 11 your book is used in this way on Amazon?  
 12 A. No, I have seen it.  
 13 Q. And the Amazon functionality has  
 14 search inside this book. Did you see that?  
 15 A. Yes.  
 16 Q. Were you aware of that?  
 17 A. Yes.  
 18 Q. So, you authorized that?  
 19 A. No.  
 20 Q. When did you become aware that  
 21 there were search inside this book  
 22 functionality?  
 23 A. I don't remember the year. Years  
 24 ago when they first put that click inside, to  
 25 look inside on it.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Did you, at that point in time, ask  
 3 your publisher what that meant?  
 4 A. No.  
 5 Q. Did you have knowledge it entailed  
 6 making a digital copy of your work?  
 7 A. No.  
 8 Q. You have no knowledge?  
 9 A. No.  
 10 Q. Do you have any knowledge as you  
 11 sit here today?  
 12 A. I realize that they had a couple of  
 13 pages because they were able to show a couple  
 14 of pages.  
 15 Q. It's not just that. When you say,  
 16 search inside this book, the way that works,  
 17 if you enter a term, it will tell you where  
 18 that term appears in your work?  
 19 MR. GOLDMAN: Objection.  
 20 Q. This is a different issue than look  
 21 inside. This is search inside this book.  
 22 Are you aware what that  
 23 functionality means or what it does?  
 24 MR. GOLDMAN: Objection to the  
 25 form.

1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. I actually never did that. I never  
 3 realized that. I thought it would only show  
 4 you several pages.  
 5 Q. I see.  
 6 A. I never searched, like, the word,  
 7 "be."  
 8 Q. Did you ever ask a publisher or  
 9 anyone or Amazon what security measures they  
 10 have in place to protect the digital copy of  
 11 that work?  
 12 A. No.  
 13 Q. Are you troubled at all about the  
 14 security that Amazon has with respect to that  
 15 work?  
 16 A. My concern with them showing the  
 17 work is a little bit less because then they're  
 18 going to sell the books. I'm get royalties  
 19 off the book. So, if that encourages somebody  
 20 to buy the book, I'm less troubled.  
 21 Q. So, wouldn't you agree with me the  
 22 copies that HathiTrust has in the search  
 23 functionality works the same way; it makes a  
 24 return and identifies particularly your works  
 25 will come up. Someone may then go and buy

1 CONFIDENTIAL-PAT CUMMINGS  
 2 your work. So, in the same way the copies  
 3 that my clients have, that functionality, the  
 4 search functionality, allows people to  
 5 discover your work and would, in fact,  
 6 stimulate sales of your work. Do you disagree  
 7 with that?  
 8 MR. GOLDMAN: Object to the form.  
 9 It's argumentative. I'm tempted to  
 10 ask her not to answer that question.  
 11 MR. PETERSEN: You can't instruct  
 12 the witness not to answer a question,  
 13 you know that.  
 14 Q. I can rephrase the question.  
 15 A. I do understand the question, but I  
 16 don't feel the same way about it because this  
 17 feels to me like if my publisher entered into  
 18 it, it's a commercial agreement and I'll  
 19 benefit from it financially if there's a sale  
 20 made. I don't feel the same way about the  
 21 HathiTrust.  
 22 Q. If someone discovers your work  
 23 using the HathiTrust functionality, and mind  
 24 you, you testified you weren't really aware of  
 25 how the HathiTrust used the digital copies.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. True.  
 3 Q. But I represented to you that for  
 4 your works, there's a search functionality  
 5 that will allow someone to finds your work,  
 6 but won't actually display that work.  
 7 Remember we talked about that?  
 8 A. Yes.  
 9 Q. And so in that particular case, if  
 10 someone discovers your work using the search  
 11 functionality at HathiTrust and wanted to  
 12 obtain that book, wouldn't that be bound to  
 13 your benefit if they went down and ordered  
 14 your book or went on Amazon and ordered your  
 15 book?  
 16 MR. GOLDMAN: Objection to the  
 17 form.  
 18 A. There's no way for me to know the  
 19 difference. To me, I have a contract with the  
 20 publisher and I agree to a certain amount of  
 21 advertising, and I have a certain amount of  
 22 confidence that my publisher is acting in my  
 23 best interest because if they profit, I  
 24 profit. I don't feel the same way with the  
 25 HathiTrust. I don't have an agreement with

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Yet you allow Amazon to have a  
 3 digital copy of your work.  
 4 A. I don't allow it.  
 5 Q. Have you told Amazon not to have a  
 6 digital copy of your work?  
 7 A. No, I haven't.  
 8 Q. Have you told your publisher not to  
 9 allow it?  
 10 A. No, I haven't.  
 11 Q. So, that happens with your  
 12 authorization, does it not?  
 13 MR. GOLDMAN: Objection to the  
 14 form.  
 15 A. No. My feeling is because I did  
 16 not tell them I don't want it, doesn't mean I  
 17 authorize it. That's two different things.  
 18 Nobody asked me if they could put  
 19 it up there. I haven't authorized it. If  
 20 I -- and until I today, I hadn't seen how many  
 21 pages you are able to access. So, I might  
 22 have a problem with it going forward. I  
 23 wasn't aware that this much information was up  
 24 there.  
 25 Q. And you've never done anything to

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 them.  
 3 Q. If someone discovers the work from  
 4 the HathiTrust, they can't obtain a copy of it  
 5 and it compels them to buy a copy from the  
 6 publisher, you get remunerated for that; do  
 7 you not?  
 8 MR. GOLDMAN: Object to the form.  
 9 A. The truth is, I have seen what my  
 10 students have printed out. Do you know? I  
 11 have seen what a 20-year old can do once they  
 12 access databases. And so, I don't have  
 13 confidence they can't -- someone couldn't just  
 14 printout the information.  
 15 It's one thing for a picture book,  
 16 it's another for, like, the Talking with  
 17 series, yes.  
 18 Q. So, do I understand that correctly  
 19 that you have more confidence in Amazon to  
 20 protect the digital copy it has of your work  
 21 than you do the University of Michigan.  
 22 MR. GOLDMAN: Objection to the  
 23 form.  
 24 A. I don't have more confidence in  
 25 Amazon.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 check the security procedures in place in  
 3 Amazon to protect that work?  
 4 MR. GOLDMAN: Objection; asked and  
 5 answered.  
 6 A. No.  
 7 Q. Mark that 15.  
 8 (Exhibit PC-15, document bearing  
 9 Bates label AG0002301 through '345,  
 10 marked for identification, as of this  
 11 date.)  
 12 Q. Ms. Cummings, can you take a look  
 13 at what I mark as Exhibit 15?  
 14 Do you recognize this document?  
 15 A. Yes.  
 16 Q. Are these royalty statements for  
 17 Clean Your Room, Harvey Moon?  
 18 A. Yes.  
 19 Q. Does it appear to be a complete  
 20 summary of the royalty statements taken  
 21 collectively -- I'll put the same question to  
 22 you that I asked before; if we had someone  
 23 tally up all the figures, would it give us the  
 24 royalties you received in connection with  
 25 Clean Your Room, Harvey Moon?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. Yes.  
 3 Q. Does it appear to be complete to  
 4 you?  
 5 A. Yes.  
 6 MR. GOLDMAN: I'll object to the  
 7 form to the extent the word,  
 8 "complete" is vague.  
 9 Q. I'm going to mark, as Exhibit 16,  
 10 an agreement -- a letter agreement Bates  
 11 stamped AG '43 through AG '44.  
 12 (Exhibit PC-16, document bearing  
 13 Bates label AG000043 through '044,  
 14 marked for identification, as of this  
 15 date.)  
 16 Q. Do you recognize this document?  
 17 A. Yes, I do.  
 18 Q. What is it?  
 19 A. It's a request by Simon & Shuster  
 20 that I signoff on an e-book version of my  
 21 book.  
 22 Q. Did you ever sign off on that  
 23 agreement?  
 24 A. No, I didn't.  
 25 Q. You refused to sign it?

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 after he left Simon & Schuster and I  
 3 apologized for not getting back to him, and he  
 4 said it was a good thing I didn't sign it.  
 5 Q. Why did he say that?  
 6 A. Because the field is changing so  
 7 rapidly it wasn't a bad thing to wait and see  
 8 what's coming and do more research and figure  
 9 out what the best deals are.  
 10 Q. You can put that aside for the time  
 11 being.  
 12 (Exhibit PC-17, document bearing  
 13 Bates label AG0002387 through '366,  
 14 marked for identification, as of this  
 15 date.)  
 16 Q. Ms. Cummings, if you could, take a  
 17 look what I marked as Exhibit 17.  
 18 Do you recognize this document?  
 19 A. Yes, I do.  
 20 Q. What is this document?  
 21 A. It's a royalty statements for  
 22 Talking with Artists Volume III. Volume III I  
 23 think, yes.  
 24 Q. And is this work still in print?  
 25 A. As far as I know it is. According

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 A. I didn't refuse to, I just didn't  
 3 sign it. I haven't refused. Just hadn't  
 4 considered it.  
 5 Q. And this is concerning which work?  
 6 A. I believe this is for Talking with  
 7 Artists? Yes, for Talking with Artists.  
 8 Q. And to the best of your knowledge,  
 9 Simon & Schuster made that work available in  
 10 e-form?  
 11 A. To the best of my knowledge, no, I  
 12 hope not.  
 13 Q. Why didn't you signoff on this  
 14 letter?  
 15 A. I handle my own business, loosely,  
 16 and I don't know enough about e-books and my  
 17 belief was that my existing contract would  
 18 give me a better deal than signing off on  
 19 something new on this new format.  
 20 I felt like I had to do some  
 21 research and speak to people about whether or  
 22 not this was a good deal, and I hadn't gotten  
 23 around to it.  
 24 Q. Did you ever do that research?  
 25 A. I actually spoke to Reuben Pfeffer

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 to the last statement, I think it made a  
 3 whopping \$13.  
 4 Q. If I'm doing this correctly,  
 5 Talking with Artists, Volume III is not a work  
 6 in suit. It's not a work you contend was  
 7 infringed by my clients?  
 8 A. True.  
 9 Q. Let's put that aside. I'm not sure  
 10 why that's here.  
 11 I think I figured out why it's  
 12 here. I want to make sure we're in agreement  
 13 that this is not related to Talking with  
 14 Artists, Volume I or II because I think that's  
 15 why it was here. We understood it to be  
 16 Talking with Artists, Volume I or Volume II.  
 17 Are you sure this relates entirely  
 18 to Volume III? Can you just take a look at  
 19 it?  
 20 A. Well, Houghton Mifflin is III. The  
 21 first two were Simon & Schuster. So, this  
 22 would only be Volume III.  
 23 Q. I didn't follow that.  
 24 Simon & Schuster is on --  
 25 A. Mine says Houghton Mifflin.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Ms. Cummings, have you produced  
 3 documents to your lawyers concerning royalty  
 4 statements for Talking with Artists Volume I  
 5 and II?  
 6 A. Yes.  
 7 Q. But these are not the documents you  
 8 produced on that issue, correct?  
 9 A. Well, this is Volume III, and I  
 10 have seen whatever the last one was, Volume II  
 11 that we looked at. I see the one for Volume  
 12 II. Didn't we go over that?  
 13 MR. GOLDMAN: PC-10 is Volume II.  
 14 You haven't marked Volume I.  
 15 Q. But this all relates to Volume III?  
 16 MR. GOLDMAN: PC-17, I believe.  
 17 A. Right.  
 18 Q. This is all Volume III?  
 19 A. Yes.  
 20 Q. I was right putting it aside.  
 21 If I can mark, as Exhibit 18, some  
 22 more royalty statements.  
 23 (Exhibit PC-18, document bearing  
 24 Bates label AG0002426 through '409,  
 25 marked for identification, as of this

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. GOLDMAN: Mr. Petersen, I just  
 3 want to clarify something. We left  
 4 that question, and just in looking at  
 5 these statements, they don't tally the  
 6 dollars paid over time. They do  
 7 appear to tally the number of copies  
 8 sold over time.  
 9 So, when you're asking this  
 10 question, it's unclear what you're  
 11 asking.  
 12 MR. PETERSEN: My hypothetical  
 13 paralegal who tallied up, I'm sure  
 14 would tally the payments. Is that  
 15 your question, are we going to tally  
 16 it right?  
 17 MR. GOLDMAN: I suppose because I  
 18 don't know that that would actually  
 19 work. I don't know that you probably  
 20 would be able to. I don't think she  
 21 doesn't know, I think it's a  
 22 confusing question because you're  
 23 asking many different statements of a  
 24 book published before the first  
 25 statement date is.

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 date.)  
 3 Q. Ms. Cummings, if you can, take a  
 4 look at what I marked as Exhibit 18.  
 5 What is Exhibit 18?  
 6 A. It's the royalties statement for  
 7 Talking with Artists, Volume I.  
 8 Q. So, this was the missing Volume I,  
 9 great.  
 10 Does it appear to be complete  
 11 summary of the royalty statements for the  
 12 royalty payments you received in connection  
 13 with that work?  
 14 A. Yes.  
 15 Q. You want to make a moment to flip  
 16 through? I just want to make sure we're not  
 17 missing something.  
 18 If someone tallied this up and came  
 19 up with a number, I want to make sure that  
 20 would be an accurate reflection of the  
 21 royalties you received in connection with this  
 22 work.  
 23 A. Unless there's a period missing, I  
 24 mean, I can check to see if there's any gaps,  
 25 but --

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. Let me break it down. I'm just  
 3 trying to figure out what the royalties paid  
 4 to you were, using the documents you had an  
 5 obligation to provide to us. I'm just trying  
 6 to do it in a way -- I don't run around with  
 7 calculators.  
 8 So, I guess I'll start over.  
 9 If we had someone tally up these  
 10 royalty statements, I'm assuming each period  
 11 is covered, would that be correct?  
 12 A. Yes.  
 13 MR. PETERSEN: I'm not sure of  
 14 your objection. I'm not sure where  
 15 it's coming from. I don't know what  
 16 more we can do on this issue.  
 17 Do you still have the same  
 18 objection?  
 19 MR. GOLDMAN: No, I think that  
 20 question helped clarify it for each  
 21 period covered by each statement,  
 22 she's saying is accurate and would be  
 23 cumulative for that period.  
 24 Q. And the follow-up question is: Is  
 25 there anything missing here? Is there any



1 CONFIDENTIAL-PAT CUMMINGS  
 2 sort of --  
 3 A. If you give me a minute, I'll go  
 4 through and look to see if anything is  
 5 missing.  
 6 Q. Okay, if you could.  
 7 MR. GOLDMAN: And the other thing  
 8 I would note for the record is that  
 9 your request only included documents  
 10 subsequent to 2001. So this will not  
 11 be cumulative of any royalties that  
 12 were earned prior to 2001.  
 13 For example, I mean, aside from  
 14 any periods that might be missing from  
 15 that -- from after 2001.  
 16 Q. I believe, Ms. Cummings, you pulled  
 17 all the royalty statements you had for each of  
 18 the works?  
 19 A. I pulled them all, but I only  
 20 copied back to 2001. Was that the range?  
 21 That's all I copied.  
 22 Q. That's what we have, as is as far  
 23 back as we went. I don't have my document  
 24 request in front of me, so I can't respond if  
 25 that was truly our limitation, but --

1 CONFIDENTIAL-PAT CUMMINGS  
 2 at those particular libraries could have been  
 3 effected because if they have a copy, they  
 4 don't have to reorder it.  
 5 Q. Why wouldn't they have to -- if the  
 6 copy -- if they're not making the copy  
 7 available to students, why would that have any  
 8 relationship to the amount of purchases that  
 9 my clients make every year?  
 10 MR. GOLDMAN: Objection.  
 11 A. I don't know what their intentions  
 12 are. I can't know.  
 13 Q. I'm not asking you to speculate on  
 14 my client's intentions. I'm really trying to  
 15 keep this to facts and what you do know. I'm  
 16 truly not asking you to speculate.  
 17 A. Okay.  
 18 (Continued on next page to include  
 19 jurat.)

20  
 21  
 22  
 23  
 24  
 25

1 CONFIDENTIAL-PAT CUMMINGS  
 2 MR. GOLDMAN: The limitation is  
 3 contained in PC-7, interrogatories  
 4 number 2 and 3. It shows that it's  
 5 2001.  
 6 MR. PETERSEN: If I could have  
 7 five minutes to organize some notes --  
 8 (Whereupon, at this time, a short  
 9 break was taken.)  
 10 BY MR. PETERSEN:  
 11 Q. Ms. Cummings, I know we talked  
 12 about you're bad with dates, so I'll represent  
 13 to you that Google began digitizing works  
 14 around 2005. So, here we are seven years  
 15 later. You've been selling -- your works have  
 16 been selling all that time, correct?  
 17 A. Yes.  
 18 Q. Do you believe there's been any  
 19 diminution in the amount of your sales as a  
 20 result of my client's digitization of your  
 21 works? Has that impacted your sales in any  
 22 way?  
 23 MR. GOLDMAN: Objection.  
 24 A. I wouldn't know. I wouldn't know.  
 25 If I estimate, I would say that library sales

1 CONFIDENTIAL-PAT CUMMINGS  
 2 Q. So, how could it be that it could  
 3 have any impact on your sales if the libraries  
 4 are not making the digital copy available of  
 5 your work? How could that have any bearing  
 6 upon sales of your works?  
 7 A. I wouldn't know. That's the  
 8 answer.  
 9 MR. PETERSEN: I don't think I  
 10 have anything further. Thank you very  
 11 much for your time. I do appreciate  
 12 it.  
 13 (Whereupon, at 12:34 p.m., the  
 14 Examination of this Witness was  
 15 concluded.)  
 16  
 17

18  
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 21  
 22  
 23  
 24  
 25

\_\_\_\_\_  
 PAT CUMMINGS

Subscribed and sworn to before me  
 This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
 NOTARY PUBLIC

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1 CONFIDENTIAL-PAT CUMMINGS  
 2 C E R T I F I C A T E  
 3  
 4 STATE OF NEW YORK )  
 : SS.:  
 5 COUNTY OF RICHMOND )  
 6  
 7 I, AYLETTE GONZALEZ, a Notary Public  
 8 for and within the State of New York, do  
 9 hereby certify:  
 10 That the witness, PAT CUMMINGS,  
 11 whose examination is hereinbefore set forth  
 12 was duly sworn and that such examination is a  
 13 true record of the testimony given by that  
 14 witness.  
 15 I further certify that I am not  
 16 related to any of the parties to this action  
 17 by blood or by marriage and that I am in no  
 18 way interested in the outcome of this matter.  
 19 IN WITNESS WHEREOF, I have hereunto  
 20 set my hand this 4th day of June, 2012.  
 21  
 22 \_\_\_\_\_  
 23 AYLETTE GONZALEZ  
 (Notary Public No. 01G06228612  
 Expiration date: 9/27/2014)  
 24  
 25

1 CONFIDENTIAL-PAT CUMMINGS  
 2 ERRATA SHEET FOR THE TRANSCRIPT OF:  
 3 Case Name: The Authors Guild Inc v. HathiTrust  
 4 Dep. Date: May 22, 2012  
 Deponent: PAT CUMMINGS  
 Pg. Ln. Now Reads Should Read Reason  
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 20 \_\_\_\_\_  
 PAT CUMMINGS  
 21  
 22 SUBSCRIBED AND SWORN BEFORE ME,  
 23 This \_\_\_ day of \_\_\_\_\_, 2012.  
 24 \_\_\_\_\_  
 25 Notary Public  
 My Commission Expires: \_\_\_\_\_

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