

EXHIBIT 64

Edward H. Rosenthal
Jeremy S. Goldman
FRANKFURT KURNIT KLEIN & SELZ, P.C.
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

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 NFFO TO
DEFENDANTS’ SECOND SET OF INTERROGATORIES AND
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

Plaintiff Norsk faglitterær forfatter- og oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) (“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 Court for the Southern District of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ Second 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.

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. Plaintiff objects to each of the requests to the extent they seek legal opinions that are not properly the subject of rule 26 discovery.

M. Plaintiff objects to each of the requests to the extent that it seeks documents and/or information with respect to any “Relevant Member Work,” which Defendants define as “each work for which one or more of Plaintiff’s members is a legal or beneficial owner of a copyright or an exclusive right under a copyright that Plaintiff claims has been infringed by one or more of the Defendants.” The information concerning “Relevant Member Works” requested herein is neither necessary to establish Plaintiff’s associational standing to bring a claim against Defendants for copyright infringement on behalf of its members, nor is such information relevant to Plaintiff’s claims or Defendants’ valid defenses in this action. Moreover, to the extent a request concerning a “Relevant Member Work” purports to require Plaintiff to identify documents and information concerning each and every one of its members’ copyrighted works, of which there are tens of thousands, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome. Plaintiff’s responses set forth below are provided solely with respect to the works, if any, listed on Schedule A to Plaintiff’s Objections and Responses to Defendants’ First Set of Interrogatories and Requests for the Production of documents (“Schedule A”).

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants’ First Set of Interrogatories and Requests for the Production of documents (“Schedule A”), and for each work for which one or more of your members is a 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 (“Relevant Member Work”), indicate whether that work is in-print or out-of-print, and the criteria and facts relied upon in reaching that conclusion.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 2: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify all author royalties and/or other income generated by such work from 2001 to the present and itemized by source, as well as documents sufficient to substantiate such royalties and/or income.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 3: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify a) the number of hardback and/or paperback copies printed in each year from 2001 to the present; b) the number of hardback and/or paperback copies remaining in the inventory of any publisher or publisher's agent at the end of each year from 2001 to the present; and c) the number of hardback and/or paperback copies remaining in the inventory of any wholesaler or wholesaler's agent at the end of each year from 2001 to the present; d) the number of hardback and/or paperback copies remaining in the inventory of any retailer or retailer's agent at the end of each year from 2001 to the present; e) the number of hardback and/or paperback copies returned by any retailer for each year from 2001 to the present; and f) documents sufficient to substantiate such numbers.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 4: For each work, if any, listed on Schedule A, and for each Relevant Member Work, indicate whether that work has been distributed, pursuant to your and/or that relevant member's authorization, in digital, electronic or other machine-readable format within the last ten years and, if so, identify for each such work a) the specific digital, electronic or other machine-readable format(s) in which it was distributed; b) the number of copies of the work distributed in such format(s); c) the publisher(s) of the work in such format(s); and d) the specific royalties accruing to the author with respect to such distribution in each such format.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 5: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity any alleged harm you and/or your relevant member have suffered or will suffer arising solely by virtue of each of the following, and identify all documents related to the same: a) the inclusion of the work in Defendants' digital archives; b) the availability of a digital version of the work for use purely in connection with non-consumptive research; c) the availability of a digital version of the work for use purely in connection with full-text searching; d) the availability of a digital version of the work for use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 6: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls used to ensure the safety and security of such work when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats, and identify documents sufficient to substantiate the use of such controls, by a) you; b) any publisher; c) any printer; d) any distributor; e) any warehouse; f) any wholesaler; g) any retailer; h) any Internet host, website and/or online retailer in connection with digital or electronic formats; and/or i) any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

INTERROGATORY NO. 7: For each work, if any, listed on Schedule A, and for each Relevant Member Work, identify with specificity all physical, logical/technical, administrative and/or other controls, used to prevent and/or detect unauthorized access to printed or electronic works, that you have requested in any licensing, publishing, distribution and/or other agreements related to such work, and identify all documents related to such requests.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

REQUEST NO. 1: For each work, if any, listed on Schedule A to your Objections and Responses to Defendants' First Set of Interrogatories and Requests for the Production of Documents ("Schedule A"), and for each work for which one or more of your members is a 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 ("Relevant Member Work"), documents sufficient to identify whether that work is or has ever been part of any effort to reprint out-of-print works in any form, including without limitation the Author's Guild's "BackinPrint.com" service.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All agreements with and/or related to iUniverse.com, or any other service offering per-order printing in a hardback, paperback or electronic format, that involve any work listed on Schedule A or any Relevant Member Work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All documents concerning the grant of electronic and/or digital reproduction, distribution rights and/or display rights to any person or entity, including without limitation all correspondence and agreements concerning the grant of such rights in any work listed on Schedule A or any Relevant Member Work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All documents concerning the criteria used to determine whether a given work is in-print or out-of-print under any publishing agreement or other agreement, including without limitation any such documents referring to any work listed on Schedule A or any Relevant Member Work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 1: All documents concerning, describing or referring to any physical, logical/technical, administrative and/or other controls used to prevent and/or detect unauthorized access to printed or electronic works generally, including without limitation any such documents referring to any work listed on Schedule A or any Relevant member Work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 2: All documents concerning any physical, logical/technical, administrative and/or other controls used to ensure the safety and security of any work listed on Schedule A when stored, distributed, sold and/or licensed in any format, including without limitation hardback, paperback, and electronic and digital formats by any person or entity, including without limitation you and any publisher; printer; distributor; warehouse; wholesaler; retailer; Internet host, website and/or online retailer in connection with digital or electronic formats; and/or any purchaser of such work.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 3: All documents concerning the existence or non-existence of a specific market or potential market for the digitization and further reproduction, distribution and/or display of printed works for the purposes of a) electronic archiving; b) non-consumptive

research; c) full-text searching; and/or d) use by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Plaintiff objects to this Request on the ground that it is vague, ambiguous, overbroad and unduly burdensome in several respects. For example, the request to produce “[a]ll documents concerning the . . . non-existence of a . . . potential market” for various uses of “printed works” is unintelligible, and the term “electronic archiving” is undefined and could be interpreted as encompassing retail electronic book distributors. The Request is further objectionable in that it is not limited to documents relating to Plaintiff’s works, but to “printed works” in general. Subject to and without waiving the foregoing objections or any General Objections, Plaintiff will conduct a reasonable search and produce documents, if any, responsive to this Request.

REQUEST NO. 4: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the inclusion of such work in a digital archive.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 5: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with non-consumptive research.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 6: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work in connection with full-text searching.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 7: For each work, if any, listed on Schedule A and for any Relevant Member Work, documents sufficient to identify any revenue or other earnings of any kind generated or expected to be generated in whole or in part by the use of such work by the blind or others with disabilities that restrict their use of standard printed works.

RESPONSE: Subject to and without waiving any General Objections, Plaintiff responds that no works were listed on Schedule A.

REQUEST NO. 8: All non-privileged documents concerning the HathiTrust and/or Defendants' alleged digitization of written works.

RESPONSE: Plaintiff objects to this Request on the ground that is overbroad and unduly burdensome. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will conduct a reasonable search and produce non-privileged documents, if any, responsive to this Request.

REQUEST NO. 9: All documents concerning the effect, if any, the HathiTrust has had or is expected to have on the value, revenue or earnings associated with printed and/or electronic written works.

RESPONSE: Plaintiff objects to this Request on the grounds that it is vague, ambiguous, overbroad and repetitive of prior requests, pursuant to which documents have been or will be produced.

REQUEST NO. 10: All documents identified by you in response to Defendants' Second Set of Interrogatories.

RESPONSE: Subject to and without waiving the General Objections, Plaintiff responds that no such documents have been identified.

Dated: New York, New York
April 20, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

By: /s/ Jeremy S. Goldman

Edward H. Rosenthal
Jeremy S. Goldman
488 Madison Avenue, 10th Floor
New York, New York 10022
Tel.: (212) 980-0120
Fax: (212) 593-9175
erosenthal@fkks.com
jgoldman@fkks.com

Attorneys for Plaintiffs

SERVICE LIST

Joseph M. Beck (admitted *pro hac vice*)
Kilpatrick Stockton, LLP (GA)
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309
Tel: (404)-815-6406
Fax: (404)-541-3126
Email: jbeck@kilpatrickstockton.com

Joseph E. Petersen
Kilpatrick, Stockton, LLP (NY)
31 West 52nd. Street
New York, NY 10019
Tel: (212)775-8715
Fax: (212)775-8815
Email: jpetersen@kilpatrickstockton.com

Attorneys for Defendants

Nelson E. Roth
Cornell University
Office of University Counsel
300 CCC Building, Garden Avenue
Ithaca, NY 14853
Tel: (607) 255-2796
Fax: (607) 255-2794
Email: ner3@cornell.edu

Attorneys for Cornell University

Daniel F. Goldstein (admitted *pro hac vice*)
Brown, Goldstein & Levy, LLP
120 E. Baltimore St., Suite 1700
Baltimore, MD 21202
Tel: (410) 962-1030
Fax: (410) 385-0869
Email: dfg@browngold.com

Peter Jaszi (admitted *pro hac vice*)
5402 Surrey Street
Chevy Chase, MD 20815
Tel: (757) 276-1790
Fax: (301) 656-7483
Email: pjaszi@wcl.american.edu

Robert Jay Bernstein
The Law Offices of Robert J. Bernstein
380 Lexington Avenue, 17th Floor
New York, NY 10022
Tel: (212) 551-1068
Fax: (212) 551-1001
Email: rjb@robert-bernsteinlaw.com

Attorneys for Intervenor Defendants
National Federation of the Blind, Georgina
Kleege, Blair Seidlitz and Courtney Wheeler

VERIFICATION

I, Jan Terje Helmlı, General Counsel for Plaintiff Norsk Faglitterær Forfatter- Og Oversetterforening, 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 April 20, 2012.



Jan Terje Helmlı