

EXHIBIT 5

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD INC., et al.,)
Plaintiffs,)
vs.) No. 11 Civ. 6351 (HB)
HATHITRUST, et al.,)
Defendants.)
_____)

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DEPOSITION OF
HEATHER CHRISTENSON
Berkeley, California

Wednesday, April 11, 2012

Reported by:
JUDIE A. NICHOLAS, CSR NO. 12229
JOB NO. 48480

Page 2

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4 Wednesday, April 11, 2012
5 9:24 a.m.
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9 Deposition of Heather Christenson, held at the
10 Offices of The Cobalt Firm, 918 Parker Street, Building
11 A21, Berkeley, California, pursuant to Notice, before
12 Judie A. Nicholas, Certified Shorthand Reporter for
13 the State of California.
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15
16 OFFICE OF THE GENERAL COUNSEL
17 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
18 1111 Franklin Street
19 Oakland, CA 94607
20 BY: SUNIL R. KULKARNI, ESQ.
21
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23 --oOo--
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1 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER
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1 HEATHER CHRISTENSON,
 2 being first duly sworn,
 3 was deposed and testified as follows:
 4 EXAMINATION BY MR. GOLDMAN
 5 MR. GOLDMAN: Q. Good morning, Heather. My
 6 name is Jeremy Goldman. I'm an attorney with Frankfurt
 7 Kurnit Klein & Selz. To my right is Edward Rosenthal.
 8 We represent the Authors Guild and a number of other
 9 parties in a lawsuit against University of Michigan,
 10 University of California, HathiTrust, and several other
 11 entities. Thank you for coming this morning.
 12 Could you just state your name and your address
 13 for the record.
 14 A. My name is Heather Christenson. My address is
 15 1809 Virginia Street, Berkeley, California 94703.
 16 Q. Have you ever been deposed before?
 17 A. No.
 18 Q. So I think it would be a good idea to go over
 19 some of the ground rules and to discuss how things are
 20 going to proceed today.
 21 So I'm going to be asking a number of
 22 questions. I would appreciate it if you waited until I
 23 finish the question before you answered it, mainly so
 24 that the court reporter can record what we're saying and
 25 we have a clear transcript.

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1 A. 1986.
 2 Q. And after graduating from UC San Diego where
 3 did you go after that?
 4 MR. POTTER: Objection: Foundation.
 5 You can answer.
 6 THE WITNESS: Where did I go?
 7 MR. GOLDMAN: Q. Where was your first job
 8 after you finished college?
 9 MR. POTTER: Objection: Foundation.
 10 You can answer.
 11 THE WITNESS: I left San Diego and traveled to
 12 San Francisco and had a variety of temp jobs, and landed
 13 my first job at a small consulting company that at that
 14 time was called the Goldfield Group.
 15 Q. What did you do at the Goldfield Group?
 16 A. Research and building a database.
 17 Q. I should have asked this before. What did you
 18 study at UC San Diego?
 19 A. My degree is in communications.
 20 Q. And do you have any post-graduate degrees?
 21 A. Yes.
 22 Q. What degrees do you have? What degree or
 23 degrees do you have?
 24 A. I have a degree in -- masters degree in library
 25 information studies.

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1 If you don't understand a question as I asked
 2 it, please ask me to restate it or to state it
 3 differently and I'll be happy to try to clear it up.
 4 There may be questions to which your counsel
 5 may object. In the event that your counsel objects,
 6 wait until he finishes with the objection, and then,
 7 unless he directs you otherwise, you normally will
 8 answer the question, although he'll advise you otherwise
 9 if that's the case. That's normally the way it's done,
 10 but normally an objection doesn't mean that you
 11 shouldn't answer the question, it means that the
 12 objection is saved for the record and then you would
 13 continue with the deposition.
 14 Do you have any questions? Does that make
 15 sense to you?
 16 A. No, I don't have any questions.
 17 Q. And you understand that today's deposition is
 18 under penalty of perjury so that the truth is very
 19 important here.
 20 A. Yes.
 21 Q. Why don't you tell me a little bit about your
 22 educational background. Where did you go to college?
 23 A. I went to undergraduate college at UC San
 24 Diego.
 25 Q. And what year did you graduate?

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1 Q. And where did you obtain that masters degree?
 2 A. UC Berkeley.
 3 Q. And what years did you attend UC Berkeley to --
 4 when you obtained that degree?
 5 A. I achieved my degree in 1992. I believe it
 6 took me a year and a half to achieve the degree.
 7 Q. So in between graduating UC San Diego in 1996
 8 and before you started UC Berkeley, could you tell me
 9 the places that you worked at, if any, other than the
 10 Goldfield Group?
 11 MR. POTTER: Jeremy, maybe you want to take it
 12 one by one, after the Goldfield Group and --
 13 MR. GOLDMAN: Q. After you finished the
 14 Goldfield Group, did you go to another job before you
 15 went to UC Berkeley for your masters degree?
 16 A. The partners in the Goldfield Group had
 17 business issues with each other and I continued to work
 18 for people in the group who changed the name to the Reed
 19 Group. And I continued in that work.
 20 Q. And what years did you work at the Goldfield
 21 Group?
 22 A. To the best of my recollection, I worked with
 23 people in that group until 1990, I believe.
 24 Q. And that includes Reed Group?
 25 A. Yes, that would include the name change.

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1 Q. And there came a time when you left the Reed
 2 Group?
 3 A. I went to school at Berkeley, yeah.
 4 Q. After --
 5 A. I believe I started my degree, yes, to the best
 6 of my recollection. It was a busy time in my life.
 7 Q. And there came a time when you graduated UC
 8 Berkeley with your masters degree in library information
 9 sciences, correct?
 10 A. Yes.
 11 Q. You said that was 1992?
 12 A. Yes.
 13 Q. And did you find employment afterward?
 14 A. I worked for a library placement service that
 15 placed me in a number of different positions where I
 16 gained some library experience.
 17 Q. And what types of jobs were you doing during
 18 that time period?
 19 A. Some of them were -- one was I worked at the
 20 Pacific Telesystems cataloging videotapes. I worked for
 21 the Society of California Pioneers cataloging glass
 22 negatives on the history of California. I worked at the
 23 law firm of Hancock, Rothert & Henshaw as a law
 24 librarian.
 25 Q. During this time you were employed by this

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1 did you find employment at another place?
 2 A. I was a consultant to SF Gate, the
 3 San Francisco news.
 4 Q. And what time period were you working as a
 5 consultant for SF Gate?
 6 A. I believe that was 1998.
 7 Q. And after that where did you go, if anywhere?
 8 A. I took a job at a company that was then called
 9 Aeneid Corporation.
 10 Q. How do you spell that?
 11 A. A-e-n-e-i-d, like the old book.
 12 Q. Which is probably in public domain then.
 13 A. I don't know.
 14 Q. How long were you working at the Aeneid
 15 Corporation?
 16 A. Up until 2000 -- sometime in 2001, and they
 17 changed their name also in the course of my employment
 18 there. Their second name was EO Exchange, E-O
 19 E-x-c-h-a-n-g-e.
 20 Q. In general, what were your responsibilities at
 21 the Aeneid or the EO Exchange?
 22 A. That company provided what is now called
 23 vertical search, so we performed research across the
 24 web, identified websites in relevant subject areas,
 25 performed -- indexing those websites, and provided

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1 library placement service; is that right?
 2 A. Yes, I believe so.
 3 Q. And what time period were you working with this
 4 library placement service?
 5 A. I believe it was up until about 1993.
 6 Q. And after you left the library placement
 7 service did you find employment elsewhere?
 8 A. Yes, I did.
 9 Q. And where did you go next?
 10 A. The San Francisco Examiner.
 11 Q. And what were your main job responsibilities at
 12 the San Francisco Examiner?
 13 A. I was a news librarian, and then I got promoted
 14 to be the assistant head librarian of the news library.
 15 Q. What is -- what did being a librarian at the
 16 San Francisco Examiner entail?
 17 A. I directed the work of a group of other
 18 librarians who cataloged news stories. I performed news
 19 research for various reporters on research. I worked on
 20 archives, photo archives, archives of the printed paper
 21 clippings at that time.
 22 Q. And during what time period were you working at
 23 the San Francisco Examiner?
 24 A. I believe it was up to 1997.
 25 Q. And after you left the San Francisco Examiner

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1 search access to portions of the web for customers, and
 2 I directed a team of people who did that work.
 3 Q. And after you left that job, did you -- did
 4 there come a time when you worked somewhere else
 5 afterward?
 6 A. Then I came to California Digital Library.
 7 Q. What year did you join the California Digital
 8 Library?
 9 A. 2002.
 10 Q. And is that where you are currently employed?
 11 A. Yes.
 12 Q. Between 2002, other than the present, was there
 13 any time when you weren't employed by the California
 14 Digital Library?
 15 A. No.
 16 Q. When you were hired in 2002, what was your --
 17 did you have a -- were you given a title when you were
 18 hired in 2002?
 19 A. Yes.
 20 Q. What was your title?
 21 A. In the accounting system, I believe my role was
 22 principal analyst. On my business card it was Resource
 23 Liaison Coordinator.
 24 Q. And what were your primary job responsibilities
 25 when you were first hired?

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1 A. The California Digital Library licenses content
 2 from publishers and database providers on behalf of the
 3 University of California campuses, and my role was to
 4 coordinate a group of librarians across the campuses,
 5 across California, who would monitor these licensed
 6 resources for usability, adherence to technical
 7 requirements and other factors, and I would bring them
 8 together and get their feedback and work with the
 9 figures on behalf of the libraries.
 10 Q. How long did you work in that position?
 11 A. I believe about three years, I believe.
 12 Q. Did your title change at the end of those three
 13 years?
 14 A. Not formally, no.
 15 Q. Did your business card change at the end of
 16 three years?
 17 A. No.
 18 Q. Did your job responsibilities change after
 19 three years?
 20 A. Yes.
 21 Q. What were your new job responsibilities?
 22 A. Project management.
 23 Q. And what projects were you managing?
 24 MR. POTTER: Objection.
 25 At what time?

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1 vendor. What vendor was the library working with?
 2 A. Ex Libris, E-x L-i-b-r-i-s.
 3 Q. And Ex Libris provides -- does Ex Libris
 4 provide a software application?
 5 MR. POTTER: Objection.
 6 At that time? Now?
 7 MR. GOLDMAN: Q. At that time, when you were
 8 managing the ERMS project at UC.
 9 A. At that time Ex Libris intended to provide a
 10 system.
 11 Q. How long did UC work with Ex Libris?
 12 A. I don't know.
 13 Q. Does UC continue to work with Ex Libris?
 14 A. I don't know with Ex Libris. I don't know. I
 15 believe so.
 16 Q. After you -- did there come a time where you
 17 completed responsibilities relating to the ERMS project
 18 as one of your primary responsibilities?
 19 MR. POTTER: Objection: Foundation.
 20 You can answer if you understand the question.
 21 THE WITNESS: Can you define -- or what is
 22 meant by "completed"?
 23 Q. Are you still involved in ERMS at this time?
 24 A. No.
 25 Q. Did there -- when did you stop becoming

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1 THE WITNESS: Yeah.
 2 MR. GOLDMAN: Q. You said after three years --
 3 you said for three years, so you started at the CDL in
 4 2002, so you're saying in around 2005 you became a
 5 project manager.
 6 Is that fair to say?
 7 A. I assumed additional responsibilities that
 8 included project management.
 9 Q. And what were the additional responsibilities
 10 that you assumed?
 11 A. University of California libraries were working
 12 to -- working with a vendor on an electronic resources
 13 management system, and it was my responsibility to
 14 coordinate the group who were working with the vendor on
 15 that particular project.
 16 Q. What is electronic resource management?
 17 A. The resources we license -- I use the word
 18 resource to mean a journal, online journal database,
 19 et cetera. We have contracts for those for our access
 20 to those services and there's a lot of data that is
 21 stored that we need to keep track of surrounding our use
 22 and contacts for those services, and so the system would
 23 manage that data across all of these campuses, or it was
 24 intended to.
 25 Q. You said that the UC Library was working with a

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1 involved with ERMS?
 2 A. When I became the Mass Digitization Project
 3 Manager.
 4 Q. When did you become Mass Digitization Project
 5 Manager?
 6 A. 2007.
 7 Q. Is that your current title?
 8 A. Yes, that's my current title on my business
 9 card.
 10 Q. What's your current title through accounting,
 11 just so the record is clear?
 12 A. MSP-1.
 13 Q. When you became the Mass Digitization Project
 14 Manager in 2007, who appointed you the Mass Digitization
 15 Project Manager in 2007?
 16 MR. POTTER: Objection: Foundation.
 17 THE WITNESS: Can you rephrase that question?
 18 MR. GOLDMAN: Q. When you became a -- I can
 19 ask it differently.
 20 When you became the Mass digitization Project
 21 Manager in 2007, who did you work for?
 22 A. I reported to Robin Chandler.
 23 Q. And what was Robin Chandler's position?
 24 A. She was director. I don't recall the specific
 25 name of the group, the overall group.

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1 Q. Was she an employee of the California Digital
 2 Library?
 3 A. Yes.
 4 Q. And do you know to whom Robin Chandler
 5 reported?
 6 MR. POTTER: Objection: Foundation.
 7 MR. GOLDMAN: Q. At that time.
 8 A. At that time Robin Chandler reported to Ivy
 9 Anderson.
 10 Q. And at that time what was Ivy Anderson's
 11 position?
 12 A. She was the Director of Collection, Development
 13 and Management.
 14 Q. And at that time are you aware whether Ivy
 15 Anderson reported to anybody?
 16 A. I don't know. There were a number of personnel
 17 changes at that time.
 18 Q. When you were made the Mass Digitization
 19 Project Manager, was there an executive director of the
 20 California Digital Library?
 21 A. Yes.
 22 Q. Who was the Executive Director at that time?
 23 A. I believe at that time it was Laine Fairley.
 24 Q. When you were first hired as the Mass
 25 Digitization Project Manager -- maybe I can call it MDP

Page 20

1 Q. And what were those three projects?
 2 A. There was a project working with Google at the
 3 Northern Regional Library Facility. There was a project
 4 working with Internet Archive at the Northern Regional
 5 Library Facility, and there was a project working with
 6 Internet Archive at the Southern Regional Library
 7 Facility.
 8 Q. Do you know when the California Digital Library
 9 was founded?
 10 A. I read -- I believe I read at some point that
 11 it was 1997, but I'm not entirely certain.
 12 Q. Could you describe the mission of the
 13 California Digital Library?
 14 MR. POTTER: Objection: Foundation.
 15 You can answer if you understand the question.
 16 THE WITNESS: We serve as a digital library on
 17 behalf of the ten campuses, and we work in concert with
 18 the ten campus libraries to provide library services to
 19 the University of California community.
 20 MR. GOLDMAN: Q. And is it fair to say that
 21 the California Digital Library deals primarily with
 22 digital content?
 23 MR. POTTER: Objection: Vague and ambiguous.
 24 THE WITNESS: There may be aspects of our work
 25 that involve physical library material.

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1 for short.
 2 Would that be okay with you?
 3 A. Sure.
 4 Q. When you became the MDP Project Manager, did
 5 anybody report to you?
 6 A. Not that I recollect.
 7 Q. Could you describe your job responsibilities as
 8 the MDP Project Manager when you were first hired in
 9 2007?
 10 A. I was responsible for coordinating our mass
 11 digitization projects. I was responsible for
 12 coordinating UC Libraries mass digitization projects
 13 across our campuses.
 14 Q. At that time when you were first hired, what
 15 projects were you managing?
 16 MR. POTTER: Objection.
 17 Just to clarify, you mean when she first
 18 assumed the position as Mass Digitization Project
 19 Manager?
 20 MR. GOLDMAN: Yes.
 21 MR. POTTER: Because she was hired by UCL prior
 22 to that.
 23 MR. GOLDMAN: Yes, that's what I mean.
 24 THE WITNESS: To the best of my recollection,
 25 there were three projects at that time.

Page 21

1 MR. GOLDMAN: Q. Does the California Digital
 2 Library have a budget separate from the rest of the
 3 library system at UC?
 4 A. I don't know.
 5 Q. Have you ever seen a budget for the California
 6 Digital Library?
 7 A. No.
 8 Q. Do you manage a separate budget for the mass
 9 digitization projects at CDL?
 10 A. No.
 11 Q. Do you know who does -- do you know whether
 12 there is a separate budget for the mass digitization
 13 projects at CDL?
 14 A. Not specifically.
 15 Q. Do you know who would know that?
 16 A. Ivy Anderson.
 17 Q. You had said that when you were first -- when
 18 you first assumed the responsibilities as project
 19 manager in 2005 you reported to Robin Chandler and Robin
 20 Chandler reported to Ivy Anderson.
 21 Is Ivy Anderson still part of the CDL?
 22 A. Yes.
 23 Q. And what is Ivy Anderson's current position?
 24 A. It's the same as what I said earlier.
 25 Q. What is the Internet Archive?

Page 22

1 A. My understanding of the Internet Archive, it's
 2 a nonprofit organization that makes -- provides certain
 3 content on the web, located in San Francisco, founded by
 4 Brewster Kahle.
 5 Q. You mentioned two projects at UC that were --
 6 that -- the management of which you assumed in 2007
 7 involving the Internet Archive, one at the NRLF and one
 8 at the SRLF.
 9 Turning first to the NRLF project, what did
 10 that project involve?
 11 A. The University of California had a contract
 12 with Internet Archive to digitize materials from the
 13 NRLF, and we hosted the internet scanning machine at
 14 NRLF.
 15 Q. When you said you hosted scanning machines at
 16 NRLF, what do you mean by that?
 17 A. Internet Archives provided the machines,
 18 provided all the services associated with the machines,
 19 ran the operation. We allowed them to use our space, to
 20 the best of my knowledge.
 21 Q. So the Internet Archive provided their own
 22 staff?
 23 A. Yes.
 24 Q. And the Internet Archive managed that staff
 25 themselves?

Page 24

1 A. I believe that that was in 2007 also.
 2 Q. Had you begun as the project manager for the
 3 MDP when Microsoft became involved with the Internet
 4 Archive?
 5 A. I can't recall specifically. It was -- it was
 6 early on when I assumed that position at some point.
 7 Q. And what was the nature of Microsoft's
 8 involvement with the Internet Archive?
 9 A. Microsoft funded digitization. My
 10 understanding is Microsoft funded digitization by
 11 Internet Archive in public domain volumes.
 12 Q. So the Internet Archive only digitized public
 13 domain bodies; is that correct?
 14 A. The intent of the Internet Archive was only to
 15 digitize public domain volumes in projects I was
 16 associated with. I'm not aware of all Internet Archive
 17 projects.
 18 Q. Could you describe the general method by which
 19 works were digitized by the Internet Archive in 2007
 20 when you first started working as the project manager.
 21 A. They use the scanning machines that they had
 22 developed for that purpose.
 23 Q. Maybe we'll start a few steps back. What were
 24 they scanning?
 25 MR. POTTER: Objection: Vague.

Page 23

1 A. Yes.
 2 Q. How many people were -- when you first assumed
 3 the project in 2007, how many people were working at
 4 NRLF on the Internet Archive project that were employed
 5 by Internet Archive?
 6 A. I don't know.
 7 Q. What is the Open Content Alliance?
 8 MR. POTTER: Objection: Foundation.
 9 THE WITNESS: My understanding of Open Content
 10 Alliance was it was a number of parties in agreement
 11 with an intent to digitize public domain materials.
 12 University of California was one of the parties,
 13 Internet Archive was one of the parties, and there were
 14 others, Yahoo, the Sloan Foundation.
 15 MR. GOLDMAN: Q. What about Microsoft?
 16 A. I don't recall if Microsoft was originally part
 17 of the Open Content Alliance or whether they were later.
 18 I don't recall.
 19 Q. Did there come a time where Microsoft became
 20 involved in the Open Content Alliance?
 21 A. I don't know for sure.
 22 Q. Did there come a time when Microsoft became
 23 involved with the Internet Archive?
 24 A. Yes.
 25 Q. And when was that?

Page 25

1 MR. GOLDMAN: Q. What was the Internet Archive
 2 scanning? Were they scanning printed books?
 3 A. Yes, printed volumes.
 4 Q. And where did those print volumes come from?
 5 A. From the Northern Regional Library Facility.
 6 Q. And how were particular works selected for
 7 digitization by the Internet Archive?
 8 A. I believe they were selected by the Northern
 9 Regional Library Facility. The project began before I
 10 assumed that position, so... at the point I assumed the
 11 position we had lists of books to be scanned that I was
 12 not involved in the creation of.
 13 Q. Who created -- who prepared those lists?
 14 A. I don't know.
 15 Q. Was it the Internet Archive or was it -- was it
 16 someone at the Internet Archive that prepared those
 17 lists?
 18 A. I don't believe so.
 19 Q. To the best of your knowledge, which entity was
 20 responsible for preparing those lists?
 21 A. To the best of my knowledge, it was University
 22 of California.
 23 Q. And you don't know which people prepared those
 24 lists?
 25 MR. POTTER: Objection: Asked and answered.

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<p>1 THE WITNESS: No.</p> <p>2 MR. GOLDMAN: Q. And, just to be clear, I'm</p> <p>3 talking about at any time, not just in 2007 when you</p> <p>4 first started working on the project.</p> <p>5 Do you know who prepared those lists at any</p> <p>6 time?</p> <p>7 A. Can you rephrase that question? I don't know</p> <p>8 specifically --</p> <p>9 Q. Okay.</p> <p>10 A. -- as I sit here today.</p> <p>11 Q. Do you know who would know -- or who might</p> <p>12 know, let me ask.</p> <p>13 A. Potentially Robin Chandler would know.</p> <p>14 Q. Are you aware of what criteria were used to</p> <p>15 determine which works were put on that list?</p> <p>16 A. Not specifically.</p> <p>17 Q. You stated earlier that it was the intent of</p> <p>18 the program to digitize public domain material.</p> <p>19 Do you know how a determination was made as to</p> <p>20 whether a particular volume was public domain material?</p> <p>21 A. I wasn't specifically involved in that.</p> <p>22 One way that would be done would be via the</p> <p>23 publication date of the material published before 1923</p> <p>24 in the United States.</p> <p>25 Q. Were there other criteria that were used to</p>	<p>1 make that determination?</p> <p>2 A. I know there were guidelines for material</p> <p>3 published in -- not in the U.S.</p> <p>4 There were likely other criteria applied.</p> <p>5 Q. Do you know which party was responsible for</p> <p>6 making the determination as to whether a particular work</p> <p>7 was public domain?</p> <p>8 MR. POTTER: Objection: Vague.</p> <p>9 THE WITNESS: University of California</p> <p>10 determined which books were on the list.</p> <p>11 MR. GOLDMAN: Q. Do you know why the Internet</p> <p>12 Archive only digitized works that were in the public</p> <p>13 domain?</p> <p>14 MR. POTTER: Objection: Mischaracterizes prior</p> <p>15 testimony.</p> <p>16 THE WITNESS: The intent of the project between</p> <p>17 both University of California and the Internet Archive</p> <p>18 was to digitize materials that were free from copyright</p> <p>19 restrictions so that they might be available for people</p> <p>20 to read.</p> <p>21 MR. GOLDMAN: Q. Are you aware of any</p> <p>22 discussions that ever took place concerning whether</p> <p>23 Internet Archive would digitize works that were not in</p> <p>24 the public domain?</p> <p>25 MR. POTTER: Objection.</p>
Page 28	Page 29
<p>1 Are you talking about this particular project</p> <p>2 with the University of California or just the Internet</p> <p>3 Archive in general discussing that?</p> <p>4 Q. I'm talking about the Internet Archive project</p> <p>5 with University of California.</p> <p>6 MR. POTTER: To the extent that any discussions</p> <p>7 you may be aware of were with counsel, you may</p> <p>8 acknowledge those instructions, but I'm instructing you</p> <p>9 not to provide any substance of those discussions.</p> <p>10 THE WITNESS: Okay. I recall that at some</p> <p>11 point Brewster Kahle expressed an interest in digitizing</p> <p>12 materials, what he called 20th century type time frame.</p> <p>13 MR. GOLDMAN: Q. Did you have any discussions</p> <p>14 with Brewster Kahle -- let's start with at any time.</p> <p>15 Have you ever spoken to Brewster Kahle at any time?</p> <p>16 A. Yes.</p> <p>17 Q. And did you ever speak to him about the</p> <p>18 Internet Archive project at UC?</p> <p>19 A. Yes.</p> <p>20 Q. And the -- what you just referred to about</p> <p>21 Brewster Kahle, did you have a discussion with him</p> <p>22 directly about digitizing 20th century works I think you</p> <p>23 called it?</p> <p>24 A. I was involved in the discussion.</p> <p>25 Q. And when did that discussion take place?</p>	<p>1 A. I don't specifically recall. I don't know. I</p> <p>2 couldn't say.</p> <p>3 Q. And what was the nature of Mr. Kahle's</p> <p>4 interest? What was he interested in doing in</p> <p>5 particular?</p> <p>6 A. I don't recall the specifics of the</p> <p>7 conversation.</p> <p>8 Q. You said what he called 20th century works. Do</p> <p>9 you know what he was referring to when he said that?</p> <p>10 MR. POTTER: Objection: Calls for speculation.</p> <p>11 THE WITNESS: I don't know specifically what he</p> <p>12 might have -- what might have been in his mind.</p> <p>13 MR. GOLDMAN: Q. Do you know whether that</p> <p>14 included works that were in copyright?</p> <p>15 MR. POTTER: Objection: Calls for speculation.</p> <p>16 THE WITNESS: No, I don't know.</p> <p>17 MR. GOLDMAN: Q. Did UC proceed with Mr.</p> <p>18 Kahle's proposal or idea?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Do you know what the basis was for not</p> <p>21 proceeding with Mr. Kahle's idea?</p> <p>22 MR. POTTER: I caution you again not to reveal</p> <p>23 any communications that may be made with attorneys.</p> <p>24 THE WITNESS: Yes, there were conversations</p> <p>25 with our legal counsel.</p>

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1 MR. GOLDMAN: Q. Did you have any
 2 conversations with anyone outside of your legal counsel
 3 about this project -- about this proposed project?
 4 A. Not that I can recall.
 5 Q. You said you were part of the -- I could go
 6 back and read it, but I think you said you were part of
 7 the conversations about this proposal.
 8 Who else was part of those conversations, other
 9 than yourself and Mr. Kahle?
 10 A. The only person I can recall that was part of
 11 the conversation was Ivy Anderson.
 12 Q. Were there written communications regarding
 13 this proposal?
 14 A. I don't recall.
 15 Q. So you don't recall whether there were any
 16 emails about this proposal?
 17 A. No.
 18 Q. Was there a meeting that took place about this
 19 proposal, an in-person meeting that took place?
 20 A. Not that I can recall.
 21 Q. So how did this meeting take place, or was
 22 there a meeting at all?
 23 A. To the best of my recollection, it was a phone
 24 call.
 25 Q. When we were discussing -- earlier we were

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1 MR. GOLDMAN: Q. By the Internet Archive, or
 2 the California Digital Library.
 3 A. To the extent there's anything that could be
 4 formally called guidelines, not to my knowledge. We
 5 don't have any current projects with Internet Archive
 6 that are in my purview.
 7 Q. Now, you said that there was a list of works
 8 that was prepared for digitization by the Internet
 9 Archive. What would happen -- how would those lists be
 10 used in combination with the digitization project by
 11 Internet Archive?
 12 A. Those lists were used to choose books to pull
 13 from the shelf to provide to Internet Archive.
 14 Q. And who pulled the books from the shelves?
 15 A. The staff in NRLF and SRLF.
 16 Q. So people that were employed by UC, not
 17 Internet Archive?
 18 A. Yes.
 19 Q. After they pulled the books, what did they do
 20 with them?
 21 A. They put them on a cart and wheeled them over
 22 to the Internet Archive digitization area.
 23 Q. How many -- roughly how many scanning machines
 24 were in the NRLF?
 25 MR. POTTER: Objection.

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1 discussing criteria that may have been used to determine
 2 whether a particular work was public domain or not. You
 3 mentioned guidelines for materials that were published
 4 not in the United States.
 5 What were these guidelines?
 6 A. I don't know specifically.
 7 Q. Did you ever see these guidelines?
 8 A. I can't recall.
 9 Q. Do you know who developed the guidelines?
 10 A. No.
 11 Q. Do you know whether these guidelines are still
 12 in use?
 13 A. Can you clarify "these guidelines"?
 14 Q. You mentioned -- I'm basing it off of what you
 15 told me. You mentioned guidelines.
 16 What were you referring to when you said
 17 "guidelines"?
 18 A. Specific to the Internet Archive project taking
 19 place in 2007?
 20 Q. That's what I'm referring to.
 21 A. Okay.
 22 Q. Are those particular guidelines still in use,
 23 to your knowledge?
 24 MR. POTTER: By anyone, by the Internet
 25 Archive, by the UC libraries?

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1 At that time in connection with this project?
 2 MR. GOLDMAN: Yes.
 3 THE WITNESS: Ten.
 4 MR. GOLDMAN: Q. Did you have any supervision
 5 over the digitization that was being done by Internet
 6 Archive?
 7 A. No.
 8 Q. And when you say digitization, what do you mean
 9 by that? When a book is digitized, what do you mean by
 10 that?
 11 A. A book is placed on the scanning machine and
 12 there's images taken of the pages. There's digital
 13 files created with the output that comes from the
 14 machine.
 15 Q. In connection with the Internet Archive, where
 16 were those files stored after they were digitized?
 17 A. The digital files that were created from the
 18 Internet Archive scanning machines, to the best of my
 19 knowledge, were housed at Internet Archive, to the best
 20 of my knowledge.
 21 Q. Did you see retained a digital copy of any of
 22 those files that were scanned by Internet Archive?
 23 A. Not as a matter of process. Internet Archive
 24 makes them available for download on their site.
 25 Q. When you said not as a matter of process, are

1 you saying there were instances in which UC obtained a
 2 digital copy directly from the digitization, or were you
 3 saying something else?
 4 MR. POTTER: Objection: Vague.
 5 THE WITNESS: Can you rephrase the question?
 6 MR. GOLDMAN: Q. When I asked my question
 7 before, you said "not as a matter of course." I'm
 8 trying to understand, were there exceptions to what
 9 happened as a matter of course there?
 10 A. Could be that I'm not aware of. There could
 11 be.
 12 Q. Okay. Why don't we take a five-minute break.
 13 We've been going an hour.
 14 MR. POTTER: Sounds good.
 15 (A break was taken.)
 16 FURTHER EXAMINATION BY MR. GOLDMAN
 17 MR. GOLDMAN: Q. You also mentioned that the
 18 Internet Archive had equipment at the SLRF; is that
 19 right?
 20 MR. POTTER: Objection: Mischaracterizes prior
 21 testimony.
 22 THE WITNESS: There were Internet Archive
 23 scanning machines at SRLF, yes.
 24 MR. GOLDMAN: Q. How many scanning machines
 25 were there when you assumed the project in 2007?

1 A. I believe there were ten.
 2 Q. And did there come a time when the Internet
 3 Archive project stopped at UC?
 4 A. It depends on how you characterize "project."
 5 The operations at NRLF and SRLF did stop.
 6 Q. When did that happen?
 7 A. I believe it was 2009.
 8 Q. And between the time that you began as the MDP
 9 Project Manager until operation stopped at those
 10 facilities in 2009, did the number of machines at those
 11 facilities change in any material way?
 12 A. There remained ten machines at NRLF during the
 13 remaining of the project. There may have been some
 14 fluctuation in the number.
 15 Q. At SRLF, is that what you're saying?
 16 A. At either NRLF or SRLF.
 17 Q. Were there operations at any other operations,
 18 any other Internet Archive operations, at any other
 19 facility, or those were the only two?
 20 A. No, there were not, to my knowledge.
 21 Q. Do you know why operations stopped?
 22 A. Because we ran out of funding.
 23 Q. When you say "we," what do you mean? Who do
 24 you mean by "we"?
 25 A. University of California.

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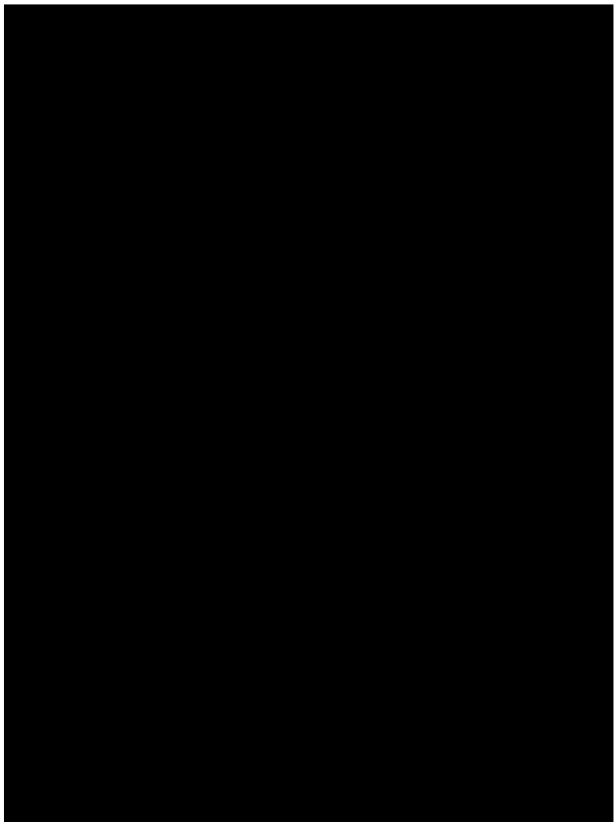
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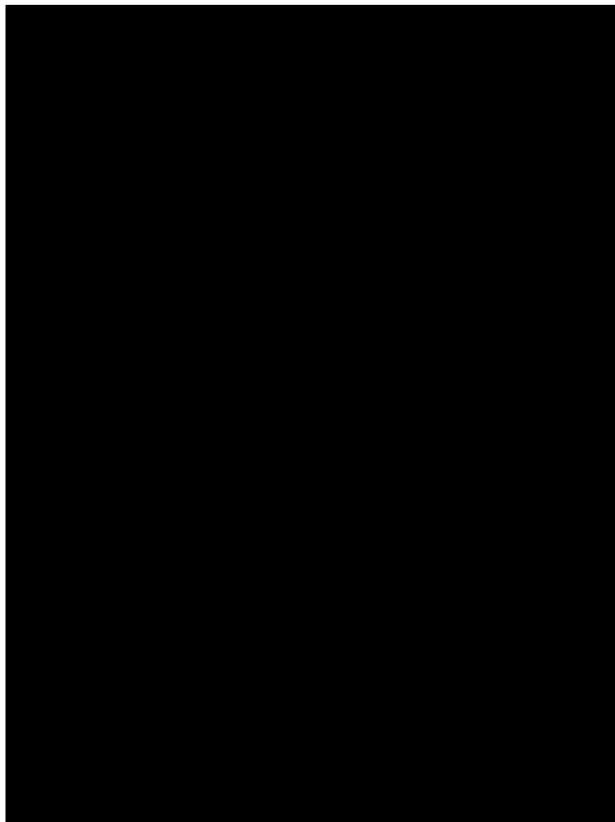
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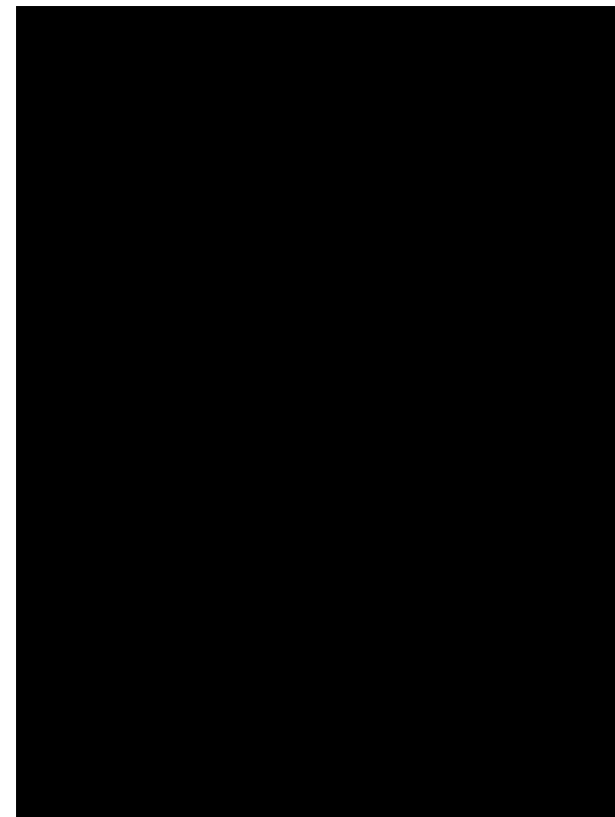
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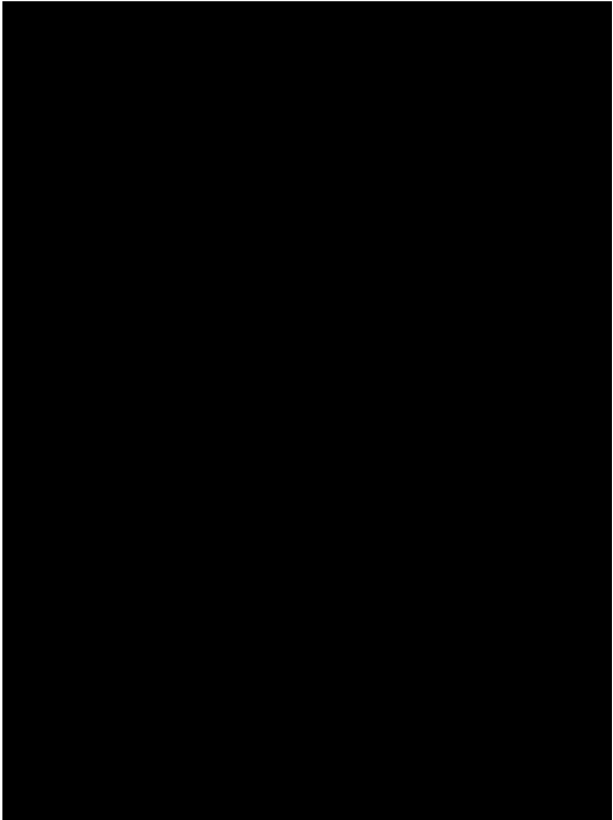
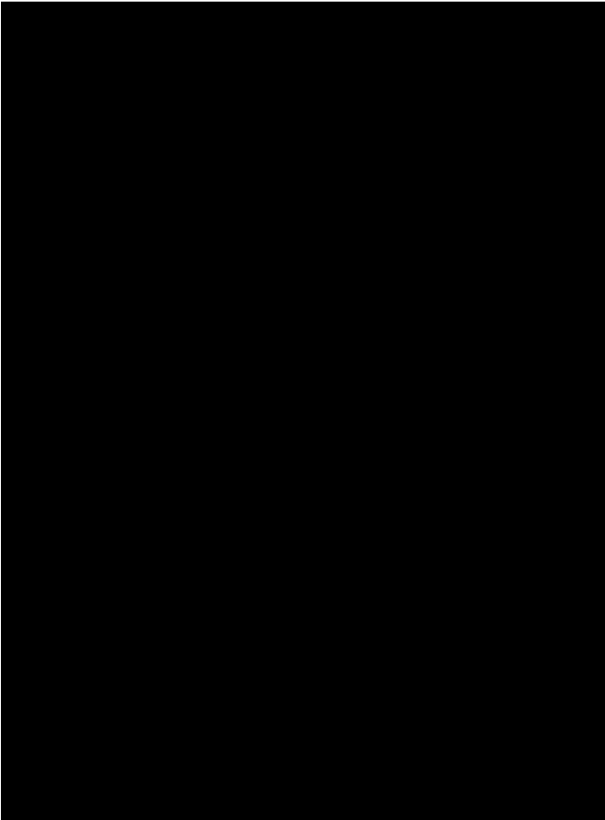
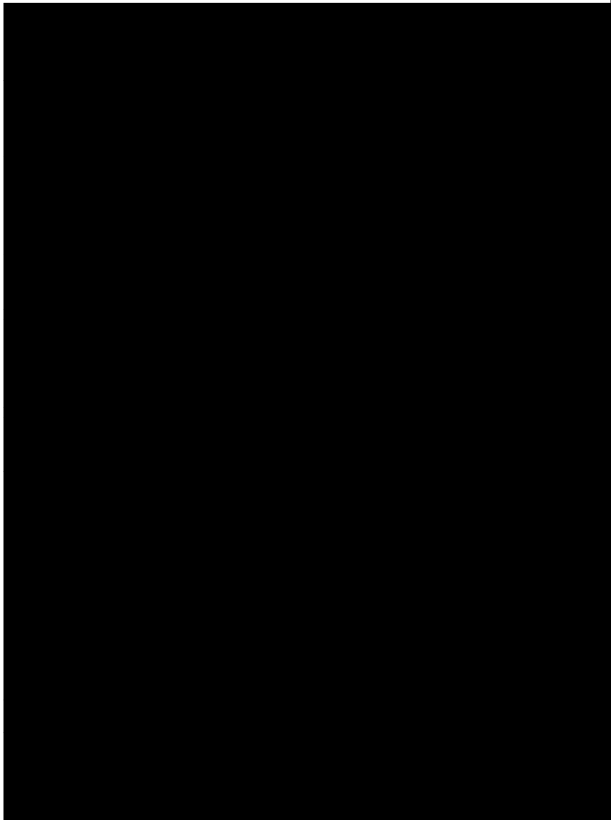
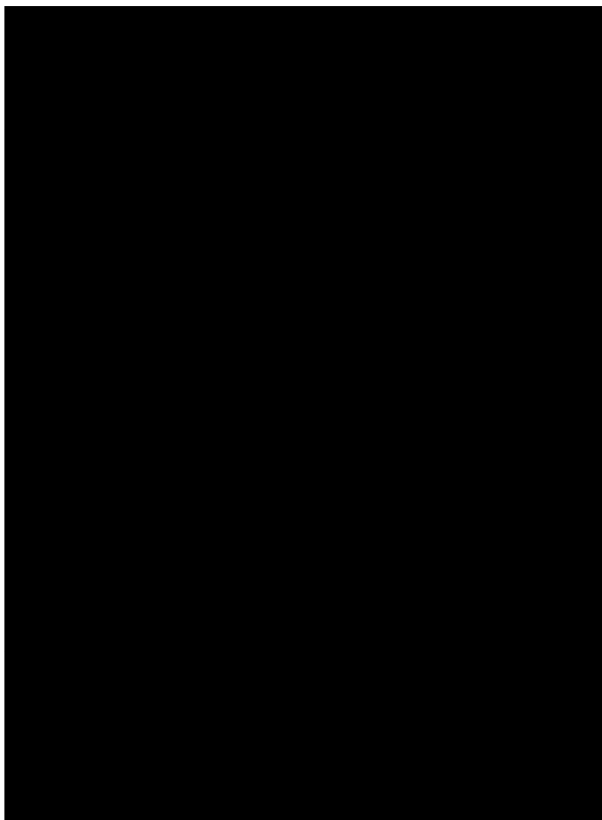
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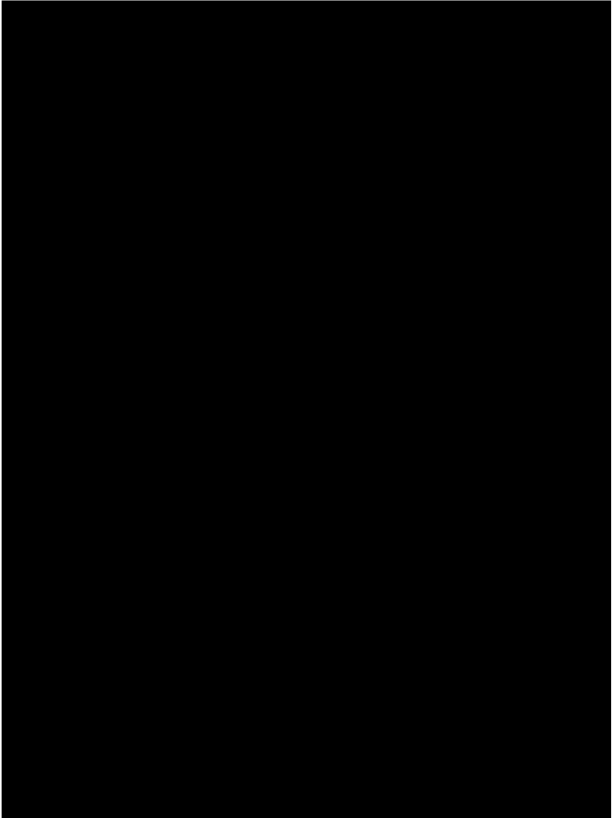

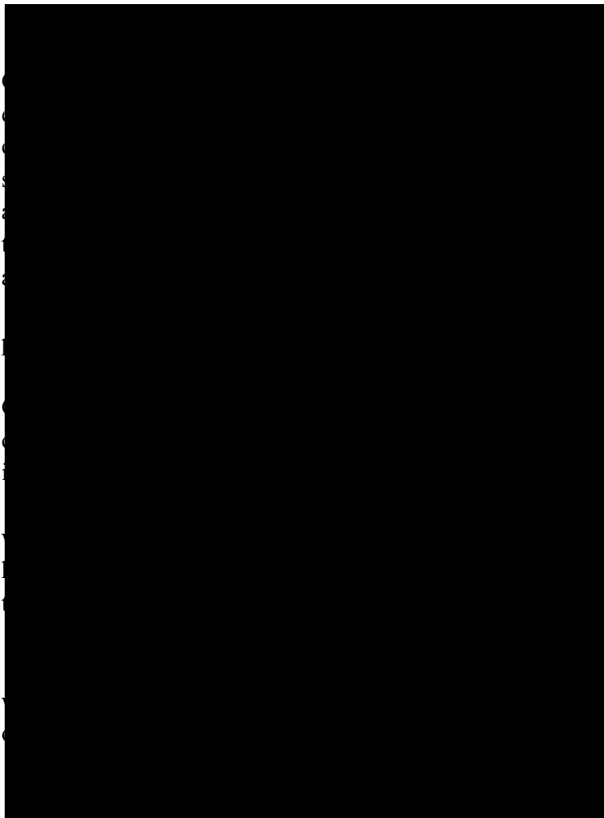

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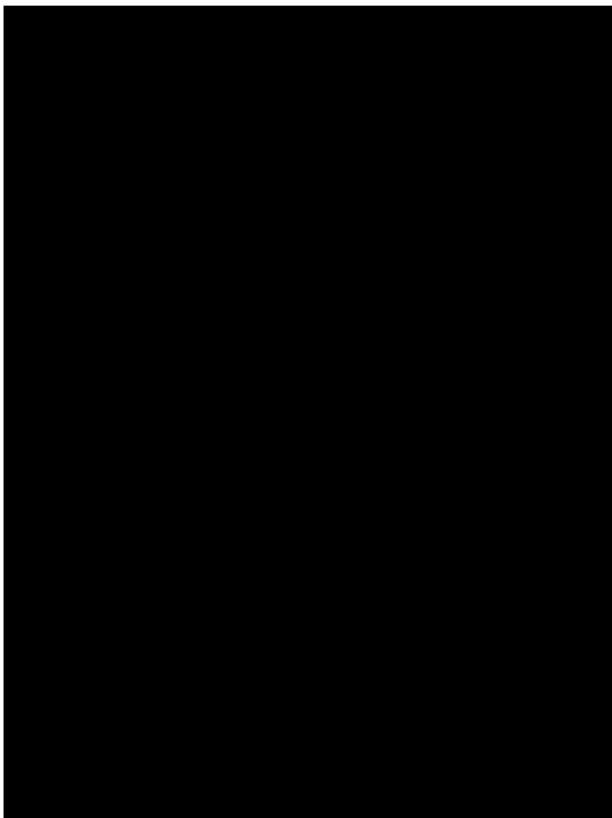
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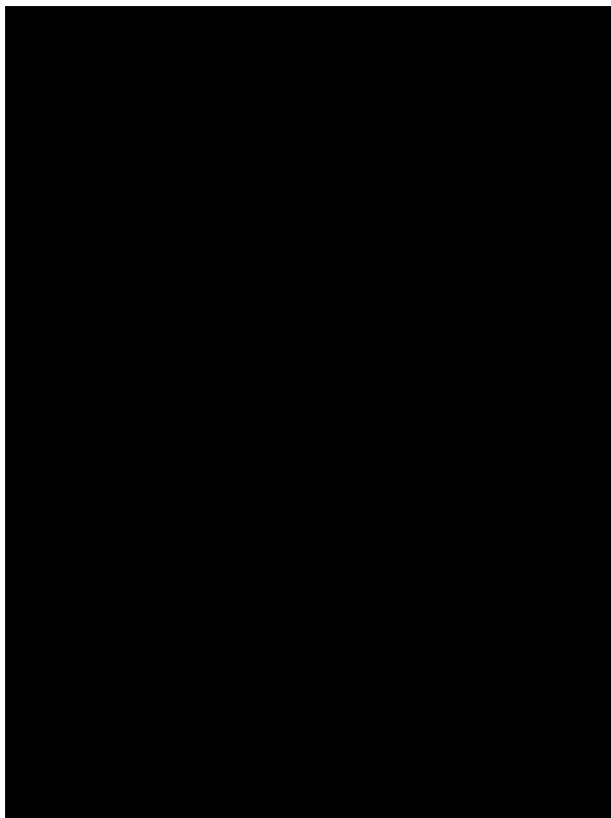
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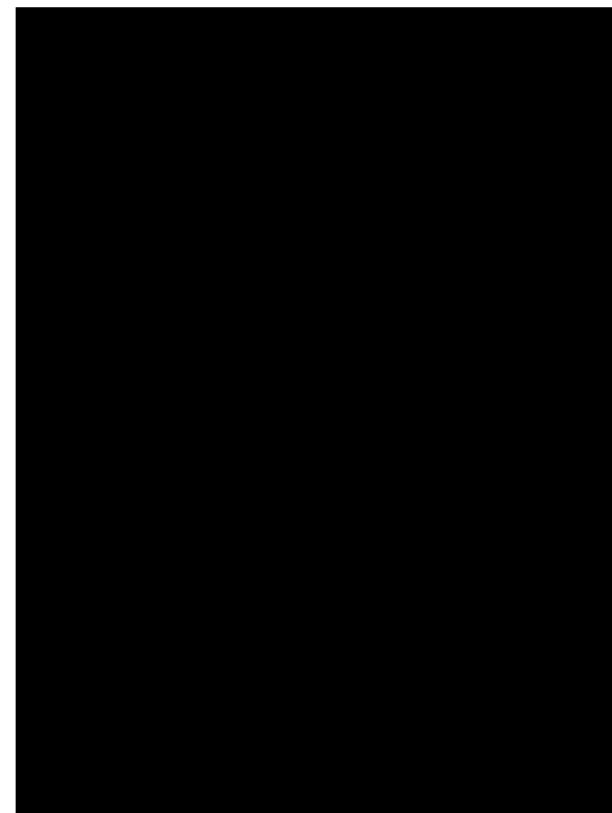
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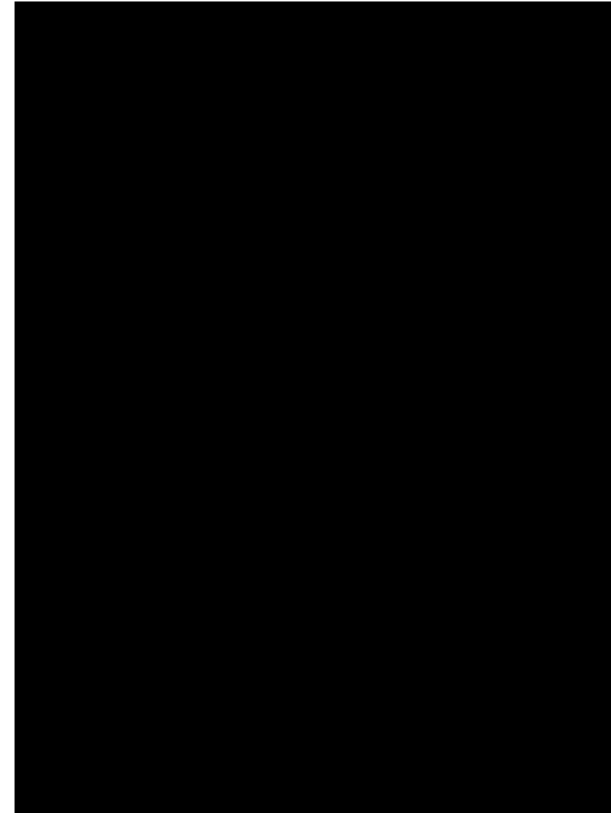
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 7 Q. And you said with respect to most of the
 8 questions about that topic, you said that you were --
 9 that you didn't have knowledge, correct?
 10 A. Correct.
 11 Q. Now, again, you're the project manager for the
 12 Mass digitization Project at University of California,
 13 and including the Google project.
 14 If you don't have knowledge of that, who would?
 15 A. The technical staff at CDL, as I've indicated.
 16 Q. Is that Paul Fogel?
 17 A. Paul Fogel is a likely person.
 18 Q. And who does -- what is his position?
 19 A. I believe his title is Mass digitization
 20 Technical Lead.
 21 Q. And to whom does he report?
 22 A. He reports to Ivy Anderson.
 23 Q. Now, I'd just like to go over in sort of a
 24 broader way an organizational chart, if you will, for
 25 CDL.

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1 Laine Fairley is the Executive Director,
 2 correct?
 3 A. Yes.
 4 Q. Is she at the top of the California Digital
 5 Library?
 6 A. Yes.
 7 Q. What is her involvement with the mass
 8 digitization project?
 9 A. The University of California contract with
 10 Google rests with the office of the president, so CDL
 11 participates in activities associated with that
 12 contract, so she has jurisdiction over those activities.
 13 That's my best interpretation of what I believe Laine's
 14 role to be.
 15 Q. Are there other responsibilities or activities
 16 that she takes a material part in with respect to the
 17 Mass digitization Project with Google?
 18 A. Can you rephrase that?
 19 Q. Other than managing the Google contract, are
 20 there any other duties or responsibilities that Laine
 21 Fairley has in connection with the Mass digitization
 22 Project with Google?
 23 MR. POTTER: Objection: Mischaracterizes prior
 24 testimony.
 25 You may answer.

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1 THE WITNESS: Yes, I don't -- I don't believe I
 2 said "manages."
 3 MR. GOLDMAN: Q. However you want to
 4 characterize it. I'm not trying to restate your
 5 testimony.
 6 A. I'm not aware of Laine's job description in
 7 specifics.
 8 Q. How many people report directly to Laine?
 9 A. I don't know the exact count, but the director
 10 level employees at CDL report to Laine.
 11 Q. They report directly to Laine.
 12 Sorry, say that again, the directors?
 13 A. In general, someone with the title of director
 14 at CDL report to Laine.
 15 Q. And Ivy is a director; is that right?
 16 A. Yes.
 17 Q. Are there other directors that are involved in
 18 the Mass Digitization Project other than Ivy?
 19 A. Can you rephrase the question?
 20 Q. What's --
 21 A. In particular, "involved" is unclear.
 22 Q. As part of their primary duties or
 23 responsibilities activities relating to mass
 24 digitization at UC.
 25 A. Related to the projects we've discussed and

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1 Q. Was there anyone else that reported to you?
 2 A. In the course of projects, there were several
 3 retired UC librarians who contributed some work who for
 4 their work products reported to me, but formally did not
 5 report to me.
 6 Q. Did anyone report to Paul Fogel?
 7 A. Yes.
 8 Q. Who reports to Paul Fogel?
 9 A. Andy Mardesich.
 10 Q. And what's Andy Mardesich's position?
 11 A. I don't know his exact title. He's a
 12 programmer.
 13 Q. Anyone else?
 14 A. No.
 15 Q. There came a time when University of California
 16 joined HathiTrust, correct?
 17 A. Correct.
 18 Q. And University of California was one of the
 19 founding members of HathiTrust, correct?
 20 A. University of California was one of the initial
 21 group of partners who came together to form HathiTrust.
 22 Q. Were you involved in the decision to form
 23 HathiTrust?
 24 A. No.
 25 Q. Who was involved in that decision?

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1 digitization of books and book-like volumes.
 2 Q. And who reports to Ivy Anderson?
 3 A. I do, Paul Fogel. She has a whole team of
 4 people who work on assignments.
 5 The organizational chart is actually -- I
 6 believe the organization is on our website.
 7 To my knowledge, Wendy Parfrey, Li -- Chan Li,
 8 Emily Stambaugh, Curtis Lavery.
 9 Q. Is there anyone else other than you and Paul
 10 Fogel that report to Ivy Anderson that are involved in
 11 the Mass Digitization Project, and by involved, I'm
 12 referring to how I described involved before.
 13 A. If you define report as directly report, then
 14 no.
 15 Q. And how -- do you supervise anyone directly?
 16 A. Not currently.
 17 Q. Was there a time when people reported to you?
 18 A. Yes.
 19 Q. When was that?
 20 A. It was prior to this -- years prior to 2012.
 21 Q. And who reported to you?
 22 A. Jason Coleman.
 23 Q. And what was his position?
 24 A. His title was Mass Digitization Project
 25 Specialist.

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1 A. Actually I would correct that answer. I was
 2 involved in a process associated with making that
 3 decision.
 4 Q. Who else at UC was involved in making that
 5 decision?
 6 A. At CDL, I believe it was Laine and the CDL
 7 directors. A group advised Laine on that decision.
 8 Q. I couldn't hear you.
 9 A. A group had discussions surrounding that
 10 decision.
 11 Q. And were you involved in any of those
 12 discussions?
 13 A. Yes.
 14 Q. And what was said during those discussions?
 15 MR. POTTER: You're not to reveal any
 16 substantive communications that took place that involved
 17 counsel.
 18 THE WITNESS: Okay. I don't recall.
 19 MR. GOLDMAN: Q. You don't recall any
 20 discussions about joining HathiTrust or --
 21 A. I recall that there were discussions.
 22 (Exhibit No. HC4 marked for
 23 identification.)
 24 Q. I marked as HC4 another PowerPoint presentation
 25 entitled HathiTrust, Sharing a Federal Print Repository:

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1 Issues and Opportunities, dated May 25th, 2011, Heather
 2 Christenson.
 3 Heather, is this a presentation that you
 4 prepared?
 5 A. I would say not fully, no.
 6 Q. Is this a presentation that you gave?
 7 A. Yes.
 8 Q. What were the circumstances of giving this
 9 presentation?
 10 A. If I recall correctly, I was called in to
 11 replace John Wilkin to give this presentation.
 12 Q. To whom did you give this presentation?
 13 A. To a gathering of representatives from the
 14 federal libraries.
 15 Q. You mean like a Library Of Congress?
 16 A. Yes, the Department of the Treasury, et cetera,
 17 those agencies.
 18 Q. Did that also include the Library of Congress,
 19 or not?
 20 A. I believe it did, yes.
 21 Q. Did the library of Congress join HathiTrust, by
 22 the way?
 23 A. Yes.
 24 Q. And has the library of Congress contributed
 25 digital works to HathiTrust?

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1 HC5 is an article entitled HathiTrust, A
 2 Research Library At Web Scale, Heather Christenson.
 3 Does this appear to be the article that you
 4 wrote?
 5 A. Yes.
 6 Q. Is it fair to say that you did a -- did
 7 research regarding HathiTrust?
 8 A. That's fair to say, yes.
 9 Q. I actually wasn't done with that one. Can you
 10 go back to that page with the organization chart.
 11 I apologize to the room for jumping around.
 12 It's on page 5 I think I said.
 13 Under Collection Development, it says "Print"
 14 is one of the entries, and it says, "Cloud Library
 15 (effect of digital on print)."
 16 Do you know what that means?
 17 A. I don't know specifically what the author of
 18 this chart intended. I know libraries are interested in
 19 the interplay between print and digital collections and
 20 it reflects that, and HathiTrust has a collections
 21 committee.
 22 Q. Have you ever served on the collections
 23 committee at HathiTrust?
 24 A. Yes.
 25 Q. Now, on page -- if we turn to your article,

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1 A. I believe I have seen that they did, yes.
 2 Q. Are you aware that they only contributed works
 3 in the public domain to HathiTrust?
 4 A. I don't know that I -- I can't recall what
 5 awareness I had of those characteristics of the works.
 6 I know they had some works.
 7 Q. Okay. If you turn to the fifth page in,
 8 there's an organization chart, and if you don't know how
 9 to interpret this because it wasn't your presentation, I
 10 understand, just let me know, but my questions are going
 11 to be to the best of your understanding based on this.
 12 A. I understand.
 13 Q. Under collection development -- let me take a
 14 step back, actually.
 15 What is your participation in HathiTrust?
 16 A. CDL, I coordinate the various contributions of
 17 our CDL staff to HathiTrust related projects.
 18 The HathiTrust, as an organization, I lead a
 19 working group of the communication.
 20 Q. You wrote an article about HathiTrust, didn't
 21 you?
 22 A. Yes.
 23 Q. I just want to get this -- can I have 21?
 24 (Exhibit No. HC5 marked for
 25 identification.)

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1 which is HC5, and you go to page 95 at the top, under
 2 Goals and Values, there's a number of bullet points that
 3 are described as the important goals of HathiTrust, and
 4 the third one down says "To stimulate effort to
 5 coordinate shared collection management strategies among
 6 libraries, thus reducing long-term capital and operating
 7 costs of libraries associated with the store and care of
 8 print collections."
 9 Could you explain what that means?
 10 A. I believe this language is drawn from the -- a
 11 statement on the website. I'd have to look at my
 12 footnote there. That libraries -- across libraries at
 13 large there may be duplication in the collections that
 14 we hold. It costs libraries money to house those print
 15 copies and if a digital copy exists, it may have some
 16 bearing on a -- a library may choose to envision the
 17 presence of that digital copy in their decision about
 18 that item.
 19 Q. And by saying a factor, do you mean to say that
 20 a library -- there may be circumstances in which a
 21 library may decide not to keep a physical copy of a book
 22 in its print collections due to the existence of a
 23 digital copy of that work?
 24 A. Sure, that could be the case, yes.
 25 Q. Could it also -- could also the existence of a

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<p>1 digital copy of a work affect a library's decision --</p> <p>2 library at large, like you said, to acquire a print copy</p> <p>3 of a work?</p> <p>4 A. Yes.</p> <p>5 Q. And is the goal of that -- is one of the goals</p> <p>6 of that when it says reducing long-term capital, does</p> <p>7 that mean it will save the library money in order to do</p> <p>8 that when that framework exists?</p> <p>9 A. It saves libraries money if they don't store</p> <p>10 print books.</p> <p>11 Q. Or if they don't have to acquire as many new</p> <p>12 books, correct?</p> <p>13 A. It's true that libraries would save money if</p> <p>14 they don't acquire a book, but acquisitions was not in</p> <p>15 my mind as part of the subject matter of my paper. I</p> <p>16 was, in my mind, likely considering retrospective</p> <p>17 collections here foremost.</p> <p>18 Q. Do you agree that the presence of a shared</p> <p>19 digital repository on the web scale, as you would call</p> <p>20 it, of HathiTrust could affect a library's acquisition</p> <p>21 decisions?</p> <p>22 A. It could.</p> <p>23 Q. And by impacted, you mean it could result in a</p> <p>24 library not purchasing a book that it might have</p> <p>25 purchased but for the existence of the shareholder</p>	<p>1 controlled depository?</p> <p>2 A. There could probably be a lot of other factors</p> <p>3 present in a situation like that, but they could. It's</p> <p>4 in the realm of possibility.</p> <p>5 Q. Do you think that's one of the goals of</p> <p>6 HathiTrust?</p> <p>7 A. Me personally as an individual, I would not</p> <p>8 express that as one of the goals of HathiTrust.</p> <p>9 Q. Do you have any involvement with the copyright</p> <p>10 review management system at the University of Michigan?</p> <p>11 A. No.</p> <p>12 Q. You've never had any discussions with anyone at</p> <p>13 the University of Michigan regarding the copyright</p> <p>14 review management system?</p> <p>15 A. I've had discussions with people, yes.</p> <p>16 Q. Is it your understanding that -- withdrawn.</p> <p>17 On HathiTrust only certain works are available</p> <p>18 for others -- for reading; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And how is that determination made about</p> <p>21 whether a work is available for reading?</p> <p>22 A. It happens internally. It happens in systems</p> <p>23 other than our own. However, I -- my understanding is</p> <p>24 that it's based on bibliographic data as items are</p> <p>25 loaded into the repository.</p>
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<p>1 Q. You said -- people other than your own, is that</p> <p>2 what you said?</p> <p>3 A. The determination is made somewhere else</p> <p>4 outside of CDL is what I know for certain. I know it's</p> <p>5 not made at CDL.</p> <p>6 Q. Do you know who makes the determination?</p> <p>7 A. No. And I don't even know if it's a who or a</p> <p>8 what, or...</p> <p>9 Q. Those determinations are made with respect to</p> <p>10 UC works that have been contributed to HathiTrust,</p> <p>11 correct?</p> <p>12 A. Works digitized from UC libraries, correct.</p> <p>13 Q. So you don't know who makes the decision about</p> <p>14 whether an UC digitized work will be available for</p> <p>15 reading on HathiTrust or not?</p> <p>16 A. Can you rephrase that question?</p> <p>17 Q. Which part didn't you understand?</p> <p>18 A. Who --</p> <p>19 Q. Who meaning which person or entity is</p> <p>20 responsible for making determinations about whether</p> <p>21 works that came from your libraries ended up in</p> <p>22 HathiTrust, whether those works will be available for</p> <p>23 viewing on line?</p> <p>24 A. No.</p> <p>25 Q. And do you know how that determination is made?</p>	<p>1 A. My understanding of that determination, an</p> <p>2 initial determination is made based on bibliographic</p> <p>3 data.</p> <p>4 Q. If we go back to -- or if we go to the</p> <p>5 presentation and there's a pie chart about halfway</p> <p>6 through.</p> <p>7 MR. POTTER: Did you say HC4?</p> <p>8 MR. GOLDMAN: Q. HC4, and at the top says</p> <p>9 Content Distribution. Can you tell me what we're</p> <p>10 looking at on this slide?</p> <p>11 A. Can you rephrase the question?</p> <p>12 Q. This slide, as I understand it, shows a pie</p> <p>13 chart and it shows 74 percent -- is it fair to say that</p> <p>14 this pie chart shows that 74 percent of the works in</p> <p>15 HathiTrust are estimated to be in copyright?</p> <p>16 Is that what this chart is showing?</p> <p>17 A. That appears to be what's represented in this</p> <p>18 chart.</p> <p>19 Q. Is that consistent with your understanding?</p> <p>20 Let me rephrase that question. Do you have any</p> <p>21 reason to believe that this chart is inaccurate.</p> <p>22 A. I believe this chart likely represents data</p> <p>23 coming from HathiTrust systems.</p> <p>24 Q. But just yes or no, do you have any reason to</p> <p>25 believe that the information on this slide is</p>

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1 inaccurate?
 2 A. No.
 3 Q. Do you believe that the number of works that
 4 were digitized by the university of California includes
 5 a greater percentage of in copyright work or a lower
 6 percentage of in copyright work that is in the
 7 HathiTrust database as a whole?
 8 A. Can you repeat that?
 9 I'm sorry. Repeat the question.
 10 Q. This chart states, or represents, that
 11 approximately 74 percent of the works in HathiTrust, and
 12 by "works," I mean the 8,234,081 volumes that were
 13 released at that time as of March 5th, 2011. This chart
 14 says 74 percent are in copyright.
 15 I'm asking you whether you know one way or the
 16 other whether the works you see contributed are roughly
 17 the same percentage -- roughly the same percentage of
 18 those works are in copyright.
 19 A. I don't know.
 20 Q. Do you know whether it's more than 50 percent
 21 of the works by UC are estimated to be in copyright?
 22 A. I would not estimate that 50 percent of the
 23 works digitized by UC are in copyright. I mean that's
 24 not -- it's not a -- no.
 25 Q. You wouldn't -- because you don't know one way

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1 information services on the web; otherwise, University
 2 budgets, hard times, many facets of the environmental
 3 situation that might indicate a call somewhat like this.
 4 Q. Okay. Are you familiar with the term "fair
 5 use" as it applies to copyright law?
 6 A. I'm familiar that there's a provision in law
 7 called fair use, yes.
 8 Q. Have you ever reviewed that provision?
 9 A. Yes, I have.
 10 Q. Actually -- could I have Tab 9.
 11 (Exhibit No. HC6 marked for
 12 identification.)
 13 Okay, what I've marked as HC6 is what I'll
 14 represent is a printout of Section 17 U.S.C.A. § 107,
 15 which is the Fair Use Provision in the Copyright Act.
 16 I guess my question is this. In connection
 17 with the selection of books as part of the Mass
 18 Digitization Project with Google, did you ever consider
 19 the -- did you ever consider fair use as it's set forth
 20 in this statute at that time?
 21 MR. POTTER: I'm going to object to the extent
 22 it calls for a legal conclusion, and she's not at
 23 lawyer.
 24 MR. GOLDMAN: Q. Yeah, and without -- yes.
 25 THE WITNESS: As I stated before, when I was

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1 or another, or because you have reason to believe it's
 2 less than 50 percent?
 3 A. If I had to estimate and stake my life on it, I
 4 would take a guess that UC has a higher percentage of
 5 public domain content than indicated in this chart.
 6 Q. What is your basis for that statement?
 7 A. Several large projects we worked on were
 8 entirely public domain content -- with the intent to
 9 digitize public domain content.
 10 Q. If you look at the third slide from the back
 11 entitled Changing Library Landscapes. The first bullet
 12 point says Rapidly Changing Landscape. It says,
 13 "Libraries are making these decisions but they are more
 14 and more collective decisions," and the final bullet
 15 point says, "We cannot afford anymore to do work
 16 separately that could be done collaboratively."
 17 Do you agree with the final sentiment stated on
 18 this presentation?
 19 A. If I recall correctly, the slide is not my
 20 slide.
 21 Q. Do you know what's meant by this, "We cannot
 22 afford to do work anymore separately that could be done
 23 collaboratively"?"
 24 A. My interpretation of that would be libraries
 25 are in an environment where there's many competing

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1 charged with carrying out these projects, it's according
 2 to a contract, and I assume that there's legal input
 3 into contracts at the University of California. And I'm
 4 not a lawyer.
 5 Q. But in connection with either the bulk pulls
 6 that were done or the candidate list method of selecting
 7 books for digitization, are you aware of any -- are you
 8 aware of any discussions that took place regarding any
 9 of the factors of fair use that are set forth in this
 10 provision?
 11 MR. POTTER: To the extent those discussions
 12 involve lawyers --
 13 MR. GOLDMAN: It's a yes-or-no question.
 14 Yes-or-no question.
 15 THE WITNESS: I don't know, but I'd have to
 16 assume that UC discussed with legal counsel.
 17 MR. GOLDMAN: Q. I'm not asking for
 18 assumptions. Are you aware of any such discussions?
 19 A. Not that I can recall here today.
 20 Q. With respect to any work that was digitized by
 21 Google that came from an UC library with respect to any
 22 particular work, are you aware whether any person at any
 23 time made an analysis regarding any of these four
 24 factors that are listed here in the statute?
 25 And let me just say, for example, when any

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1 particular work from UC was selected for digitization,
 2 are you aware whether anyone ever considered the purpose
 3 and characteristic of the use, including whether such
 4 use is of a commercial nature or is for nonprofit
 5 educational purposes?
 6 A. At the point of action of choosing a specific
 7 item, I'm not -- I'm not aware.
 8 Q. And at that same point of action, were you
 9 aware whether a determination was made regarding the
 10 nature of the copyrighted work that was chosen for
 11 digitization?
 12 A. No.
 13 Q. And what about the amount and substantiality of
 14 the portion used in relation to the copyrighted work as
 15 a whole, are you aware of any analysis made of that
 16 factor at that point in time?
 17 MR. POTTER: I'm going to object to this line
 18 of questioning to the extent it could call for legal
 19 conclusions what these various factors might mean.
 20 MR. GOLDMAN: Q. Yes or no?
 21 A. Can you repeat the question?
 22 THE REPORTER: Question: "And what about the
 23 amount and substantiality of the portion used in
 24 relation to the copyrighted work as a whole, are you
 25 aware of any analysis made of that factor at that point

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1 whether anyone every considered the amount and
 2 substantiality of the portion used in relation to the
 3 copyrighted work as a whole?
 4 A. Not that I can recall.
 5 Q. And do you recall -- do you know whether anyone
 6 at that point in time considered the effect of the use
 7 upon the potential market for or value of the
 8 copyrighted work?
 9 A. Can you rephrase the question?
 10 Q. Are you aware whether -- are you aware whether
 11 anyone at UC, you, yourself or anyone else, considered
 12 at the point in time when any work that was digitized by
 13 Google of UC works, whether any person ever considered
 14 at that time the effect of the use upon the potential
 15 market for or value of the copyrighted work?
 16 A. I'm still confused. It's legal terms. I am
 17 not in the mind of people who are pulling books from the
 18 shelves, so -- I could only say that I can't recall --
 19 Q. You were the one managing the pulling of the
 20 books from the shelves, correct?
 21 A. No.
 22 Q. Who managed the pulling of the books from the
 23 shelves?
 24 A. In -- for each project there's a specific
 25 person who handled that role, or persons.

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1 in time?"
 2 THE WITNESS: I'm not a lawyer. I don't have
 3 an understanding of what --
 4 MR. GOLDMAN: Q. I'm not asking if you're a
 5 lawyer, I'm just asking whether any analysis was
 6 conducted at the point in time when this work was
 7 selected for digitization.
 8 A. A legal analysis?
 9 Q. I'm not asking for a legal analysis, I'm asking
 10 whether or not, yes or no, you're aware there was an
 11 analysis done at that time?
 12 MR. POTTER: Clarification. Are you asking if
 13 she's aware that someone contemplated Fair Use Factor 3,
 14 whether she knows what that means or not, or is she
 15 aware that someone contemplated what she understands
 16 that factor to mean?
 17 MR. GOLDMAN: Q. I am asking -- I'm definitely
 18 not asking what her understanding of that provision is
 19 as a legal matter. I'm asking whether, just as I asked
 20 with the other two, at the point of -- at the point when
 21 a particular work was selected for digitization, are you
 22 aware whether anyone considered any of these four
 23 factors, and I'm going through each of the three
 24 factors.
 25 We're now on the third one. Are you aware

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1 Q. Are you aware whether any people that were
 2 selecting the books from the shelves, or at any point up
 3 the chain, people that selected the books, people that
 4 supervised the selection of books, anyone at Google,
 5 anyone, anyone in the whole world, whether they
 6 determined at that time, are you aware whether anyone
 7 made a consideration of any of those four factors that
 8 we went through at any point in time when the books were
 9 selected for digitization?
 10 A. I'm still not certain I entirely understand the
 11 question, but I don't see how I could be aware of all
 12 those individual people's thought processes, so I would
 13 say no.
 14 That's my answer.
 15 Q. There came a time when University of Michigan
 16 announced the launch of something called the Orphan
 17 Works Project. Have you ever heard of the Orphan Works
 18 Project before?
 19 A. Yes.
 20 Q. What is the Orphan Works Project, to the best
 21 of your understanding?
 22 A. The best of my understanding, the University of
 23 Michigan was going to develop a research process to look
 24 at works or books, volumes, to try to further
 25 information on whether or not --

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1 I'm going to take a pause. I'm thinking.
 2 Since the University of Michigan was going to
 3 develop a process to review a certain category of books
 4 called Orphan Works to try to develop a more complete
 5 picture of the rights situation.
 6 Q. And there came a time when UC announced that it
 7 would be participating in the Orphan Works Project; is
 8 that right?
 9 A. Yes.
 10 Q. Who was involved with the decision -- who made
 11 the decision to participate in the Orphan Works Project?
 12 A. I don't know who made -- I don't know is the
 13 answer.
 14 Q. Did you have any discussions with anyone
 15 about -- prior to joining the Orphan Works program or
 16 prior to announcing UC's intent to joining the Orphan
 17 Works program, did you have any discussion about the
 18 Orphan Works program?
 19 A. I don't specifically recall. I may have been
 20 in discussions where it was mentioned.
 21 Q. And what were the nature of those discussions?
 22 MR. POTTER: To the extent counsel was present,
 23 I'll instruct you not to reveal the substance of the
 24 conversations.
 25 THE WITNESS: There are HathiTrust project

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1 UC libraries?
 2 A. Yes.
 3 Q. Were you involved in any discussions regarding
 4 the designation of UC digitized works as orphan
 5 candidates?
 6 A. Not that I can recall.
 7 Q. How did you become aware that UC digitized
 8 works were being designated as orphan candidates?
 9 A. I can't recall. It may have been through the
 10 lawsuit. Through the lawsuit.
 11 MR. POTTER: Can you wrap it up in about five
 12 so she can pick up her children?
 13 MR. GOLDMAN: Yeah.
 14 Oh, Sigh.
 15 Okay. Let's take a minute break, just a
 16 minute, so I can go over my notes and talk to counsel.
 17 (A break was taken.)
 18
 19
 20
 21
 22
 23 ///
 24 ///
 25 ///

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1 discussions that take place.
 2 MR. GOLDMAN: Q. It's my understanding that UC
 3 provided assistance in refining the process that was
 4 being used by Michigan to isolate prospective Orphan
 5 Works; is that correct?
 6 A. I don't have firsthand -- there may have been
 7 participation outside of CDL. I didn't participate.
 8 Q. It's my understanding that an associate
 9 university librarian at UCLA provided assistance in
 10 refining the process. Do you know who that associate
 11 university librarian at UCLA to be that participated in
 12 refining the process at University of Michigan?
 13 A. I don't have knowledge of what may or may not
 14 have been contributed. A person who was a candidate for
 15 that was Sharon Farb.
 16 Q. Did you have any discussions with Sharon Farb
 17 regarding that process being used by the University of
 18 Michigan?
 19 A. I don't recall.
 20 Q. Do you know how -- part of the Orphan Works
 21 Project involved the creation of a list of orphan
 22 candidates; is that right?
 23 A. I don't know the specifics of the process.
 24 Q. Are you aware that certain of the works that
 25 were working candidates were works that originated from

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1 MR. GOLDMAN: No further questions.
 2 Do you have any questions?
 3 MR. POTTER: No. I appreciate that. I think
 4 we're good.
 5
 6 (Time noted: 4:00 p.m.)
 7
 8 --oOo--
 9
 10
 11
 12 _____
 13 HEATHER CHRISTENSON
 14
 15
 16
 17
 18 Subscribed and sworn to before me this day
 19 of _____, 2012.
 20
 21 _____
 22
 23
 24
 25

1 CERTIFICATE
2
3 STATE OF CALIFORNIA)
) ss.
4 COUNTY OF MONTEREY)
5
6 I, JUDIE A. NICHOLAS, a Certified
7 Shorthand Reporter for the State of California,
8 do hereby certify:
9 That HEATHER CHRISTENSON, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me, and that such
12 deposition is a true record of the testimony
13 given by such witness.
14 I further certify that I am not related to
15 any of the parties to this action by blood or
16 marriages; and that I am in no way interested
17 in outcome of this matter.
18 IT WITNESS WHEREOF, I have hereunto
19 set my this 23rd day of April, 2012.
20
21
22
23 _____
24 Judie A. Nicholas, CSR 12229
25

1 ERRATA SHEET FOR THE TRANSCRIPT OF:
2 CASE NAME: The Authors Guild Inc v HathiTrust
3 DEPOSITION DATE: April 11, 2012
4 DEPONENT: Heather Christenson
5
6 PAGE LINE NOW READS SHOULD READ REASON
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20
21 SIGNATURE OF DEPONENT
22
23 SUBSCRIBED AND SWORN BEFORE ME
24 THIS ___ DAY OF _____, 2012.
25 _____
(Notary Public) My Commission expires: _____

1 MR. GOLDMAN: No further questions.

2 Do you have any questions?

3 MR. POTTER: No. I appreciate that. I think
4 we're good.

5

6 (Time noted: 4:00 p.m.)

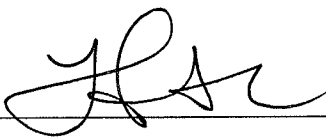
7

8 --oOo--

9

10

11



12

HEATHER CHRISTENSON

13

14

15

16

17


18 Subscribed and sworn to before me this 21st day

19 of June, 2012.

20

21

22

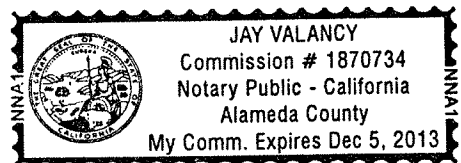


JAY VALANCY

23

24

25



ERRATA SHEET**ERRATA SHEET FOR THE TRANSCRIPT OF:**

Case Name: Authors Guild v. HathiTrust

Dep. Date: April 11, 2012

Deponent: **HEATHER CHRISTENSON**

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

I hereby certify that I have read the foregoing deposition and that said transcript is true and accurate, with the exception of the following changes noted below, if any:

Global change:

“Jody Healy-Pritchett” should be “Jodi Healy Pritchett”

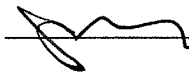
“Jody” should be “Jodi”

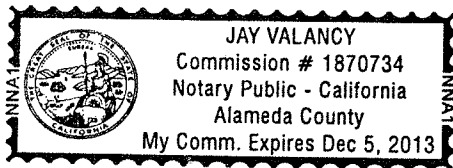
Page	Line	Now Reads:	Should Read:	Reason
9	7	1996	1986	1
10	23	Henshaw	Bunshoft	3
14	9	Figures	Vendors	3
18	12		There should be no comma between “Collection” and “Development”	3
19	21	UCL	CDL	3
22	5	Cooperative Agreement	Common Interest Agreement	3
22	13	internet Machine	book machines	3
28	8	Instructions	Discussions	3
36	7	California University	University of California	3
48	11	Berkeley project, Google project	Berkeley project	2
48	18	SRLF	NRLF	3
48	19	Books from SRLF were not digitized by Google and I wouldn't have said this.		
55	12	On the aspect of this	On that aspect of this	3
62	11	Shaundelle	Shondell	3
62	17	Nishimura	Nishijima	3
63	6	Fairley	Farley	3
63	22	Chesley-Perry	Chesley Perry	3
64	6	Marta	Martha	3

		Nebis	Nevis	
65	15	Not sure what the "macro" means	Please delete	1
71	15	into	print	1
87	19	a common ease of	Complete	1
87	20	Knowledge	Recollection	1
87	12		Add "at that time" to the end	1
100	11	Exact	Exactly	3
106	2	logical	legal	1
129	1	Fairley	Farley	3
131	6	Organization	Organizational chart	2
133	8	Short term	Short term solution	2
136	24	Yes	No "Yes" is recorded, but I wouldn't have said this because I've never been on the committee and the answer is no. I suspect that she recorded the opposing counsel's statement at 136:22 as "collections" rather than "communications" (I am on the communications committee)	1


Heather Christenson

Subscribed and sworn to before me
this 21st day of June, 2012.


Jay Valancy



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