

EXHIBIT 38

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al,	:	
	:	Index No. 11 Civ. 6351 (HB)
Plaintiffs,	:	
	:	
- against -	:	
	:	
HATHITRUST, et al.	:	
	:	
Defendants.	:	
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**OBJECTIONS AND RESPONSES OF PLAINTIFF DANIELE SIMPSON
TO DEFENDANTS’ FIRST SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Daniele Simpson (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Courts for the Southern Districts of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ First Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

Objection in any specific response shall not constitute a waiver of any General Objection with respect to that request.

B. No incidental or implied admissions are intended by the responses herein. That Plaintiff has answered or objected to any interrogatory or document request should not be taken as an admission that Plaintiff accepts or admits the existence of any fact set forth or assumed by such interrogatory or document request. The fact that Plaintiff has answered part or all of any interrogatory or document request is not intended to be, and shall not be construed to be, a waiver by Plaintiff of any part of any objection to that interrogatory or document request.

C. These responses are made solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any documents produced or information provided by Plaintiff at time of trial. By responding to Defendants' interrogatories or document requests, Plaintiff does not waive any objection that may be applicable to: (1) the use, for any purpose, by Defendant of any documents, things or information provided in response to Defendants' interrogatories or document requests; or (2) the admissibility, privilege, relevancy, authenticity, or materiality of any of such documents, things or information to any issue in the case. Plaintiff expressly reserves the right to object to the use of documents or things produced, or information provided, in connection herewith during any subsequent proceeding, including the trial of this or any other action.

D. Plaintiff has not completed an investigation of all of the facts relating to this case, has not completed discovery in this action, and has not completed Plaintiff's preparation for trial. The documents and things produced, or information provided, in response to Defendants' interrogatories or document requests are without prejudice to Plaintiff's rights to produce

additional documents and things, or provide further information. Plaintiff's responses to Defendants' interrogatories and document requests are made based on Plaintiff's present information and belief predicated upon information and writings presently available to and located by Plaintiff and Plaintiff's attorneys. Accordingly, these responses are subject to supplementation and amendment should future investigation indicate that to be appropriate. Plaintiff also reserve the right to produce or use any documents or information produced and/or discovered after service of this response in support of or in opposition to any motion, in depositions, or at trial.

GENERAL OBJECTIONS

A. Plaintiff objects to each of the requests seeking confidential, trade secret, or proprietary business, technical, marketing, or financial information, or any other confidential material. Plaintiff will disclose confidential information only pursuant to the terms of the Stipulated Protective Order entered or to be entered in this case. These responses are designated "CONFIDENTIAL" under the Protective Order entered in this case.

B. Plaintiff objects to each of the requests seeking information covered by the attorney-client privilege, work product immunity, joint defense privilege, or otherwise covered by any other applicable privilege, immunity, or other protection.

C. Plaintiff objects to each of the requests to the extent it seeks documents or information that are already in Defendants' possession, are a matter of public record, or are otherwise equally available to Defendants.

D. Plaintiff objects to each of the requests with respect to which any benefit of the production to Defendants is outweighed by the burden and expense to Plaintiff, taking into account the needs of the case.

E. Plaintiff objects to each of the requests seeking through definitions and instructions to impose obligations beyond what is required in accordance with the Federal Rules of Civil Procedure, the Local Rules, applicable court orders, or stipulations or agreements of the parties (collectively, “the Rules”). Plaintiff will respond to Defendants’ requests only to the extent required by the Rules.

F. Plaintiff objects to each of the requests seeking material that Plaintiff is under an obligation to any third-party not to disclose, including documents that would require breach of a contract, protective order, settlement, or other duty to maintain confidentiality.

G. Plaintiff objects to each of the requests seeking the same information requested by one or more of Defendants’ requests for production or any interrogatory served by Defendants at any time in this case. Plaintiff will provide information or documents only once, regardless of the number of requests to which the same may be responsive.

H. Plaintiff objects to each of the requests to the extent that it seeks information not relevant to any claim or defense and/or not reasonably calculated to lead to the discovery of admissible evidence, including but not limited to, information beyond the relevant temporal and/or geographic scope of this matter.

I. Plaintiff objects to each of the requests that purports to attribute any special or unusual meaning to any technical terms or phrases.

J. Plaintiff objects to each of the requests, and to the incorporated definitions and instructions contained in such request, that purports to alter the plain meaning and/or scope of any specific request and thereby renders such request vague, ambiguous, overbroad, or uncertain.

K. Plaintiff objects to each of the requests as overbroad and unduly burdensome to the extent that it can be interpreted in such a way as to require Plaintiff to search for documents beyond Plaintiff's possession, custody, or control.

L. Plaintiffs object to each of the requests to the extent they seek legal opinions that are not properly the subject of rule 26 discovery.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. Identify each work for you are the legal or beneficial owner of a copyright or an exclusive right under a copyright that you claim has been infringed by one or more of the Defendants, and provide the following information for each such work: (i) title; (ii) author; (iii) date and location of first publication; (iv) date and location of any subsequent publication; (v) the date and registration number of any U.S. copyright registration and/or renewals; and, if applicable, (vi) the specific exclusive right for which you are the legal or beneficial owner; (vii) the manner in which you became the legal or beneficial owner of that exclusive right; and (viii) any other person or entity, including without limitation co-authors or publishers, that is also a legal or beneficial owner of a copyright or an exclusive right under a copyright for that work, and identify any specific exclusive right for which that person or entity is the legal or beneficial owner.

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, that the date and location of every publication of each work infringed by Defendants, as well as the information requested in subparagraphs (vi) through (viii) above, are not necessary to establish either Plaintiff's (a) legal or beneficial ownership of the copyright at issue, or (b) standing to bring a claim against Defendants arising from their infringement of Plaintiff's copyright. Moreover, the aforementioned requests are both overbroad and unduly burdensome.

Subject to and without waiving any of the foregoing objections or the General Objections, Plaintiff's response to this interrogatory, which is provided to the best of Plaintiff's knowledge, is set forth in Schedule A.

2. *For each work identified in response to Interrogatory No. 1, identify the most recent date on which that work was published, in hardcopy or electronic form, for distribution and commercial sale.*

RESPONSE:

Subject to and without waiving any General Objections, Plaintiff's response to this interrogatory, which is provided to the best of Plaintiff's knowledge, is set forth in Schedule A.

3. *For each work identified in response to Interrogatory No. 1: (i) indicate whether any copyright in the work, or any exclusive right under a copyright in the work, was previously licensed, transferred or assigned to any person and has since reverted to you; and, if applicable, (ii) identify the specific exclusive right that has so reverted.*

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, that the information requested is not necessary to establish either Plaintiff's (a) legal or beneficial ownership of the copyright at issue, or (b) standing to bring a claim against Defendants arising from their infringement of Plaintiff's copyright. Moreover, the interrogatory is both overbroad and unduly burdensome.

Subject to and without waiving any of the foregoing objections or the General Objections, Plaintiff states that for each of Plaintiff's works identified on Schedule A, Plaintiff granted the exclusive right to publish the work to one or more publishers for a period of time in exchange for the payment of royalties. Irrespective of whether those rights reverted, at all times, Plaintiff was and continues to be either the legal or beneficial owner of the exclusive rights to reproduce and distribute the work, which are the exclusive rights Plaintiff claims to have been violated by Defendants in this action.

4. *For each work identified in response to Interrogatory No. 1, identify any license or other agreement permitting or requiring the digitization of the work for any purpose — including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching,*

and/or for use in formats accessible by the blind or others with print disabilities—as well as any documents concerning such license or agreement.

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, that publishing licenses and agreements may be ambiguous as to whether digital reproduction and distribution rights are covered by the grant of rights, and neither Plaintiff's claims nor Defendants' defenses in this action require the resolution of any such ambiguity.

Subject to and without waiving any of the foregoing objections or the General Objections, Plaintiff states that there are no license or other agreements expressly permitting or requiring the digitization of the work identified in response to Interrogatory No. 1.

5. *For each work identified in response to Interrogatory No. 1, identify any past, present, or planned efforts made by you directly, or made by others on your behalf or with your knowledge, to enter any license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities—as well as any documents concerning such efforts.*

RESPONSE:

Subject to and without waiving any General Objections, Plaintiff states that there are no past, present or planned efforts made by Plaintiff, or made by others on Plaintiff's behalf or with Plaintiff's knowledge, to enter into a license or other agreement allowing for the digitization of the work identified in response to Interrogatory No. 1 for any purpose.

6. *For each work identified in response to Interrogatory No. 1, identify any harm that has occurred or is expected to occur to any market or potential market for that work by virtue of Defendants' alleged conduct described in the First Amended Complaint, including without limitation the identification of (i) the market or potential market at issue (by name and/or brief description); (ii) any licensee or potential licensee of the work within that market; and (iii) all documents concerning the alleged harm that has occurred or is expected to occur.*

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of the parties' agreement concerning the appropriate use of interrogatories in this action. Plaintiff further objects to this interrogatory on the ground that Plaintiff does not seek actual damages in this action, but an injunction under 17 U.S.C. § 502 and impoundment under 17 U.S.C. § 503, for which it is not necessary to quantify monetary damages.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff states that the "alleged conduct described in the First Amended Complaint," that is, the digitization of Plaintiff's copyrighted content, the repeated copying and transferring of the digital files resulting from that digitization to multiple physical and virtual locations, including on computer systems connected to the Internet, without Plaintiff's permission, in violation of section 501 of the Copyright Act, has caused Plaintiff damages that are unquantifiable and irreparable. Plaintiff asserts that those damages comprise, among other things:

- Loss or potential loss of control over the reproduction and distribution of Plaintiff's copyrighted works;
- Exposure of Plaintiff's copyrighted works to virtually unlimited piracy;
- Loss or potential loss of revenue from sale of hardcopies and digital copies of works to libraries; and
- Loss or potential loss of revenue from licensing digital copies of works to libraries.

Plaintiff has to date not been able to quantify any specific revenues lost as a result of Defendants' infringing conduct and Plaintiff is not aware of any documents in Plaintiff's

possession, custody or control that could be employed to quantify any specific damages incurred as a result of Defendants' infringing conduct.

7. *For each work identified in response to Interrogatory No. 1, identify any reduction to the value or potential value of that work by virtue of Defendants' alleged conduct described in the First Amended Complaint, including without limitation the identification of (i) the decline in value, measured in dollars, of each such work; and (ii) all documents and other evidence that support the alleged decline in value.*

RESPONSE:

Plaintiff repeats and restates Plaintiff's objections and response to Interrogatory No. 6.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

1. *All documents identified by you in response to Defendants' First Set of Interrogatories to Plaintiff.*

RESPONSE:

Subject to and without waiving any General Objections or other objections as set forth herein, Plaintiff will conduct a reasonable search and produce any documents in Plaintiff's possession, custody or control identified as responsive to Interrogatory Nos. 4 or 5 above.

Dated: New York, New York
January 13, 2012

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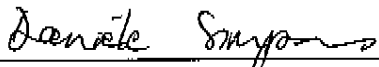
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SCHEDULE A

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Simpson, Daniele	Je cours plus vite que la lycose: poèmes	1983/Sherbrooke, Québec, Canada: Naaman		Hardcopy	N/A – Foreign Work

VERIFICATION

I, Daniele Simpson, have read the foregoing Responses to Interrogatory Numbers 1 through 7 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 31st, 2012.



Daniele Simpson