

EXHIBIT 7

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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.)
_____)

CONFIDENTIAL - ATTORNEYS EYES ONLY
DEPOSITION OF
LAINE FARLEY
Berkeley, California

Thursday, April 12, 2012

Reported by:
JUDIE A. NICHOLAS, CSR NO. 12229
JOB NO. 48481

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2
3 Thursday, April 12, 2012
4 9:33 a.m.
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8 Deposition of Laine Farley, held at the
9 Offices of The Cobalt Law Firm, 918 Parker Street, Building
10 A21, Berkeley, California, pursuant to Notice, before
11 Judie A. Nicholas, Certified Shorthand Reporter for
12 the State of California.
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1 APPEARANCES:
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3 Attorneys for Plaintiffs
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5 New York, NY 10022
6 BY: EDWARD H. ROSENTHAL, ESQ.
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9
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11 Attorneys for Defendants
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13 New York, NY 10036
14 BY: ROBERT N. POTTER, ESQ.
15
16
17 OFFICE OF THE GENERAL COUNSEL
18 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
19 1111 Franklin Street
20 Oakland, CA 94607
21 BY: SUNIL R. KULKARNI, ESQ.
22
23
24
25

Page 5

1 LAINE FARLEY,
2 being first duly sworn,
3 was deposed and testified as follows:
4 EXAMINATION BY MR. ROSENTHAL
5 MR. ROSENTHAL: Q. Good morning, Ms. Farley.
6 My name is Edward Rosenthal. I'm an attorney for
7 plaintiffs The Authors Guild and a number of other
8 organizations and authors in a case against University
9 of California and a number of other defendants.
10 I'm going to ask you some questions today about
11 facts related to that case.
12 Have you ever been deposed before?
13 A. No.
14 Q. Have you ever testified at a trial?
15 A. Yes.
16 Q. Can you tell me the circumstances, in very
17 general terms?
18 A. Yeah. I guess there were two cases. One was
19 when I was working as a librarian at another institution
20 and I was just asked to introduce a piece of evidence,
21 and the other was when I was a student and I filed a
22 suit against my landlord.
23 Q. Okay. So you have a little bit of experience,
24 but let me just give you a few ground rules.
25 I'm going to ask you questions. Wait until I'm

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<p>1 finished asking the question before you answer it.</p> <p>2 And your lawyer may object, and wait until he</p> <p>3 finishes his objection before you answer, because the</p> <p>4 only way the reporter can get the transcript down is if</p> <p>5 each of us speak separately, and the other thing is, I'm</p> <p>6 sure the reporter will tell you this, but try to keep</p> <p>7 your voice up so that she can hear you. There can be a</p> <p>8 little background noise here we found yesterday,</p> <p>9 especially because we may need to open the windows at</p> <p>10 some point because it gets warm.</p> <p>11 If you need to take a break, let me know.</p> <p>12 Please don't ask to take a break in the middle of a</p> <p>13 question, but, otherwise, if you need to take a break</p> <p>14 for any reason, just let me know and we'll do that.</p> <p>15 A. Okay.</p> <p>16 Q. How are you -- are you currently employed?</p> <p>17 A. Yes.</p> <p>18 Q. Who are you currently employed by?</p> <p>19 A. University of California.</p> <p>20 Q. And what is your title, if you have one?</p> <p>21 A. Executive Director.</p> <p>22 Q. Executive director of what?</p> <p>23 A. Of the California Digital Library.</p> <p>24 Q. Is the California Digital Library a separate</p> <p>25 entity from the University of California?</p>	<p>1 A. No.</p> <p>2 Q. Are you paid by the University of California?</p> <p>3 A. Yes.</p> <p>4 Q. How long have you been executive editor --</p> <p>5 Executive Director of the California Digital Library?</p> <p>6 A. Since 2008.</p> <p>7 Q. And prior to 2008 what was your employment,</p> <p>8 immediately prior to when you became the Executive</p> <p>9 Director of the California Digital Library?</p> <p>10 A. I was the Interim Executive Director of the</p> <p>11 California Digital Library.</p> <p>12 Q. When did that begin?</p> <p>13 A. In 2006.</p> <p>14 Q. Do you remember when in 2006?</p> <p>15 A. Not precisely.</p> <p>16 Q. The beginning of the year, the end of the year?</p> <p>17 A. I think about the middle of the year.</p> <p>18 Q. And prior to becoming Interim Director what was</p> <p>19 your employment?</p> <p>20 A. At the California Digital Library.</p> <p>21 Q. Did you have a title?</p> <p>22 A. I was the Director of Digital Library Services.</p> <p>23 Q. When did you first become Director of Digital</p> <p>24 Library Services?</p> <p>25 A. I don't remember.</p>
Page 8	Page 9
<p>1 Q. Several years?</p> <p>2 A. Several years, yeah.</p> <p>3 Q. Was there a difference in your duties and</p> <p>4 responsibilities between when you were Interim Director</p> <p>5 of the California Digital Library and when you became</p> <p>6 Executive Director?</p> <p>7 A. Not substantially, no.</p> <p>8 Q. Were there any significant changes at all,</p> <p>9 other than the title and the permanence?</p> <p>10 A. It was mostly the permanence.</p> <p>11 Q. As the Executive Director of the California</p> <p>12 Digital Library, what are your day-to-day</p> <p>13 responsibilities?</p> <p>14 A. I'm responsible for setting the direction --</p> <p>15 the overall direction and overseeing the operations.</p> <p>16 Q. Of the California Digital Library?</p> <p>17 A. Uh-huh.</p> <p>18 Q. If I say CDL --</p> <p>19 A. CDL, yes.</p> <p>20 Q. How many employees are there in the CDL?</p> <p>21 A. Approximately 70.</p> <p>22 Q. And all of those 70 employees report to you,</p> <p>23 either directly or indirectly?</p> <p>24 A. Yes.</p> <p>25 Q. And who do you report to currently?</p>	<p>1 A. To the Vice Provost For Academic Planning</p> <p>2 Programs and Coordination.</p> <p>3 Q. Who is that?</p> <p>4 A. Dan Greenstein.</p> <p>5 Q. How long have you reported to Mr. Greenstein?</p> <p>6 A. In all of the jobs that I just described --</p> <p>7 Q. Yeah.</p> <p>8 A. -- he was my supervisor.</p> <p>9 Q. All the way through?</p> <p>10 A. All the way through. He had my job prior to</p> <p>11 when I took it.</p> <p>12 Q. Where is he located?</p> <p>13 A. In Oakland.</p> <p>14 Q. In Oakland? And where are your offices?</p> <p>15 A. In Oakland.</p> <p>16 Q. In Oakland? Is that at a University of</p> <p>17 California facility building?</p> <p>18 A. Yes.</p> <p>19 Q. Is it part of Berkeley, University of</p> <p>20 California at Berkeley?</p> <p>21 A. No.</p> <p>22 Q. Could you describe for me what the California</p> <p>23 Digital Library is.</p> <p>24 A. It is a peer library to the other libraries in</p> <p>25 the UC system, and we are responsible for providing</p>

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<p>1 digital services and content on behalf of the other ten 2 libraries and the other units on the campuses. 3 Q. Providing digital services. What do you mean 4 by "digital services"? 5 A. Well, we either develop or acquire services 6 that support finding and using digital materials for the 7 students and faculty. 8 Q. Can you give me an example of some of those 9 services you find or develop? 10 A. One of the oldest ones is the Melvyl catalog, 11 which is just a library catalog that represents the 12 holdings of the campus library. 13 Q. The Melvyl catalog, correct me if I -- let me 14 know if I say this correctly, but the Melvyl catalog is 15 a digital database that would include information about 16 all of the books that are in the various University of 17 California libraries? 18 A. Yes. 19 Q. Do you have responsibilities to the budget of 20 the California Digital Library? 21 A. Yes. 22 Q. Are there other people at CDL who also have 23 budgetary responsibility? 24 A. Yes. 25 Q. And who are they?</p>	<p>1 A. Each of our program managers is responsible for 2 their program budgets. 3 Q. Tell me what you mean by program manager. 4 A. Program manager would have a portfolio of 5 services that they are responsible for managing. 6 Q. Is Heather Christenson a program manager? 7 A. No. 8 Q. Is there a particular -- well, strike that for 9 the moment. 10 And in terms of budgetary concerns, do you 11 report to Mr. Dan Greenstein on that also? 12 A. Yes. 13 Q. Did there come a time when the CDL became 14 involved in any mass digitization programs? 15 A. Can you clarify what you mean by that? 16 Q. Did a time come when CDL became to work with 17 any outside parties with respect to the digitization of 18 any books or other works? 19 A. Yes. 20 Q. Can you tell me when that was? 21 A. As I recall, it was around 2006. 22 Q. And describe for me what happened around 2006. 23 A. We began to work with the Internet Archive, and 24 also the Google project began during that time period. 25 Q. Were there any -- did you work at all with</p>
Page 12	Page 13
<p>1 Microsoft at about that time? 2 A. Yes. 3 Q. What did you do with Microsoft? 4 A. Microsoft provided the funding for the projects 5 that we did with the Internet Archive. 6 Q. And let's talk about Internet Archive for a 7 moment and leave Google aside. 8 What was the programs with the Internet 9 Archives? 10 A. We worked with them to digitize books from some 11 of our facilities where they provided the scanning 12 process, the equipment and the process, and, as I said, 13 the funding was provided mostly by Microsoft. 14 Q. Did Microsoft receive any benefit from 15 providing the funding? 16 MR. POTTER: Objection: Vague. 17 MR. ROSENTHAL: Q. Was there any -- did 18 University of California or the CDL give Microsoft any 19 financial or other compensation in exchange for their 20 funding of the internet project? 21 A. No. 22 Q. In terms of the project with the Internet 23 Archive, how -- strike that. 24 Were you involved in the determination of which 25 books would be digitized as part of the Internet</p>	<p>1 Archive's project? 2 A. No. 3 Q. Who was, if you know? 4 A. Well, there were a number of people involved. 5 The campus libraries had a say in it, and there was a 6 number of discussions to determine which ones. 7 Q. Do you know who those discussions involved -- 8 who was involved in those discussions? 9 A. I don't. 10 Q. But you weren't? 11 A. Not -- I might have been in some, but not as a 12 participant. 13 Q. Was there one or more written agreements with 14 Internet Archive with respect to the digitization 15 program? 16 A. Yes. 17 Q. Have you seen those agreements? 18 A. Yes. 19 Q. Do you know whether those agreements in any way 20 defined which type of works could be digitized as part 21 of that project? 22 MR. POTTER: Objection: Vague. 23 THE WITNESS: I don't know. 24 MR. ROSENTHAL: Q. You don't know? 25 A. I don't recall.</p>

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1 Q. Do you know whether the Internet -- as part of
 2 the Internet Archive's digitization program, whether
 3 that program was limited to public domain works?
 4 A. That was the intent, yes.
 5 Q. And why was that the intent?
 6 A. It was Internet Archive's goal to do public
 7 domain.
 8 Q. How do you know that?
 9 A. Just from, you know, the history of the
 10 project, discussions with them over time.
 11 Q. Do you know how a determination was made as to
 12 whether a particular work was or wasn't in the public
 13 domain?
 14 A. I don't.
 15 Q. Do you know who would know that?
 16 A. I don't. I can't think of an individual, but,
 17 as I said, there were a number of people involved.
 18 Q. Apart from the Internet Archive project you
 19 were just talking about and apart from the Google
 20 project, did you have any discussions with anyone about
 21 digitizing works that were still subject to copyright
 22 prior to Google -- prior to beginning the Google
 23 project?
 24 MR. POTTER: Objection: Vague.
 25 MR. ROSENTHAL: Q. You can still answer the

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1 from anyone that Brewster Kahle was interested in
 2 digitizing works still protected by copyright?
 3 A. Possibly.
 4 Q. Do you have any specific recollection?
 5 A. No.
 6 Q. Or do you have any recollection who you would
 7 have talked to about that, if anyone?
 8 A. No.
 9 Q. Let's talk about the Google digital project.
 10 When I say Google digital project, what does that mean
 11 to you?
 12 MR. POTTER: Objection: Vague.
 13 You can answer if you have an understanding.
 14 THE WITNESS: Well, the project would be the
 15 way we defined with Google the work that we did with
 16 them to digitize however it was digitized.
 17 MR. ROSENTHAL: Q. I just want to come up --
 18 I'm not trying to be crafty, I'm just trying to come up
 19 with a way that we can refer to the relationship between
 20 CDL and Google in a shorthanded way.
 21 If I say Google digital project, you'll
 22 understand I'm referring to the digitization program
 23 that CDL took part -- took -- participated in with
 24 Google beginning in about 2006?
 25 A. Yes.

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1 question if you understand it.
 2 A. I don't exactly understand, no.
 3 Q. I'll strike the question for now.
 4 Are you aware of a person named Brewster Kahle?
 5 A. Yes.
 6 Q. Who is he?
 7 A. He's the founder of the Internet Archive.
 8 Q. Was he involved with the Internet Archive at
 9 the time that the digital program you were just
 10 describing was taking place?
 11 A. Yes.
 12 Q. And did you ever speak to Brewster Kahle about
 13 the Internet Archive project?
 14 A. I don't recall.
 15 Q. Do you recall whether he -- whether you ever
 16 had any discussions with him -- with Brewster Kahle
 17 about digitizing works that were still protected by
 18 copyright?
 19 A. I don't recall.
 20 Q. Do you recall ever hearing that Brewster Kale
 21 was interested in or advocating digitizing works still
 22 protected by copyright?
 23 MR. POTTER: Objection: Vague.
 24 THE WITNESS: Can you say it again?
 25 MR. ROSENTHAL: Q. Do you ever recall hearing

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1 Q. Okay. Can you tell me how you -- how CDL first
 2 became involved with Google with respect to the Google
 3 digital project?
 4 A. I don't know for certain who initiated it.
 5 Because it was my boss at the time, Dan Greenstein, was
 6 the one who had the initial discussions.
 7 Q. So when you say you don't know who initiated,
 8 you don't know if Mr. Greenstein contacted Google or if
 9 Google contacted Mr. Greenstein?
 10 A. Correct.
 11 Q. Do you recall the first time you talked to
 12 Mr. Greenstein about the Google digital project?
 13 A. Not really.
 14 Q. Do you remember how you first heard about the
 15 Google digital project?
 16 A. And, again, are you referring to the one
 17 where -- to the project that we participated in?
 18 Q. Yes.
 19 A. He probably -- Dan Greenstein probably told me
 20 about it.
 21 Q. Do you remember what he said to you?
 22 A. No.
 23 Q. Do you remember if he -- if you discussed with
 24 him whether the Google digital project would include
 25 works protected by copyright?

Page 18	Page 19
<p>1 A. In those discussions, yes.</p> <p>2 Q. Do you remember anything about any specific</p> <p>3 discussion?</p> <p>4 A. No.</p> <p>5 Q. Can you tell me generally what those</p> <p>6 discussions were about, whether the Google digital</p> <p>7 project would include copyrighted work?</p> <p>8 A. Not really. Just that fact.</p> <p>9 Q. Do you remember ever expressing any concern to</p> <p>10 Mr. Greenstein about the inclusion of copyrighted works</p> <p>11 in the Google digital project?</p> <p>12 A. Well, I knew that the discussions would be with</p> <p>13 our counsel about that, so, no.</p> <p>14 Q. Did Mr. Greenstein ever express to you any</p> <p>15 concerns about including copyrighted material in the</p> <p>16 Google digital project?</p> <p>17 MR. POTTER: To the extent that any</p> <p>18 communications he may have had with you about that</p> <p>19 concerned legal advice, I would ask you not to share the</p> <p>20 substance of those conversations.</p> <p>21 MR. ROSENTHAL: Q. You can answer the question</p> <p>22 as long as it doesn't involve legal.</p> <p>23 A. I mean we were discussing the whole range of</p> <p>24 options, so I don't recall, you know, anything in</p> <p>25 particular.</p>	<p>1 Q. When you say "range of objections," what do you</p> <p>2 mean?</p> <p>3 A. Whether -- whether the projects would involve</p> <p>4 just material in our storage facilities or circulating</p> <p>5 collections, you know, all of the logistics of how it</p> <p>6 might take place.</p> <p>7 Q. I think you used a phrase "storage facilities."</p> <p>8 A. Uh-huh.</p> <p>9 Q. Can you tell me what you mean by that?</p> <p>10 A. Uh-huh. We had, since the 1980s probably.</p> <p>11 Facilities -- there's one in the north and one in the</p> <p>12 south -- that are meant for high density storage of</p> <p>13 library materials that the libraries determine to be of</p> <p>14 lower use than the ones they keep on campus.</p> <p>15 Q. So is the decision as to what work goes into</p> <p>16 one of those storage facilities made by each individual</p> <p>17 library?</p> <p>18 A. Yes.</p> <p>19 Q. Is it made by each library on a particular</p> <p>20 campus on a library-by-library basis, or is it made on a</p> <p>21 campus-by-campus basis, if you know?</p> <p>22 A. I don't know.</p> <p>23 Q. And there are two of those storage facilities;</p> <p>24 is that correct?</p> <p>25 A. That's right.</p>
Page 20	Page 21
<p>1 Q. Where are they located?</p> <p>2 A. One in the north is in Richmond, California.</p> <p>3 Q. I'm sorry, I interrupted you. It's in Richmond</p> <p>4 County?</p> <p>5 A. Richmond, California.</p> <p>6 Q. Richmond, California.</p> <p>7 And what's that called?</p> <p>8 A. The Northern Regional Library Facility.</p> <p>9 Q. Okay. And there's one in the south also?</p> <p>10 A. Right.</p> <p>11 Q. Where is that located?</p> <p>12 A. It's on the UCLA campus.</p> <p>13 Q. And you call that the Southern --</p> <p>14 A. Southern Regional Library Facility.</p> <p>15 Q. To the extent I refer to them, I'll refer to</p> <p>16 them as the NRLF and the SRLF as best I can.</p> <p>17 A. Okay.</p> <p>18 Q. Do you recall discussions with Mr. Greenstein</p> <p>19 about the number of books that Google wanted to digitize</p> <p>20 as part of the project?</p> <p>21 A. No.</p> <p>22 Q. Any recollection at all about that?</p> <p>23 A. No.</p> <p>24 Q. Do you recall any discussions with</p> <p>25 Mr. Greenstein about what Google's goals were with the</p>	<p>1 Google digital project?</p> <p>2 A. Not specifically.</p> <p>3 Q. How about generally?</p> <p>4 A. Well, the project had been going on for a while</p> <p>5 already with other libraries, so I think we just heard</p> <p>6 about it in general that it was part of their mission to</p> <p>7 make the world's knowledge available.</p> <p>8 Q. So before you had any discussions with</p> <p>9 Mr. Greenstein or anyone else about University of</p> <p>10 California's involvement with Google on this project,</p> <p>11 you were aware that Google had worked with other</p> <p>12 universities; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Which other universities had they worked with?</p> <p>15 A. Michigan, Harvard, Oxford -- there were five.</p> <p>16 I don't remember the other two offhand.</p> <p>17 Q. And did you ever have any discussions with any</p> <p>18 personnel at any of the other involved universities</p> <p>19 about the Google project prior to your own involvement</p> <p>20 with Google?</p> <p>21 MR. POTTER: And I just want to state, as I did</p> <p>22 yesterday, that as -- concerning testimony about</p> <p>23 Google's involvement with the University of California,</p> <p>24 there's a nondisclosure agreement, so to the extent that</p> <p>25 the fact that Ms. Farley may have learned by virtue of</p>

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1 that relationship, that testimony will be designated
 2 attorneys eyes only pursuant to the protective order,
 3 and any communications that she may have had with people
 4 at Google or otherwise that are premised on legal advice
 5 are subject to the Cooperative Agreement, and as the
 6 questions come, and, when appropriate, I'll instruct her
 7 not to answer or reveal the legal substance.
 8 MR. ROSENTHAL: Maybe you could read the
 9 question back.
 10 THE REPORTER: Question: "And did you ever
 11 have any discussions with any personnel at any of the
 12 other involved universities about the Google project
 13 prior to your own involvement with Google?"
 14 THE WITNESS: I don't recall.
 15 MR. ROSENTHAL: Q. Do you remember any
 16 discussions with anyone prior to the University of
 17 California's involvement with the Google digital project
 18 about Google's digitization of works still protected by
 19 copyright?
 20 A. Anyone?
 21 Q. Yes.
 22 A. Anyone? I don't recall.
 23 Q. When did you first learn that -- well, strike
 24 that.
 25 Did a time come when you learned that Google

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1 we made any decisions.
 2 I think I was -- I mean I was interested in
 3 what we might learn. I wouldn't say I was concerned.
 4 Q. Did you ever seek counsel yourself? And,
 5 again, don't reveal the substance of anything that you
 6 learned or spoke about, but --
 7 A. You mean with an individual?
 8 Q. I'll start with as an individual.
 9 A. No.
 10 Q. How about as the Executive Director of the
 11 California Digital Library?
 12 MR. POTTER: Advice concerning these issues?
 13 MR. ROSENTHAL: Q. Concerning the issues of
 14 digitization of copyrighted works.
 15 A. So the question is?
 16 Q. Did you, in your professional capacity as
 17 Interim or Executive Director of the California Digital
 18 Library, ever seek legal counsel with respect to the
 19 legality of digitizing copyrighted works?
 20 A. Not at that point in time, no.
 21 Q. At some later point in time?
 22 A. No, because we had already entered into the
 23 project with Google by then.
 24 Q. By when?
 25 A. By the time I became Interim Executive

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1 wanted to digitize works still protected by copyright
 2 from University of California libraries?
 3 A. Would you repeat that?
 4 MR. ROSENTHAL: Would you read that back.
 5 THE REPORTER: Question: "When did you first
 6 learn that -- well, strike that.
 7 Did a time come when you learned that Google
 8 wanted to digitize works still protected by copyright
 9 from University of California libraries?"
 10 THE WITNESS: Yes.
 11 MR. ROSENTHAL: Q. Do you recall when you
 12 learned that?
 13 A. I don't.
 14 Q. Do you recall where you learned that?
 15 A. No.
 16 Q. Was that part of the conversation with
 17 Mr. Greenstein?
 18 A. Probably.
 19 Q. Do you remember if you had any reaction to
 20 learning that information?
 21 A. I don't.
 22 Q. Do you recall whether you were concerned about
 23 digitizing copyrighted material?
 24 A. Well, again, I knew that we would -- you know,
 25 we would seek advice on that, or counsel on that before

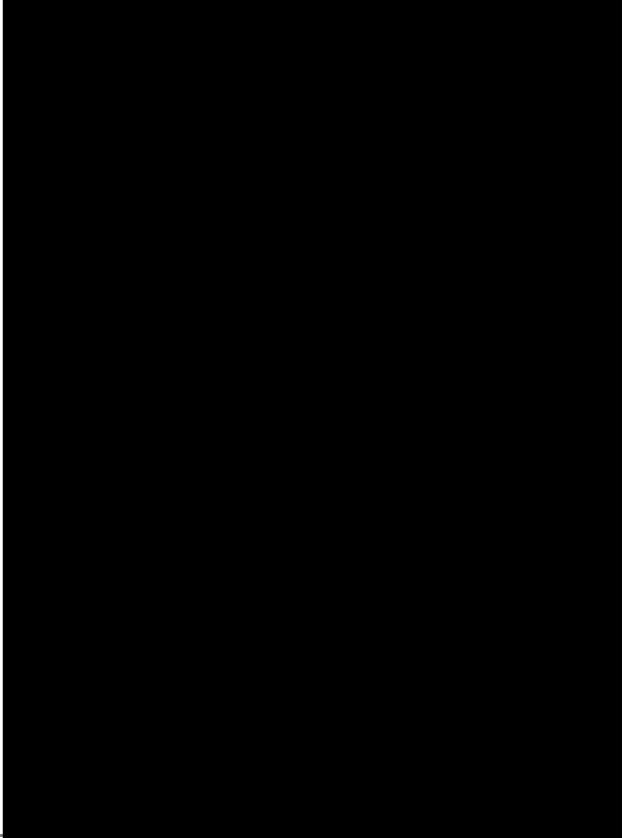
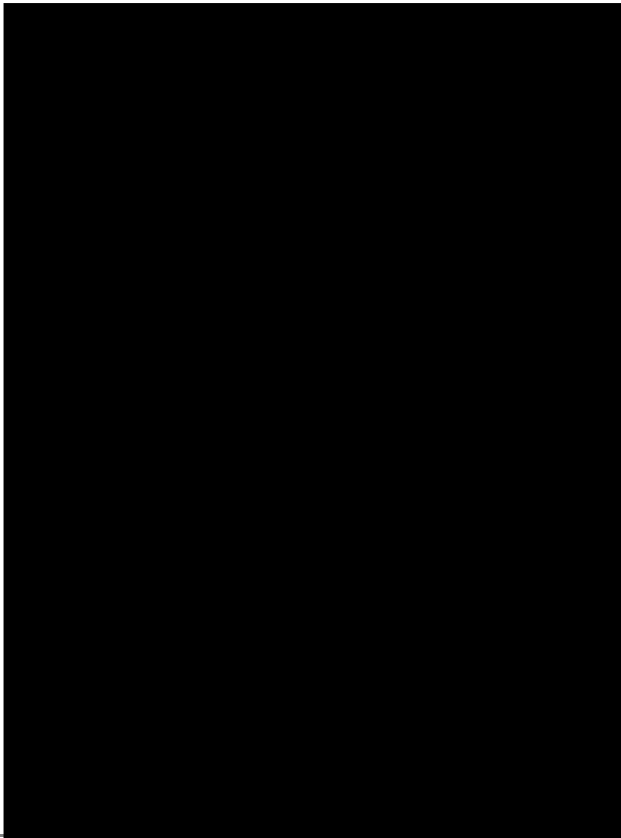
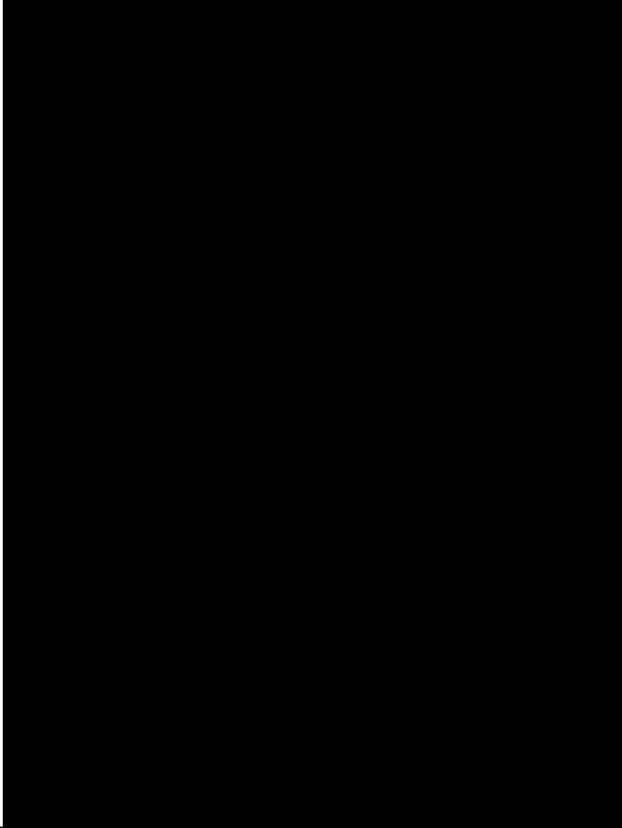
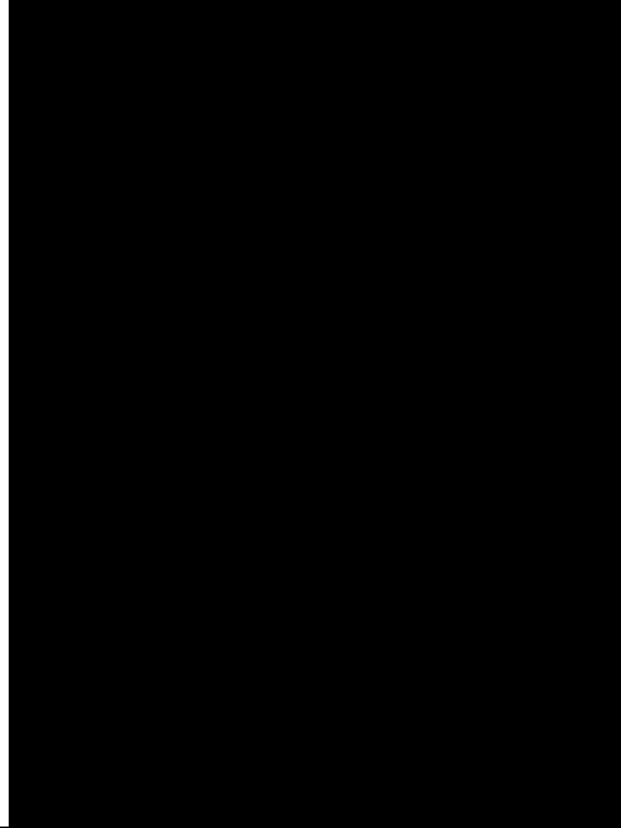
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1 Director, we were already into the project.
 2 Q. Were you involved at all in the -- in any
 3 written agreement with Google with respect to the Google
 4 digital project?
 5 MR. POTTER: Objection: Vague.
 6 THE WITNESS: What does "involved" mean?
 7 MR. ROSENTHAL: Q. Did you participate in the
 8 negotiation of any agreement with Google with respect to
 9 the Google digital project?
 10 A. No, not the original negotiations I didn't.
 11 Q. Subsequent negotiations?
 12 A. During the settlement -- do you know what I
 13 mean by "the settlement"?
 14 Q. Yes, I do.
 15 A. Yes, so I was part of discussions at that
 16 point.
 17 Q. Do you know who was -- who at the California
 18 Digital Library was involved in the negotiation of the
 19 agreement with Google with respect to the Google digital
 20 project?
 21 A. I know at least some of the parties.
 22 Q. Can you tell me who was involved?
 23 A. Dan Greenstein, and then our general counsel.
 24 Q. Who was the general counsel at that time?
 25 A. I believe the person was Mary McDonald.

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1	Q. Is she still general counsel?	1	[REDACTED]
2	MR. KULKARNI: Just to be clear, Mary McDonald	2	[REDACTED]
3	is not General Counsel for the University of California,	3	[REDACTED]
4	she is an attorney in the Office of General Counsel.	4	[REDACTED]
5	THE WITNESS: Yes, that's what I meant.	5	[REDACTED]
6	MR. ROSENTHAL: Q. Okay. Is she still	6	[REDACTED]
7	employed by the University of California, as far as you	7	[REDACTED]
8	know?	8	[REDACTED]
9	A. Yes.	9	[REDACTED]
10	Q. Let me show you what's been previously marked	10	[REDACTED]
11	as Exhibit HC1 that was marked at Heather Christenson's	11	[REDACTED]
12	deposition yesterday. I'm going to assume -- just off	12	[REDACTED]
13	record for a minute.	13	[REDACTED]
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 4 Q. When did you join HathiTrust?
 5 A. In 2008.
 6 Q. How did that decision to join HathiTrust come
 7 about from the point of view of the University of
 8 California?
 9 A. Michigan, and I believe Indiana was also a part
 10 of this, approached my boss, Dan Greenstein, and asked
 11 if we would be interested, and sort of explained what
 12 the purpose was, and then we had a number of discussions
 13 internally about whether we would or not, and made the
 14 decision to go forward.
 15 Q. Were you part of the approach to Dan Greenstein
 16 by Michigan and Indiana?
 17 MR. POTTER: Objection: Vague.
 18 MR. ROSENTHAL: Q. As you described earlier,
 19 you said Dan Greenstein was approached. Do you know
 20 what form that approach took?
 21 A. I think there were some phone calls and then
 22 there was a letter.
 23 Q. Were you part of the phone calls?
 24 A. No.
 25 Q. Did you see the letter?

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1 A. Yes.
 2 Q. Do you remember what the letter said?
 3 A. Well, it generally laid out the -- you know,
 4 what the purpose was, what they hoped to accomplish. I
 5 think it offered -- explained some of the initial terms.
 6 Q. You described there were internal discussions
 7 about whether or not to join the HathiTrust. Do you
 8 recall the substance of those internal discussions?
 9 MR. POTTER: Again, to the extent that those
 10 were discussions with counsel, I instruct you not to
 11 reveal the substance of that.
 12 THE WITNESS: It was, you know, what -- first
 13 we went back to what we wanted to achieve with the
 14 Internet Archive and the Google project, the
 15 digitization project, and we tried to assess whether
 16 what HathiTrust aimed to do, you know, matched our
 17 goals.
 18 We had a lot of respect for Michigan's work in
 19 general so we knew this was a serious sort of thing, so,
 20 you know, it was around a lot of questions about how it
 21 would happen, what kind of governance, what our role
 22 might be, those sorts of things.
 23 Q. Did you discuss the financial impact on the
 24 University of California?
 25 A. Yes.

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1 Q. What was the substance of those discussions?
 2 A. Well, we knew if we kept the files ourselves we
 3 would incur certain costs. Whether we kept them as a
 4 dark archive or whether we provided any sort of access,
 5 we would have to develop a capability, and so we again
 6 weighed that against what Michigan had already developed
 7 and would be developing.
 8 Q. And did you conclude that working with the
 9 University of Michigan would be more cost effective than
 10 doing the things yourself that you just described?
 11 A. Yeah. We did sort of a cost benefit
 12 examination, and we felt that it would be --
 13 Q. Was that cost benefit examination a written
 14 document?
 15 A. Part of it was.
 16 Q. Do you know whether that document still exists?
 17 A. Possibly.
 18 MR. ROSENTHAL: Well, Mr. Potter, we'll call
 19 for the production of that document to the extent it
 20 still exists.
 21 MR. POTTER: I'm happy to take that under
 22 advisement.
 23 MR. ROSENTHAL: Let's mark as Exhibit LF1 a
 24 four-page document that's been Bates-stamped UM000012
 25 through 13.

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1 MR. ROSENTHAL: And we'll call for the
 2 production of that letter, Mr. Potter.
 3 MR. POTTER: I'll take that under advisement.
 4 MR. ROSENTHAL: Q. Were you involved on --
 5 Ms. Farley, in the drafting of the letter that's
 6 reflected on the first two pages of Exhibit LF1?
 7 A. Yes, I was involved.
 8 Q. What was the nature of your involvement?
 9 A. As I recall, we developed this in consultation
 10 with the University librarians, the other people whose
 11 names are on here, and other members of my staff.
 12 Q. What was the purpose of this letter?
 13 A. We wanted to respond to the original letter to
 14 Dan Greenstein and indicate our interest, and to express
 15 some of the areas that we wanted to learn more about.
 16 Q. The first paragraph says -- refers to the
 17 intent of the University of California libraries --
 18 there's more words but I'm not going to read them -- to
 19 join the HathiTrust as a lead partner.
 20 Do you know what the term "lead partner" meant?
 21 A. I -- we've used some different ways to
 22 characterize our role. I think we were just trying to
 23 say that we wanted to join with them as the -- you know,
 24 the original members, and that we wanted to take a major
 25 role.

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1 (Exhibit No. LF1 marked for
 2 identification.)
 3 And, actually, I'm going to ask you to look at
 4 this document.
 5 And, actually, it appears to me, Ms. Farley --
 6 and you can correct me if I'm wrong -- this is actually
 7 two different documents, the first two pages appear to
 8 be a letter from University of California to the
 9 HathiTrust Executive Committee dated October 8th, 2008,
 10 and the last two pages appear to be a letter back to the
 11 University of California from the HathiTrust Executive
 12 Committee. You can tell me if that's correct.
 13 A. Looks correct to me.
 14 Q. And if you look at the very beginning of the
 15 first page of this document, there's a reference to the
 16 objectives as outlined in the letter from the HathiTrust
 17 Executive Committee to Associate Vice Provost Dan
 18 Greenstein dated 18 August 2008, and there's more to
 19 that sentence.
 20 Is that the communication you were referring to
 21 earlier when you described that you had received -- that
 22 you saw a letter from the University of Michigan?
 23 A. Yeah.
 24 Q. Do you have a copy of that letter?
 25 A. Yes.

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1 Q. Why did you want to take a major role?
 2 A. Because we had a lot to bring to the
 3 partnership, and we felt we had expertise. I mean
 4 that's -- UC libraries like to be leaders, so --
 5 Q. You had expertise in what?
 6 A. We had expertise in preservation technology, in
 7 providing large scale services.
 8 Q. Tell me what you mean by "expertise in
 9 preservation technology."
 10 A. Well, digital preservation is a relatively new
 11 area, and we had staff who were devoted to, you know,
 12 defining and understanding how to carry that out for
 13 digital libraries.
 14 Q. Is that beyond the work with Google?
 15 A. Yes.
 16 Q. What other kinds of preservation technology
 17 would those employees have been involved in?
 18 A. Could you say the last part?
 19 Q. What would those employees that you described
 20 had expertise been involved in?
 21 MR. POTTER: Objection: Vague.
 22 THE WITNESS: Well, we were -- they were
 23 investigating technologies to use for digital
 24 preservation of, really, any type of content, not just
 25 the Google content or the Internet Archive content.

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1 MR. ROSENTHAL: Q. So other kinds of visual
 2 content, other kinds of content, is that what you mean?
 3 A. Right. Other materials that could have been
 4 digitized from the library collections, or even things
 5 that our faculty might produce or that we purchased in
 6 some way.
 7 Q. The third paragraph of this letter says, "We
 8 understand that our share of the five-year projected
 9 cost is based on the contribution of up to five million
 10 volumes, with a potential for a 50 percent per book
 11 discount for duplicates if CDL provides the mechanism
 12 for determining overlap."
 13 First, was it the intention of the University
 14 of California or CDL to contribute up to five million
 15 volumes?
 16 A. I think that was based on -- I don't recall if
 17 this was stated in our Google agreement, but it was a
 18 projection that we might do as much as five million, so
 19 we just used that as a -- in order to construct this
 20 estimate.
 21 Q. Do you know how that number was arrived at, the
 22 five million number, in addition to what you said about
 23 maybe it was in the Google agreement?
 24 A. No.
 25 Q. That five million would include both

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1 is estimated at \$717,261."
 2 What does that number reflect?
 3 A. It reflected the -- I believe they took -- let
 4 me think about this a minute.
 5 They took the formula which was in use at the
 6 time, which was direct storage cost based on size of the
 7 files, and I believe there was some additional factor
 8 that was sort of a service cost, and it was projected
 9 over this time period to spread the cost out, but we
 10 changed it a little bit as we got into the project, so I
 11 don't recall exactly if all of that was being used to
 12 make this estimation.
 13 Q. When you said "they" at the beginning of the
 14 last sentence, was that HathiTrust making that estimate?
 15 A. Yes.
 16 Q. So the number here, \$717,261, was a -- based on
 17 a HathiTrust estimate of what the University of
 18 California's share of those yearly costs would be; is
 19 that correct?
 20 A. Yes.
 21 Q. But then that particular number is based on
 22 some calculation that University of California made, not
 23 something that was provided by the HathiTrust?
 24 A. Well, that's -- I don't remember in this
 25 particular estimate how much information they had from

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1 copyrighted and public domain materials, correct?
 2 A. That is meant to include all of the
 3 digitization projects that we had undertaken.
 4 Q. And that would include works that were
 5 protected by copyright?
 6 A. Yes.
 7 Q. Now, this next phrase says -- that I read says,
 8 "A potential for a 50 percent per book discount for
 9 duplicates if CDL provides the mechanism for determining
 10 overlap."
 11 What does that mean?
 12 A. Because we had developed the library catalog I
 13 mentioned earlier, we had expertise in using
 14 bibliographic information to determine whether records
 15 for different works were the same work, and so there was
 16 thought at the time that we could extend that expertise
 17 to be able to really know if we had the same copies or
 18 not in terms of the digital copies.
 19 Q. If you, the University of California, had the
 20 same copy?
 21 A. If any of the copies in HathiTrust were exactly
 22 the same and, therefore, we could make a decision as to
 23 whether we needed to keep duplicate files or not.
 24 Q. In that paragraph -- at the end of that
 25 paragraph there's a statement, "The current yearly cost

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1 us at that time.
 2 Q. But this number would be cost to the University
 3 of California that the University of California would be
 4 required to expend as part of its participation in the
 5 HathiTrust; is that correct?
 6 A. Yeah.
 7 Q. And that is -- that number -- would that number
 8 have been lower or higher than the storage costs would
 9 have been had University of California stored these
 10 works itself?
 11 MR. POTTER: Objection: Vague.
 12 MR. ROSENTHAL: Q. In other words, does that
 13 number reflect a savings, or is it an additional expense
 14 over what University of California otherwise would spend
 15 if it didn't join the HathiTrust?
 16 A. Well, it depends on what we would have done
 17 with it, so if we had simply stored it and nothing else,
 18 this cost is probably higher, but if we had developed
 19 other services, then it probably would have been higher
 20 for us to do that on our own.
 21 Q. What other services do you mean?
 22 A. Any kind of search mechanism, any kind of
 23 viewer of public domain files, those sorts of things.
 24 Q. Would the cost to the University have depended
 25 on whether the university was required to determine the

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1 copyright status of particular works?
 2 MR. POTTER: Objection: Vague.
 3 THE WITNESS: Yeah. Can you --
 4 MR. ROSENTHAL: Q. In other words, was that a
 5 consideration that if the University had to undertake an
 6 analysis itself of whether works were or weren't
 7 protected by copyright, that would be an expense to the
 8 University?
 9 A. Well, one of the services that HathiTrust was
 10 developing was -- did have to do with copyright
 11 determination, so, yes.
 12 Q. Do you know what that service was?
 13 A. It's evolved over time and there's sort of a
 14 filter, an algorithm that checks -- you know, it's a
 15 first pass and then there's a human review, so that part
 16 of it's evolved over time.
 17 Q. So when you say that, you're referring to
 18 something that happened at the HathiTrust end of the
 19 project?
 20 A. Yes.
 21 Q. And you're saying there's some sort of
 22 algorithm that the HathiTrust applied to make an initial
 23 determination of whether a work is public domain or not?
 24 A. Yes.
 25 Q. Do you know how that algorithm works?

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1 A. Well, that a person or persons -- I think they
 2 have more than one person -- look at certain information
 3 in addition to this algorithm.
 4 Q. Do you know what information that person or
 5 persons look at?
 6 A. I don't.
 7 Q. Do you know how many people are involved in
 8 looking at it?
 9 A. I don't.
 10 Q. Was there a written agreement between the
 11 University of California and the HathiTrust reflecting
 12 the University of California's agreement to join the
 13 HathiTrust other than the documents that are -- have
 14 been marked as LF1?
 15 A. There is a standard agreement that was
 16 developed after this time period, and we have a version
 17 of that that's still being negotiated or reviewed by our
 18 attorneys.
 19 Q. In other words, that standard -- those standard
 20 terms and conditions were never agreed to -- formally
 21 agreed to?
 22 A. Well, depends on --
 23 Q. What you agreed to?
 24 A. Yes.
 25 Q. You've been operating under those terms and

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1 A. I don't.
 2 Q. Have you ever discussed that algorithm with
 3 anybody there?
 4 A. I don't recall any specific discussions.
 5 Q. How about generally?
 6 A. I think they have -- they have made some
 7 information available about how they do it.
 8 Q. Publicly?
 9 A. I don't know for certain.
 10 Q. Do you remember what information they made
 11 available?
 12 A. It's somewhat technical, so I don't remember
 13 really.
 14 Q. So it's some sort of software that does some
 15 sort of particular analysis of works to determine
 16 whether they are or aren't copyrighted -- in copyright?
 17 A. Yes, something like that.
 18 Q. Do you know if there's a distinction made
 19 between U.S. and foreign works in that algorithm?
 20 A. I don't know for certain. I know that they
 21 have -- and they're aware of that, and so I don't know
 22 if it's operational.
 23 Q. Apart -- you mentioned a human element to the
 24 analysis of the copyright status. Can you tell me what
 25 you mean by that?

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1 conditions?
 2 A. Essentially, yes.
 3 Q. But there's still some negotiations over terms?
 4 A. I think it's finalizing the formal document.
 5 MR. ROSENTHAL: Mr. Potter, we call for
 6 production of all drafts of those standard terms and
 7 conditions, as well as any final agreement, if one
 8 exists.
 9 MR. POTTER: I'll take that under advisement.
 10 MR. ROSENTHAL: Q. Do you know whether
 11 Ms. Farley included any provision where the University
 12 of Michigan indemnify -- or the HathiTrust and the
 13 University of Michigan indemnify the University of
 14 California in case there's any claim on -- with respect
 15 to the books that are part of the HathiTrust?
 16 A. I know that such clauses are always part of
 17 such agreements, but I couldn't explain what that one
 18 says.
 19 Q. Do you think there is some provision of that
 20 type?
 21 A. I think so.
 22 Q. Do you know whether that provision makes the
 23 HathiTrust responsible if there were a copyright claim
 24 made against the University of California based on the
 25 books that were digitized as part of the Google project?

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1 MR. POTTER: Object to the extent it calls for
 2 a legal conclusion.
 3 THE WITNESS: I couldn't really answer.
 4 MR. ROSENTHAL: Q. You don't know?
 5 A. Well, I can't answer your specific question
 6 about how it would be done.
 7 Q. Is -- do you know whether the University of
 8 Michigan or the HathiTrust is paying for any portion of
 9 the University of California's defense of the litigation
 10 that we're here talking about today?
 11 A. I don't know for certain.
 12 Q. Do you have any idea at all?
 13 A. I know there have been some discussions, but I
 14 don't remember what they -- what the status is.
 15 Q. Do you know whether Google is paying for any
 16 portion of the defenses of the University of California
 17 in connection with this lawsuit?
 18 A. I don't know.
 19 Q. Do you know whether Google is paying any of the
 20 expenses of the other defendants in this lawsuit?
 21 A. I don't know.
 22 Q. Going back for a moment to the downloads of the
 23 files from Google that we spoke about a little while ago
 24 at the University of California. Are those files still
 25 on the University of California servers, or on a

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1 project to Michigan?
 2 A. There was someone who knows how it was done. I
 3 don't know if it was actually transmitting or sending.
 4 Q. Who was that person?
 5 A. I'm not sure. Again, it depends on the time
 6 period, but -- I don't know.
 7 Q. Well, let's -- these letters to and from the
 8 HathiTrust were in the fall of 2008. Would this
 9 transfer have taken place sometime around the fall of
 10 2008?
 11 A. Again, I don't know exact -- if that was the
 12 first thing done or if it happened later on. I just
 13 don't know.
 14 Q. Do you know if it -- who would have been
 15 involved in this transfer if it did take place in the
 16 fall of 2008?
 17 I'm sorry, you didn't answer.
 18 A. Oh, I thought you were going to ask me
 19 something else.
 20 Q. No, I was going to ask you if you know -- let's
 21 strike that, because Mr. Goldman just showed me that
 22 there was a HathiTrust announcement that said "Ingest of
 23 content from both University of Indiana and University
 24 of California began in April," and that would be 2009.
 25 Does that sound about right to you?

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1 University of California server?
 2 A. I know that we -- we transferred as many of
 3 them as we could to Michigan.
 4 Q. So you transferred files from -- that had
 5 already been downloaded to Michigan; is that correct?
 6 A. Well, I don't know technically that's how it
 7 was done, but the same files were made available to
 8 Michigan in some fashion.
 9 Q. Was the University of California involved in
 10 that procedure that made those files available to
 11 Michigan?
 12 MR. POTTER: Objection: Vague.
 13 THE WITNESS: Yeah, again, I don't know the
 14 specific workflow or whether we would have been involved
 15 or not.
 16 MR. ROSENTHAL: Q. Google -- I assume that
 17 Google would have had the capability of taking the
 18 digital files of the books that had been digitized as
 19 part of the Google project relating to the University of
 20 California and transferring them or copying them in some
 21 way to Michigan; is that correct?
 22 A. I don't really know.
 23 Q. Do you know, was there someone at the
 24 University of California involved in transmitting or
 25 sending the digital files that were part of the Google

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1 A. Yes.
 2 Q. And who at University of California, if anyone,
 3 would have been involved in the process of having files
 4 ingested into the HathiTrust in April 2009?
 5 A. That's a better way to say it.
 6 The process of having files ingested, it was
 7 probably Paul Fogel.
 8 Q. Do you know how the digital files are stored at
 9 the University of California or HathiTrust?
 10 MR. POTTER: Objection: Vague.
 11 MR. ROSENTHAL: Q. Do you know where they're
 12 stored?
 13 A. No.
 14 Q. Do you know whether multiple copies are made of
 15 those files?
 16 A. I know that there is a replica at Indiana and I
 17 think there's a tape backup.
 18 Q. Tape backup where?
 19 A. I don't know where the tape backup is.
 20 Q. Do you think the tape backup was made by
 21 University of Michigan?
 22 A. I don't know.
 23 Q. And do you know whether those files were copied
 24 or sent anywhere else, other than what you've just
 25 described?

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1 A. No.
 2 Q. You don't know?
 3 A. I don't know.
 4 Q. Do you know whether -- and I'm sorry if you
 5 answered this before, but do you know whether the copies
 6 of the files that were at some point on a University of
 7 California server or servers are still on that server or
 8 servers?
 9 A. I know that all that could be --
 10 Q. Transferred?
 11 A. -- transferred or ingested into Michigan have
 12 been. There may still be some left.
 13 Q. Just because a file was transferred doesn't
 14 mean it doesn't remain on the current server, correct?
 15 In other words, what I'm asking is whether those files
 16 are still on the servers even if they were -- copies
 17 were sent, or they were sent?
 18 A. Well, my understanding is that once we got them
 19 securely into HathiTrust, we got rid of them, but I
 20 think that there may be some that haven't made it
 21 through that process yet.
 22 Q. What's your basis for your understanding that
 23 you got rid of them once they were transferred?
 24 A. That's what we discussed we would do with our
 25 technical staff.

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1 AFTERNOON SESSION
 2 FURTHER EXAMINATION BY MR. ROSENTHAL
 3 MR. ROSENTHAL: Q. Let's go back on the
 4 record.
 5 Ms. Farley, can you look back at what's been
 6 marked as HC1, which is the Cooperative Agreement.
 7 Has that agreement ever been amended?
 8 A. No.
 9 Q. Is the agreement that's been marked as HC1
 10 still in effect, as far as you know?
 11 A. As far as I know, yes.
 12 Q. Have there been discussions about amending it?
 13 A. Yes.
 14 Q. What was the substance of those discussions?
 15 And, again, your counsel will warn you not to talk about
 16 discussions that are with the lawyers or from the
 17 lawyers.
 18 A. Well, it was primarily during the settlement
 19 discussions. We anticipated that we might have to amend
 20 it, depending on what happened with that, so that's one
 21 reason why we haven't done anything.
 22 Q. So when the settlement didn't happen, the
 23 discussions about amending it ended?
 24 A. Essentially, yeah.
 25 Q. Are you aware of the Orphan Works program

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1 Q. When did you have that discussion?
 2 A. I don't remember.
 3 Q. What was the reason for that decision?
 4 A. No reason for us to have an additional copy.
 5 We felt that what HathiTrust was doing was adequate and
 6 we didn't need to have the expense or any other overhead
 7 for that.
 8 Q. Have you ever been involved in any -- have you
 9 ever testified before Congress or any other governmental
 10 body with respect to any issue?
 11 A. No.
 12 Q. Have you ever attended any congressional
 13 hearing or other legislative hearing with respect to any
 14 issue?
 15 A. No.
 16 Q. Are you aware whether others at the University
 17 of California testified at any governmental hearings
 18 with respect to digitization projects?
 19 A. Not that I recall.
 20 MR. ROSENTHAL: I think it would make sense,
 21 Rob, if we wanted to take a relatively short lunch break
 22 -- and I'm not going to go terribly afterwards, but I
 23 think long enough that it makes sense to take a little
 24 break. That way I can think about what I want to ask.
 25 (Lunch break was taken.)

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1 that's been undertaken by the HathiTrust?
 2 A. Yes.
 3 Q. Can you tell me what you know about that?
 4 A. That it was an effort to determine whether any
 5 works that were in copyright but out of print could --
 6 whether the copyright owners could be located to
 7 determine their status, and, if not, there would be a
 8 process where they could then be opened up for use.
 9 Q. What's the basis of your knowledge about the
 10 Orphan Works program?
 11 A. Discussions with Michigan primarily.
 12 Q. Whom at Michigan have you had discussions with?
 13 A. As a member of the Executive Committee, John
 14 Wilkin briefed the Executive Committee on occasion
 15 about, you know, what the program would entail.
 16 Q. Do you recall when that -- was there more than
 17 one briefing?
 18 A. I think there were probably several discussions
 19 that we had.
 20 Q. Tell me about the executive committee. The
 21 Executive Committee of the HathiTrust?
 22 A. Yes, that's correct.
 23 Q. Are you a member of that Executive Committee?
 24 A. Yes.
 25 Q. You personally are a member, or is the CDL a

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1 member?
 2 A. Well, I represent the University of California
 3 libraries.
 4 Q. And are there other people from the University
 5 of California who are on the Executive Committee of the
 6 HathiTrust?
 7 A. Yes.
 8 Q. Who else?
 9 A. Brian Schottlaender.
 10 Q. Who is he?
 11 A. He's the university librarian at UC San Diego.
 12 Q. Does the Executive Committee have -- of the
 13 HathiTrust have regular meetings?
 14 A. Yes.
 15 Q. How often does the Executive Committee meet?
 16 A. About once a month.
 17 Q. Are those live face-to-face meetings?
 18 A. No, they're mostly through conference call.
 19 Q. Is there a host -- particular party or person
 20 who hosts those meetings?
 21 A. What do you mean by "host"?
 22 Q. Meaning somebody who sets up the call or --
 23 let's start with is there any person or entity who sets
 24 up the conference call?
 25 A. Yes.

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1 A. I believe so.
 2 Q. Do you know who that was?
 3 A. Jack Bernard.
 4 Q. And the discussion pending was about legal
 5 issues?
 6 A. There was -- yes, there were legal issues
 7 discussed.
 8 Q. Was there any discussion at the meeting about
 9 the Orphan Works program that did not involve a
 10 discussion of legal issues or legal advice?
 11 A. I'm not sure what --
 12 Q. In other words, I'm trying to find out if
 13 everything -- if there are -- I'm going to say this more
 14 for your counsel than for you -- but whether there were
 15 discussions at this Executive Committee meeting that
 16 included the University of Michigan counsel that would
 17 not be protected by privilege.
 18 In other words, you're talking about other
 19 matters involving Orphan Works program, other than
 20 seeking or obtaining legal advice.
 21 A. I don't recall.
 22 Q. How the Orphan Works program would work, for
 23 example? Did Mr. Wilkin describe how the Orphan Works
 24 program would work?
 25 MR. POTTER: To the extent that the discussions

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1 Q. Who is that?
 2 A. Michigan.
 3 Q. Any particular person in Michigan?
 4 A. Well, John Wilkin and his assistant.
 5 Q. Is there a moderator or -- well, let's strike
 6 that again.
 7 Does the Executive Committee have a chairperson
 8 or person otherwise in charge?
 9 A. Not designated as such.
 10 Q. So there's no CEO, president, chairperson, any
 11 such type?
 12 A. No.
 13 Q. How about in practice, is there somebody who
 14 runs the -- who's more responsible for running the
 15 Executive Committee than others?
 16 A. Yes.
 17 Q. Who would that be?
 18 A. John Wilkin.
 19 Q. And he's at the University of Michigan?
 20 A. Yes.
 21 Q. Tell me what Mr. Wilkin said about the Orphan
 22 Works program the first time you spoke about it.
 23 A. Well, the first time it was -- as I recall, it
 24 was confidential with the Michigan counsel.
 25 Q. Michigan counsel was present at the meeting?

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1 involved legal advice or legal substance, I instruct you
 2 not to speak to the substance of those. If there's
 3 portions of it that are clearly delineated from anything
 4 legal, you may respond to that question.
 5 THE WITNESS: I don't -- I mean I don't
 6 remember in a way that I could make that distinction.
 7 MR. ROSENTHAL: Q. But there was some
 8 discussion about the legality of the Orphan Works
 9 program, without talking about what that discussion was?
 10 A. Yes. Yes.
 11 Q. And there have been subsequent meetings of the
 12 Executive Committee where Mr. Wilkin has talked about
 13 the Orphan Works program?
 14 A. I don't recall specifically.
 15 Q. Generally?
 16 A. I mean there might have been. I just don't
 17 recall.
 18 Q. Were there any discussions that you recall
 19 about the Orphan Works program at the Executive
 20 Committee where there was no counsel present?
 21 A. Possibly.
 22 Q. But you have no recollection of what that was.
 23 What was University of California's involvement
 24 in the Orphan Works program, if any?
 25 A. We stated that we were -- we had an intent to

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<p>1 participate, but we never actually did any of the work. 2 We had -- we had just kind of begun the discussions. 3 Q. And when you say intent to participate, what do 4 you mean by that? 5 A. Well, we were in the process of trying to 6 define what that meant actually. 7 Q. Tell me what you mean by that. 8 A. We were trying to understand whether we might 9 participate in some of the process that would be 10 conducted, and we were just trying to understand how it 11 was going to be carried out. 12 Q. By the process, do you mean identifying whether 13 a particular work was an orphan work, is that part of 14 the process? 15 A. Right, the internet research. 16 Q. But you never -- you meaning the University of 17 California never actually became involved in that 18 research? 19 A. No. There -- no, not really. 20 Q. Not really? 21 A. Yeah. 22 Q. You must have done something then. 23 A. Well, we didn't -- I didn't do anything myself. 24 Q. People under you -- in your department? 25 A. No, actually no one at CDL did anything.</p>	<p>1 Q. How about others at the University of 2 California? 3 A. The only one I'm aware of is someone from UCLA. 4 Q. And what did that person do? 5 A. She was talking with the Michigan staff who 6 were working on the process to just, you know, advise -- 7 review and advise on the steps that they were taking. 8 Q. When you say "steps they were taking," are 9 those the steps they were taking to determine whether a 10 particular work -- whether the copyright holder for a 11 particular work could be found? Identified or found? 12 A. To the best of my understanding, that's what 13 she was doing, yeah. 14 Q. Do you know whether the Orphan Works program is 15 still ongoing? 16 A. Depends on what, you know, what that means. 17 Q. Well, are steps being -- still being taken 18 today to identify works as potential Orphan Works as 19 part of the Orphan Works program? 20 A. I'm not certain if that work is still going on. 21 Q. Do you know what work is still going on? 22 A. No. 23 Q. Would you say that the Orphan Works program has 24 been suspended? 25 A. I guess I would say that nothing -- no works</p>
<p>Page 112</p> <p>1 are being identified publicly in any way. 2 Q. Are there works being identified privately? 3 A. I don't know. 4 Q. Okay. 5 A. I don't know. 6 Q. Are there agendas for the Executive Committee 7 meetings created prior to particular meetings? And I 8 don't know what the plural of agenda is, agendas or 9 agenda. 10 A. Created prior to a meeting? 11 Q. In other words, when you start an Executive 12 Committee meeting, is there an agenda that the 13 participants have? 14 A. Usually there is some sort of agenda, yes. 15 Q. That's a printed or emailed agenda? 16 A. Yes. 17 Q. Are there minutes created of the Executive 18 Committee meetings? 19 A. Yes. 20 Q. Who -- who creates those minutes? 21 A. Usually it's John Wilkin. 22 Q. Is there a secretary of the Executive 23 Committee? 24 A. No. 25 Q. He just assumes that role?</p>	<p>Page 113</p> <p>1 A. Yes. 2 Q. Does he distribute the minutes after the 3 meetings? 4 A. Yes. 5 Q. Do you know if they're available online at the 6 HathiTrust? 7 A. I believe they are. 8 Q. Do you get an email copy of those minutes? 9 A. I think we have at -- sometimes, and sometimes 10 they're posted on a, you know, private place that we 11 have. 12 MR. ROSENTHAL: We'll call for the production 13 of all of the minutes of Executive Committee meetings -- 14 all the agenda and minutes of the meetings of the 15 Executive Committee meetings since the University of 16 California was part of the HathiTrust. 17 MR. POTTER: I'll take that under advisement. 18 MR. ROSENTHAL: I knew you'd say that. 19 Who was the University of California librarian 20 who you said was involved in the Orphan Works? 21 THE WITNESS: Sharon Farb. 22 MR. POTTER: Objection to the extent it 23 mischaracterizes "involved." 24 MR. ROSENTHAL: Q. Just turning back for just 25 a minute to something we talked about this morning when</p>

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1 we were talking about the purposes of the CDL and the
 2 Google project and determination of which books would be
 3 digitized by Google, did you ever take any steps to
 4 ascertain whether -- with respect to any books in the
 5 California library that had been damaged, deteriorated,
 6 lost or stolen, that the replacement for such work could
 7 be obtained at a fair price from someone?
 8 MR. POTTER: Objection: Vague.
 9 MR. ROSENTHAL: Q. Okay. Do you understand my
 10 question?
 11 A. Well, not all of it.
 12 Q. In other words, are you aware that one of
 13 the -- one of the permitted types of reproduction under
 14 Section 101 of the act is to permit a library to replace
 15 a published work that has been damaged, deteriorated,
 16 lost or stolen? Are you aware of that?
 17 MR. POTTER: Objection to the extent it calls
 18 for a legal conclusion.
 19 THE WITNESS: I'm generally aware that that's
 20 one of the provisions.
 21 MR. ROSENTHAL: Q. Do you know, was
 22 replacement of damaged, deteriorated, lost or stolen
 23 works one of the purposes of the digital -- Google
 24 digital project at the University of California?
 25 A. It was something that I guess -- yes, it -- you

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1 of books, save money?
 2 A. No.
 3 Q. There was no consideration given to the fact
 4 that it's possible that the Google digital project would
 5 mean that the University of California would have to
 6 purchase fewer books in the future?
 7 A. No.
 8 Q. With respect to the ingestion of books into the
 9 HathiTrust, was consideration given to the possibility
 10 that that process might in some way reduce the need to
 11 purchase books in the future?
 12 A. Not to my knowledge.
 13 Q. So there was no -- so the cost savings of
 14 entering into the Google works project, including the
 15 ingestion into the HathiTrust, was what you testified
 16 earlier about storage costs, but not future acquisition
 17 costs?
 18 A. No, not -- not that I recall.
 19 Q. What about in addition to storage costs, what
 20 about shared costs for print collection management,
 21 would those be reduced because of the involvement with
 22 the HathiTrust project?
 23 MR. POTTER: Objection: Vague.
 24 You can answer if you understand.
 25 THE WITNESS: Yes. That is one of the things

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1 know, it was something that might be able to take place.
 2 I think it wasn't the main thing when we started.
 3 Q. Was it -- was there ever any attempt to
 4 identify particular works that had, in fact, been
 5 damaged, deteriorated, lost or stolen, or was this
 6 simply a -- well, let me stop the question there.
 7 Was there ever any attempt to identify -- as
 8 part of the Google digital project, did the University
 9 of California or the CDL ever attempt to determine
 10 whether certain works had been damaged, deteriorated,
 11 lost or stolen?
 12 A. You mean during the workflow process,
 13 et cetera?
 14 Q. Yes.
 15 A. I don't know.
 16 Q. And, therefore, you would not know in the case
 17 of any work that had been damaged, deteriorated, lost or
 18 stolen, whether an attempt was made to find whether a
 19 replacement could be obtained at a fair price, right?
 20 A. Not during that part of the process.
 21 Q. At some other part of the process?
 22 A. No.
 23 Q. Was -- was one of the considerations in
 24 entering into the Google works project the possibility
 25 that the university could save on the future acquisition

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1 that we talked about in terms of the need -- or the
 2 ability to make decisions about the number of print
 3 copies that we kept.
 4 MR. ROSENTHAL: Q. When you say decisions
 5 about the number of print copies that you kept, explain
 6 to me how that would be affected by the HathiTrust
 7 project.
 8 A. Well, let me think of an example. If we had
 9 multiple copies of a work that was in the public domain
 10 and it was a relatively low use title, we might be able
 11 to get rid of some of those print copies. And that's
 12 the NRLF and SRLF is how we kind of use those already.
 13 We put copies there. Some of the libraries will reduce
 14 the number of print copies they have because they know
 15 they can rely on that copy, so the digital version just
 16 gives another backup, so to speak.
 17 Q. But that response applies only to public domain
 18 works?
 19 A. Yes.
 20 Q. Did University of California or CDL have a
 21 procedure for determining which books were in the public
 22 domain?
 23 A. Did CDL have a procedure?
 24 Q. Start with CDL.
 25 A. No.

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1 Q. How about the University of California
 2 generally?
 3 A. In what context?
 4 Q. In other words, you said that the -- and I'm
 5 paraphrasing, that the -- certain books were stored at
 6 the NRLF or the SRLF, and if a book were in the public
 7 domain, there would be less of a reason for one of the
 8 other libraries to maintain a physical copy of that
 9 book, and you said that that would only apply to public
 10 domain works, correct?
 11 A. Yes.
 12 Q. So I'm questioning how -- who would determine
 13 whether a book was or wasn't a public domain work?
 14 A. Oh, I see.
 15 Well, for the books in HathiTrust, it would be
 16 through the process that's used there.
 17 Q. How about just generally at the University of
 18 California?
 19 A. Well, we wouldn't be doing it. We were not
 20 doing it in any other situation in terms of the
 21 digital --
 22 Q. So, in other words, the savings that you're
 23 describing related to the existence of the HathiTrust
 24 digital database would create that possible reduction of
 25 a need to keep hard copies of public domain books?

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1 MR. ROSENTHAL: Q. And were any of those
 2 discussions outside of the presence of counsel?
 3 A. I don't remember.
 4 Q. You don't remember if there were or weren't?
 5 A. I don't remember if there were or weren't.
 6 Q. Have you ever had any conversations out of the
 7 executive committee meetings with Paul Courant about the
 8 lawsuit against the HathiTrust?
 9 A. Outside of the Executive Committee?
 10 Q. Right.
 11 A. I don't remember.
 12 Q. How about John Wilkin?
 13 A. Possibly.
 14 Q. Do you recall the substance of any
 15 conversation?
 16 A. Not really. I mean -- it might have been
 17 just -- you know, just factual information about what
 18 was happening.
 19 Q. Do you recall what he said about what was
 20 happening?
 21 A. Not really.
 22 Q. Have you discussed the fact that you're being
 23 deposed today with anyone other than with your counsel?
 24 A. Yes.
 25 Q. With whom have you discussed it?

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1 MR. POTTER: Objection: Vague. I think it
 2 mischaracterizes prior testimony.
 3 THE WITNESS: Can you restate?
 4 MR. ROSENTHAL: Q. It's not really important.
 5 I guess my real question is, apart from the
 6 efforts the HathiTrust is making to determine whether
 7 books are or aren't in the public domain, does the
 8 University of California itself do any -- make any
 9 attempt to determine whether a particular work is or
 10 isn't in the public domain?
 11 A. Well, if we're still talking about the
 12 digitized books, then no.
 13 Q. What about other books?
 14 A. Not that I'm aware of.
 15 Q. Have you -- have there been discussions at the
 16 executive committee about the current lawsuit brought by
 17 the HathiTrust?
 18 And, again, I'll anticipate your attorney
 19 warning you not to talk about attorney protected
 20 conversations.
 21 MR. POTTER: You mean brought against the
 22 HathiTrust?
 23 MR. ROSENTHAL: Brought against the HathiTrust,
 24 yes.
 25 THE WITNESS: Yes.

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1 A. Some of the rest of my staff.
 2 Q. Can you tell me whom -- tell me who.
 3 A. Well, I told my senior managers where I was
 4 going to be today is all.
 5 Q. Your senior managers who are part of the CDL?
 6 A. Yes.
 7 Q. And that was the extent of your -- you just
 8 said "I'm being deposed in the HathiTrust case"?
 9 A. Yes.
 10 Q. And you didn't talk about the substance of your
 11 deposition?
 12 A. No.
 13 Q. Have you ever had any other conversations about
 14 the HathiTrust lawsuit, other than the ones we've talked
 15 about, with -- at the Executive Committee or with
 16 Mr. Courant and Mr. Wilkin or with your management
 17 staff?
 18 A. Yes.
 19 Q. With whom -- and your counsel?
 20 A. With our governing board, the university
 21 librarians.
 22 Q. The governing board. Those are separate
 23 things?
 24 A. Yeah, they're separate.
 25 Q. Tell me about your conversations with the

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<p>1 governing board?</p> <p>2 MR. POTTER: I believe his question clarified</p> <p>3 it earlier, but there was no counsel present, I assume.</p> <p>4 THE WITNESS: There were at some of the</p> <p>5 meetings.</p> <p>6 MR. POTTER: Any substance discussed at those</p> <p>7 meetings I'd ask you not to reveal.</p> <p>8 THE WITNESS: As I recall the meeting, we</p> <p>9 simply reported that a lawsuit had been filed and there</p> <p>10 was public information about it.</p> <p>11 MR. ROSENTHAL: Q. How about with the</p> <p>12 university librarians, same substance?</p> <p>13 A. With them, more in depth. Again, we had</p> <p>14 counsel present for those discussions.</p> <p>15 Q. Let me mark as LF2 a PowerPoint.</p> <p>16 (Exhibit No. LF2 marked for</p> <p>17 identification.)</p> <p>18 Ms. Farley, I'll ask you if you recognize this</p> <p>19 document.</p> <p>20 A. Yes.</p> <p>21 Q. What is this?</p> <p>22 A. It's a presentation I gave, PowerPoint.</p> <p>23 Q. Where did you give it?</p> <p>24 A. At a meeting at the Internet Archive.</p> <p>25 Q. It says on the front page, Leader's Forum.</p>	<p>1 A. Yes.</p> <p>2 Q. What is the Leader's Forum?</p> <p>3 A. If I recall, it was an invitation to the lead</p> <p>4 contacts for some of the institutions that had been</p> <p>5 digitizing with Internet Archive.</p> <p>6 Q. Did you prepare this PowerPoint?</p> <p>7 A. Yes.</p> <p>8 Q. Yourself?</p> <p>9 A. Yes.</p> <p>10 Q. If you look at the third page -- and the pages</p> <p>11 are not numbered -- but there's a page that says CDL by</p> <p>12 the Numbers. The very top number, which looks like it's</p> <p>13 7,200,000,000,000 bytes (7.2 TB), I assume that means</p> <p>14 terabytes, in the Digital Preservation Repository.</p> <p>15 What is the Digital Preservation Repository?</p> <p>16 A. That's the infrastructure that we have built to</p> <p>17 provide preservation services for digital content at</p> <p>18 CDL.</p> <p>19 Q. Is that 7.2 terabytes, that actually reflects</p> <p>20 the number of bytes of information that's in the</p> <p>21 University of California Digital Preservation</p> <p>22 Registry -- Repository at that point?</p> <p>23 A. At that point in time.</p> <p>24 Q. Does that include any of the digital copies</p> <p>25 that were created as part of the Google works project?</p>
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<p>1 A. No.</p> <p>2 Q. So those would be other audio/visual/website</p> <p>3 and other files?</p> <p>4 A. Yes, there's different types of formats that we</p> <p>5 get from our contributors.</p> <p>6 Q. And the fourth number is \$25 million saved</p> <p>7 every year by negotiating for licensed resources.</p> <p>8 What do you mean by that? What did you mean by</p> <p>9 that?</p> <p>10 A. One of the things we do on behalf of the</p> <p>11 campuses is to negotiate licenses with content vendors,</p> <p>12 database providers, and so we are able to save by doing</p> <p>13 this as a collective --</p> <p>14 Q. So the CDL is responsible for negotiating for</p> <p>15 certain licenses --</p> <p>16 A. Yes.</p> <p>17 Q. -- of digital materials?</p> <p>18 A. Yes.</p> <p>19 Q. Not of print materials?</p> <p>20 A. Sometimes, in the past especially, there were</p> <p>21 print options, but it's primarily for the digital.</p> <p>22 Q. And it says -- the sixth number says 2,300,000</p> <p>23 books digitized.</p> <p>24 Does that number at that point refer to the</p> <p>25 number of books that were digitized as part of the</p>	<p>1 Google works project, or does that include other works</p> <p>2 as well?</p> <p>3 A. It would have included both Internet Archive</p> <p>4 and Google at that point in time.</p> <p>5 Q. And the second to bottom number on that page</p> <p>6 says 67 servers managed by CDL Infrastructure team.</p> <p>7 What do you mean by that?</p> <p>8 A. Those are the servers where we host our</p> <p>9 applications, and in some cases we have content, but</p> <p>10 it's often just the applications.</p> <p>11 Q. Do you know how many servers have content on</p> <p>12 them?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you have any idea at all?</p> <p>15 A. I have no idea.</p> <p>16 Q. If you look at the next page, you'll see that</p> <p>17 there are certain of the numbers that were on the page</p> <p>18 we were just talking about that are in red.</p> <p>19 Do you know why this -- why that is the case?</p> <p>20 A. I think it was because those were the things I</p> <p>21 was going to focus on in the rest of the talk.</p> <p>22 Q. What is the Online Archive of California, which</p> <p>23 is in the third entry from the bottom?</p> <p>24 A. It's a system that we developed to host what</p> <p>25 are called finding aids, which are essentially</p>

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1 inventories of collections. Usually they're for special
 2 collections and rare new material.
 3 Q. Does that Online Archive of California include
 4 organizations that are not part of the University of
 5 California?
 6 A. Yes, it does.
 7 Q. Now, I'm going to assume that none of the
 8 digital files that were created as part of the Google
 9 works project were included on the Online Archive of
 10 California; is that correct?
 11 A. That's correct.
 12 Q. If you look at a page that -- I'm going to say
 13 it's about the eighth page, there's a title that's 2)
 14 Mass Digitization Strategy.
 15 Do you see that page?
 16 A. Yes. This one?
 17 Q. Yes, exactly.
 18 Does this page accurately reflect the strategy
 19 of the CDL behind the Mass Digitization Project?
 20 A. Yes.
 21 Q. When you say in the first bullet point -- the
 22 second dash and the first bullet point, "Deliver books
 23 digitally wherever users are - laptops, mobile devices,
 24 ebook readers..."
 25 What do you mean by that?

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1 A. I'm not sure I can list them all.
 2 Q. Do your best.
 3 A. Okay. For works in the public domain, if
 4 you're a member of one of the institutions of the
 5 HathiTrust and you're authenticated, you can download a
 6 full PDF. Otherwise you can download a page at a time.
 7 Q. What do you mean by "otherwise"?
 8 A. If you're not authenticated as a member of one
 9 of those institutions, you're just a member of the
 10 general public.
 11 Q. And that only applies to public domains?
 12 A. Right.
 13 Q. And that public domain determination is made by
 14 HathiTrust in the way you described earlier?
 15 A. Yes.
 16 Q. And what else? What other access limitations
 17 are you aware of?
 18 A. Well, for instance, copyrighted books can't be
 19 viewed even by members of the member institutions.
 20 I think some of the services require that you
 21 register, so if you want to create a subset of a
 22 bibliographic information that's sort of your list, you
 23 have to sign in.
 24 Q. Is that a free registration process?
 25 A. Yes.

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1 A. Well, I think we were anticipating -- and this
 2 was when -- this was 2009. We were anticipating that as
 3 the different places where users could read books
 4 developed, then we would be able to develop services
 5 that would make it easier for people to get to them.
 6 Q. Did you ever actually develop such services?
 7 A. Well, CDL didn't directly, except within the
 8 context of HathiTrust.
 9 Q. Has HathiTrust developed any mechanisms for
 10 delivering books digitally wherever users are?
 11 A. Yes.
 12 Q. What has HathiTrust done?
 13 A. Well, they have -- you can use the service
 14 virtually from anywhere. You can use certain aspects of
 15 it. They have a mobile -- I don't remember if it's an
 16 app or just a web-enabled version. They've done some --
 17 Q. How about that ability to use the HathiTrust
 18 resources limited to people who are affiliated with the
 19 HathiTrust or one of the library members of the
 20 HathiTrust?
 21 MR. POTTER: Objection: Vague.
 22 MR. ROSENTHAL: Q. Do you know if there are
 23 any limits on who can access the HathiTrust information?
 24 A. There are limits on some services.
 25 Q. Which services are there limits on?

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1 Q. Is that process limited to HathiTrust?
 2 A. I don't recall if that one is or not.
 3 Q. Do you know whether any distinctions are made
 4 between U.S. and foreign users of the HathiTrust?
 5 A. I'm not certain. There may be.
 6 Q. Are you aware of anything with respect to just
 7 any limitations on foreign users?
 8 A. Well, I know that there's some differences in
 9 what the domain date is, so I think there may have been
 10 some accommodation for that.
 11 Q. Was that ever discussed in an executive meeting
 12 where the lawyers were not present in a legal capacity?
 13 A. I don't remember.
 14 Q. On the next page, there's a page that's called
 15 Mass Digitization Project Characteristics.
 16 Do you see that page?
 17 A. Yes.
 18 Q. Then at the top -- the top bullet point says
 19 "Google."
 20 A. Yes.
 21 Q. And to the subpoints under that heading, are
 22 they all accurate, or were they all accurate at the
 23 time?
 24 A. They were accurate at the time.
 25

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. If you look at the -- a couple pages later, it

9 says "What is the HathiTrust?"

10 MR. POTTER: This is the twelfth page.

11 MR. ROSENTHAL: Q. Okay. And you look at --

12 the fourth bullet point says, "Where are the digitized

13 files stored?"

14 The first dash says "Servers at the University

15 of Michigan and Indiana University."

16 I believe that's what you testified to

17 previously.

18 A. Yes.

19 Q. You're aware that they were stored at the

20 University of Michigan and Indiana University?

21 A. Yes.

22 Q. The second point says, "Additional mirror sites

23 may be developed in the future."

24 A. Yes.

25 Q. What is the basis for that statement?

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1 services linked to..." and then it says UC-eLinks

2 (openURL).

3 What does that mean?

4 A. The whole --

5 Q. Just what does that mean?

6 A. UC-eLinks is just a brand name that we use for

7 the technology that's based on openURL, which is a

8 technical standard that provides linking from

9 bibliographic information to wherever the content is

10 stored.

11 Q. So at the time of this PowerPoint, under the

12 heading HathiTrust, the words -- it says "No

13 (proposing)", does that mean at that point there was no

14 ability to link to the HathiTrust content, but that was

15 under consideration?

16 Is that a fair characterization?

17 A. I'm trying to remember what I meant by that.

18 Q. Yeah, okay.

19 A. I think so, that we were probably investigating

20 whether and how it could be done.

21 Q. If you look at the next page, it's titled

22 Future Plans. In the -- this must be page 19.

23 The first bullet point says, "Develop prototype

24 of a UC-eLinks target for materials held in the

25 HathiTrust - Limited to pre-1923 for pilot."

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1 A. There was some discussion about we wanted to

2 have an additional mirror, and so a replication. And I

3 guess at the time that I did this, that was still under

4 discussion.

5 Q. Was that ever done?

6 A. No.

7 Q. It was not done?

8 A. It was not done.

9 Q. Is it still under consideration?

10 A. Not at present.

11 Q. Looking at a page about five or six pages

12 later -- and maybe Mr. Potter can tell us what number.

13 The schedule is "Linking Landscape."

14 MR. POTTER: 18.

15 MR. ROSENTHAL: Q. 18.

16 Can you tell me what this page means in general

17 terms, just kind of walk me through it?

18 MR. POTTER: Objection: Vague.

19 THE WITNESS: Yeah, can --

20 MR. ROSENTHAL: Q. What does the title

21 "Linking Landscape" mean?

22 A. What I was trying to demonstrate is, depending

23 on where you start, how can you then navigate to the

24 digitized material.

25 Q. So if you look at the top row, it says, "UC

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1 So tell me what you meant by that.

2 A. I think we were probably working on a test to

3 see how well we could link to the pre-1923 books in

4 HathiTrust, and that is a stand-in for generally how the

5 public domain materials are defined.

6 Q. In other words, that some determination was

7 made that pre-1923 works were public domain?

8 A. Again, it was sort of a short term, that

9 whatever had been determined public domain then.

10 Q. I see.

11 A. And since those were the ones that could be

12 viewed, it was -- made more sense to start with those.

13 Q. And HathiTrust would be developing this

14 prototype referred to in this page?

15 A. We would have worked with them to do it.

16 Q. Did that happen?

17 A. I think so.

18 Q. Is there currently a -- how do I say that -- a

19 UC-eLinks to the HathiTrust database? And if I have the

20 terminology wrong, maybe you can correct me.

21 A. That's what I'm trying to --

22 Q. Is it possible to link to the HathiTrust

23 database through UC-eLinks?

24 A. I'm not sure.

25 Q. Let's take a few minutes and then I'll be

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1 finished.
 2 (A break was taken.)
 3 FURTHER EXAMINATION BY MR. ROSENTHAL
 4 MR. ROSENTHAL: Q. Let's mark as LF3 this
 5 document.
 6 (Exhibit No. LF3 marked for
 7 identification.)
 8 I'll ask you, Ms. Farley, to look at what's
 9 been marked as Exhibit LF3 and ask you if you recognize
 10 this document.
 11 A. Yes.
 12 Q. And what is this?
 13 A. This is a Reprints Service.
 14 Q. Is CDL involved in the Reprints Service?
 15 A. Yes.
 16 Q. How is CDL involved?
 17 A. We have negotiated the agreement with HP to
 18 provide this service.
 19 Q. What is -- HP meaning Hewlett Packard?
 20 A. Yes.
 21 Q. What is the service that HP is working with
 22 University of California on?
 23 A. They are taking public domain books that we
 24 make available and they sort of clean up the files and
 25 then they provide a service to -- for users to request a

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1 aggregators.
 2 Q. Are any of the books acquired by CDL digital
 3 works acquired by CDL in the way you just described,
 4 works that are out of print?
 5 A. Possibly. I don't know.
 6 Q. Are you aware whether works that had been out
 7 of print are becoming increasingly more available for
 8 acquisition?
 9 MR. POTTER: Objection: Vague.
 10 THE WITNESS: Yeah, can you restate that?
 11 MR. ROSENTHAL: Q. In other words, do you
 12 believe that books that -- have you found in your work
 13 at the CDL that books that have been out of print are
 14 increasingly being made available in digital form?
 15 A. I don't have any personal knowledge of that.
 16 Q. In the discussions with the HathiTrust about
 17 becoming part of the HathiTrust, was Google involved in
 18 any way in those discussions?
 19 A. Can you define "involved"?
 20 Q. Did you need Google's consent to enter into the
 21 agreement with the HathiTrust?
 22 A. I'm not sure if "consent" is exactly the right
 23 term, but we did -- they were aware of it. There were
 24 some discussions with them.
 25 Q. Do you recall the substance of any of those

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1 print copy.
 2 Q. And how does Hewlett Packard -- does Hewlett
 3 Packard determine whether particular books are public
 4 domain?
 5 A. No.
 6 Q. Who makes that determination?
 7 A. Again, this comes through the workflow that we
 8 have with HathiTrust, and then we sort of decide from
 9 that -- from the public domain determination that comes
 10 through HathiTrust whether we are going to offer any of
 11 those to the service.
 12 Q. Does the University of California make any
 13 effort to confirm the HathiTrust designation as to
 14 whether something is or isn't public domain?
 15 A. I don't know.
 16 Q. Is the CDL involved in buying -- acquiring
 17 digital books for University of California libraries?
 18 A. In buying or acquiring, is that what you said?
 19 Q. Yes.
 20 A. Yes.
 21 Q. What is the involvement?
 22 A. It's similar to what I described earlier, where
 23 we do the negotiations on behalf of the UC library.
 24 Q. With publishers or authors?
 25 A. Not authors, but most of the publishers or

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1 discussions?
 2 MR. POTTER: To the extent they were outside
 3 the presence of counsel.
 4 THE WITNESS: They were always with counsel
 5 present.
 6 MR. ROSENTHAL: Q. Oh, they were with counsel
 7 present?
 8 A. Yes.
 9 MR. ROSENTHAL: I think I have no further
 10 questions.
 11 So your witness.
 12 MR. POTTER: I appreciate that. I, too, have
 13 no questions.
 14 MR. ROSENTHAL: Thank you.
 15 (Time noted: 2:16 p.m.)
 16 _____
 17 Laine Farley
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 19
 20 Subscribed and sworn to before me this
 21 ____ day of _____, 2012.
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C E R T I F I C A T E
STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

I, JUDIE A. NICHOLAS, a Certified
Shorthand Reporter for the State of California,
do hereby certify:

That LAINE FARLEY, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me, and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriages; and that I am in no way interested
in outcome of this matter.

IT WITNESS WHEREOF, I have hereunto
set my hand this 24th day of April, 2012.

Judie A. Nicholas, CSR 12229

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ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: The Authors Guild vs. HathiTrust
DEPOSITION DATE: April 12, 2012
DEPONENT: Laine Farley

PAGE LINE	NOW READS	SHOULD READ	REASON
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
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13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____

Laine Farley

SUBSCRIBED AND SWORN BEFORE ME
THIS ___ DAY OF _____, 2012

(Notary Public) My Commission expires: _____

Confidential Attorneys' Eyes Only

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1 discussions?

2 MR. POTTER: To the extent they were outside
3 the presence of counsel.

4 THE WITNESS: They were always with counsel
5 present.

6 MR. ROSENTHAL: Q. Oh, they were with counsel
7 present?

8 A. Yes.

9 MR. ROSENTHAL: I think I have no further
10 questions.

11 So your witness.

12 MR. POTTER: I appreciate that. I, too, have
13 no questions.

14 MR. ROSENTHAL: Thank you.

(Time noted: 2:16 p.m.)

Laine Farley

Laine Farley

15
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20 Subscribed and sworn to before me this
21 21 day of June, 2012.



Kali J. Snowden

ERRATA SHEET

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Authors Guild v. HathiTrust

Dep. Date: April 12, 2012

Deponent: **LAINE FARLEY**

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:

Page	Line	Now Reads:	Should Read:	Reason
16	16	Digitize however it was digitized	Digitize books	3
17	5	It was	Please strike phrase	1
19	2	Objections	Options	3
19	10	. Probably Facilities	, probably facilities	3
22	5	Cooperative Agreement	Common Interest Agreement	3
28	14	This is	Please strike phrase	1
47	1	Backup	Bibliographic	3
49	2	Obtained the digitization of a book	Obtained the digital version of a book	3
55	12	On the aspect of this	On that aspect of this	3
61	25	Re-shelf	Reshelve	3
100	11	Exact	Exactly	3
114	14	Section 101 of the act	Section 108	3
117	11-12	And that's the NRLF and SRLF is how we kind of use those already	And that's kind of how we use NRLF and SRLF already	3
126	2	New	Please strike word	1
129	9	Domain	Public domain	3
131	1	About	About whether	3
133	8	Short term	Short term solution	3
133	9	Determined	Determined to be	3
135	23	Library	Libraries	3

Laine Farley

 Laine Farley

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

KJS

Kali Snowden



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