

EXHIBIT 66

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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 THE WRITERS’ UNION OF CANADA TO DEFENDANTS’ FIRST SET OF REQUESTS FOR ADMISSION

Plaintiff The Writers’ Union of Canada (“Plaintiff”) hereby submits, pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Rule 26.3 of the Local Rules for the United States District Courts for the Southern Districts of New York (the “Local Rules”), by and through the undersigned attorneys, Plaintiff’s objections and responses to Defendants’ First Set of Requests for Admission (“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 request for admission should not be taken as an admission that Plaintiff accepts or admits the existence of any fact set forth or assumed by such request for admission. The fact that Plaintiff has answered part or all of any request for admission is not intended to be, and shall not be construed to be, a waiver by Plaintiff of any part of any objection to that request for admission.

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' requests for admission, 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' 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 preparation for trial. The documents and things produced, or information provided, in response to Defendants' requests for admission are without prejudice to Plaintiff's rights to produce additional documents and things,

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

GENERAL OBJECTIONS

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

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

L. Plaintiffs object to each of the requests to the extent they seek legal opinions that are not properly the subject of rule 36 requests for admission.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

1. *Admit that you are not the legal or beneficial owner of a copyright in a written work or an exclusive right under a copyright in a written work that, to your knowledge, has been infringed by any of the Defendants.*

RESPONSE:

Subject to and without waiving the foregoing General Objections, this request is denied.

2. *Admit that you are not the legal or beneficial owner of a copyright in a written work or an exclusive right under a copyright in a written work that, to your knowledge, has been infringed by any of the Defendants by virtue of that work's display while a candidate for inclusion as an alleged "orphan work" in connection with the Orphan Works Project.*

RESPONSE:

Subject to and without waiving the foregoing General Objections, Plaintiff admits that, to Plaintiff's knowledge, no written work for which Plaintiff is the legal or beneficial owner of the work's copyright or an exclusive right under a copyright was listed, displayed or distributed by any of the Defendants in connection with the Orphan Works Project.

3. *Admit that you are not the legal or beneficial owner of a copyright in a written work or an exclusive right under a copyright in a written work that, to your knowledge, has been infringed by any of the Defendants by virtue of that work's distribution while a candidate for inclusion as an alleged "orphan work" in connection with the Orphan Works Project.*

RESPONSE:

Subject to and without waiving the foregoing General Objections, Plaintiff admits that, to Plaintiff's knowledge, no written work for which Plaintiff is the legal or beneficial owner of the work's copyright or an exclusive right under a copyright was listed, displayed or distributed by any of the Defendants in connection with the Orphan Works Project.

4. *Admit that you are not the legal or beneficial owner of a copyright in a written work or an exclusive right under a copyright in a written work that has been registered with the United States Copyright Office and has, to your knowledge, been infringed by any of the Defendants by virtue of that work's display while a candidate for inclusion as an alleged "orphan work" in connection with the Orphan Works Project.*

RESPONSE:

Subject to and without waiving the foregoing General Objections, Plaintiff admits that, to Plaintiff's knowledge, no written work that has been registered with the United States Copyright Office for which Plaintiff is the legal or beneficial owner of the work's copyright or an exclusive right under a copyright was listed, displayed or distributed by any of the Defendants in connection with the Orphan Works Project.

5. *Admit that you are not the legal or beneficial owner of a copyright in a written work or an exclusive right under a copyright in a written work that has been registered with the United States Copyright Office and has, to your knowledge, been infringed by any of the Defendants by virtue of that work's distribution while a candidate for inclusion as an alleged "orphan work" in connection with the Orphan Works Project.*

RESPONSE:

Subject to and without waiving the foregoing General Objections, Plaintiff admits that, to Plaintiff's knowledge, no written work that has been registered with the United States Copyright Office for which Plaintiff is the legal or beneficial owner of the work's copyright or an exclusive

right under a copyright was listed, displayed or distributed by any of the Defendants in connection with the Orphan Works Project.

6. *For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that for each such work there is no license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities.*

RESPONSE:

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

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff admits that, to the best of Plaintiff's knowledge, there are no license or other agreements expressly allowing for the digitization of the works that serve as the basis for Plaintiff's denial of Request for Admission No. 1.

7. *For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that for each such work there has never been any license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities.*

RESPONSE:

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

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff admits that, to the best of Plaintiff's knowledge, there have never been any license or other agreements expressly allowing for the digitization of the works that serve as the basis for Plaintiff's denial of Request for Admission No. 1.

8. *For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that for each such work you have not sought any license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities.*

RESPONSE:

Subject to and without waiving any General Objections, this request is admitted.

9. *For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that you cannot identify any specific lost market or potential market for that work by virtue of Defendants' alleged conduct described in the First Amended Complaint.*

RESPONSE:

Plaintiff objects to this request as the phrase "specific lost market or potential market" is undefined and without obvious meaning. Plaintiff further objects to this interrogatory on the ground that Plaintiff does not seek actual damages in this action, but an injunction under 17

U.S.C. § 502 and impoundment under 17 U.S.C. § 503, for which it is not necessary to quantify monetary damages.

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

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

10. For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that you cannot identify the amount of any money lost as a result of harm to any market or potential market for that work by virtue of Defendants’ alleged conduct described in the First Amended Complaint.

RESPONSE:

Plaintiff objects to this request on the ground that Plaintiff does not seek actual damages in this action, but an injunction under 17 U.S.C. § 502 and impoundment under 17 U.S.C. § 503,

for which it is not necessary to quantify specific monetary damages incurred as a result of Defendants' infringing conduct.

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

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

11. For any works that serve as the basis for your denial of Requests for Admission Nos. 1, 2, 3, 4, or 5, admit that you cannot identify any specific monetary reduction to the value or potential value of that work by virtue of Defendants' alleged conduct described in the First Amended Complaint.

RESPONSE:

Plaintiff objects to this request on the ground that Plaintiff does not seek actual damages in this action, but an injunction under 17 U.S.C. § 502 and impoundment under 17 U.S.C. § 503,

for which it is not necessary to quantify any specific monetary damages incurred as a result of Defendants' infringing conduct.

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

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

12. *Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every copyright in a written work, or exclusive right under a copyright in a written work, for which that member is a legal or beneficial owner.*

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff's organization is a legal or beneficial owner (any such

copyright or exclusive right, a “Member Copyright”), is not necessary to establish Plaintiff’s associational standing to bring a claim against Defendants for copyright infringement.

Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Member Copyrights, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Member Copyright for each and every one of its approximately 2,000 members. However, in response to Defendants’ discovery requests, Plaintiff is willing to identify Member Copyrights for a mutually-agreeable number of randomly selected members.

13. Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every legal or beneficial co-owner of a copyright in a written work, or exclusive right under a copyright in a written work, for which that member is also a legal or beneficial owner.

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every legal or beneficial co-owner of a copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff’s organization is also a legal or beneficial owner (any such co-owner, a “Member Work Co-Owner”), is not necessary to establish Plaintiff’s associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Member Work Co-Owners, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Member Work Co-Owner for each and every one of its approximately 2,000 members. However, in response to Defendants' discovery requests, Plaintiff is willing to identify Member Work Co-Owners for a mutually-agreeable number of randomly selected members.

14. Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every licensee of a copyright in a written work, or exclusive right under a copyright in a written work, for which that member is a legal or beneficial owner.

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every licensee of a copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff's organization is a legal or beneficial owner (any such licensee, a "Member Work Licensee"), is not necessary to establish Plaintiff's associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Member Work Licensees, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Member Work Licensee for each and every one of its approximately 2,000 members.

15. *Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every copyright in a written work, or exclusive right under a copyright in a written work, for which that member was a legal or beneficial owner but has since licensed, transferred, assigned or otherwise conveyed to any person.*

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff's organization was a legal or beneficial owner but has since licenses, transferred or otherwise conveyed to any person (any such copyright or exclusive right, a "Licensed Member Copyright"), is not necessary to establish Plaintiff's associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Licensed Member Copyrights, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Licensed Member Copyright for each and every one of its approximately 2,000 members.

16. *Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every copyright in a written work, or exclusive right under a copyright in a written work, for which that member has become a legal or beneficial owner by virtue of a license, transfer, assignment or other conveyance from another person.*

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every

copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff's organization has become a legal or beneficial owner by virtue of a license, transfer, assignment or other conveyance from another person (any such copyright or exclusive right, a "Member Copyright By Conveyance"), is not necessary to establish Plaintiff's associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Member Copyrights By Conveyance, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Member Copyright By Conveyance for each and every one of its approximately 2,000 members.

17. Admit that, as to each member of [Plaintiff], you cannot specifically identify each and every copyright in a written work, or exclusive right under a copyright in a written work, for which that member was a legal or beneficial owner by virtue of a license, transfer, assignment or other conveyance from another person, but for which the copyright or exclusive right has since reverted to the current legal or beneficial owner.

RESPONSE:

Plaintiff objects to this request on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of each and every copyright in a written work, or exclusive right under a copyright in a written work, for which each and every member of Plaintiff's organization was a legal or beneficial owner by virtue of a license, transfer, assignment or other conveyance from another person, but for which the copyright or exclusive right has since reverted to the current legal or beneficial owner (any such copyright or exclusive right, a "Reverted Member Copyright"), is not necessary to establish

Plaintiff's associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this request seeks to require Plaintiff to identify each and every one of its Reverted Member Copyrights, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, Plaintiff admits that, in the ordinary course of business, it neither collects nor maintains a record of each and every Reverted Member Copyright for each and every one of its approximately 2,000 members.

Dated: New York, New York
January 30, 2012

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