

# **EXHIBIT 79**

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*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHITRUST, ET AL.,

Defendants.

Case No. 11 Civ. 6351 (HB)

**RESPONSES TO PLAINTIFFS'  
FIRST REQUESTS FOR  
ADMISSION TO DEFENDANT  
KEVIN REILLY**

Defendant Kevin Reilly (“Defendant”), in his official capacity as President of The University of Wisconsin System (the “University”) states the following objections and responses to Plaintiffs’ First Requests for Admission to Defendant Kevin Reilly pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure (“FRCP”) and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) and based upon information provided to him by employees of the University with personal knowledge of the relevant facts.

**A. GENERAL OBJECTIONS AND LIMITATIONS**

1. Defendant’s discovery and investigation of the facts of this proceeding are continuing. These discovery responses are based on information gathered as of the date of these responses. Defendant reserves the right to amend or supplement his responses when and if additional information is obtained, as required by the FRCP.

2. Defendant responds to the Requests for Admission as he interprets and understands them. If Plaintiffs now, or later, assert any interpretation of any Request that differs from Defendant’s present understanding and interpretation, Defendant reserves the right to supplement his objections and/or responses.

3. Defendant objects to each of Plaintiffs’ definitions and instructions to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

4. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent they impose burdens and requirements on Defendant that are inconsistent with or beyond those set forth in the FRCP or the Local Rules.

5. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that the information sought is protected from disclosure by (a) agreements with other parties, including, but not limited to, confidentiality agreements, (b) court order, or (c) statute, regulation, administrative order or case law.

6. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that the information sought is commercially sensitive proprietary and/or confidential information and trade secrets (“Confidential Information”). Defendant will provide non-privileged, responsive Confidential Information only pursuant to the Protective Order in place in this litigation.

7. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that the information sought was prepared in anticipation of litigation, constitutes attorney work product, discloses mental impressions, conclusions, opinions, or legal theories of Defendant’s attorneys, contains privileged attorney-client communications (including but not limited to those subject to the common interest or joint defense privilege) or is otherwise protected from disclosure under applicable privileges, law, or rules, or because such information is not properly discoverable under the FRCP or the Local Rules. Any disclosure of such protected or privileged information in any response is inadvertent and shall not constitute a waiver of such privilege, protection or immunity.

8. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that the information sought is (a) not in Defendant’s, the University’s, and/or the Library’s possession, custody, or control, (b) in the possession, custody, or control of Plaintiffs, (c) publicly available, or (d) as equally available and/or readily accessible to Plaintiffs as it is to Defendant. These discovery responses are based on a reasonably diligent search for

and review of information in those areas within Defendant's, the University's, and/or the Library's direct knowledge, custody, or control where information of the type requested would be expected to be found, and Defendant disclaims any obligation to solicit information from any other parties in responding to the Requests.

9. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent they are vague, ambiguous, and/or contain terms that are undefined or otherwise unclear.

10. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that the information sought is irrelevant to the subject matter of this action and to the extent that the Requests are not reasonably calculated to lead to the discovery of admissible evidence.

11. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent that they prematurely call for the disclosure of information that Defendant may obtain through discovery.

12. Defendant objects to the Requests for Admission in their entirety and to each Request insofar as they assume disputed facts or legal conclusions. To the extent any Request assumes disputed facts or legal conclusions, Defendant denies such disputed facts or legal conclusions. Any response or objection by Defendant with respect to any such Request is without prejudice to this objection and Defendant's right to dispute facts and legal conclusions assumed by the Requests.

13. Defendant objects to the Requests for Admission in their entirety and to each Request to the extent they fail to contain defined time periods or limits, or seek information outside of the relevant time period. In particular, Defendant objects to all demands in the

Requests that require Defendant to search for, produce, disclose or identify information without any limitation as to time. Unless otherwise indicated in a particular Request or the response thereto, Defendant's responses refer only to the time period between October 6, 2008 and October 6, 2011.

14. No objection or limitation, or lack thereof, made in these responses and objections shall be deemed an admission by Defendant as to the existence or nonexistence of information.

15. Defendant's responses to the Requests for Admission are made without prejudice to the assertion of additional objections and responses by him at a later date or to Defendant's right to supplement, modify, or amend his responses as appropriate, and to rely upon and produce evidence during trial or at any other proceeding that may be held in this action.

16. Defendant reserves the right to object on any ground at any time to a demand for further response, and reserves the right to revise, supplement, correct, or add to these responses. Defendant expressly reserves any and all rights and privileges under the FRCP, the Local Rules, and any other law or rule, and the failure to assert such rights and privileges shall not constitute a waiver thereof, either with respect to these responses or with respect to any future discovery responses or objections.

17. Defendant incorporates by reference these General Objections into each of the Responses and Specific Objections set forth below, as if fully set forth in each of them.

## **B. SPECIFIC OBJECTIONS AND LIMITATIONS**

### **DEFINITIONS**

1. Defendant objects to Plaintiffs' definition of "University" as overly broad and unduly burdensome in that it includes "each of its subsidiaries, divisions and affiliates, principals, officers, directors, members, employees, agents and attorneys," which refers to

thousands of individuals, the vast majority of which have no knowledge of and have had no involvement in the activities that are the subject of Plaintiffs' claims in this action.

2. Defendant objects to Plaintiffs' definition of "Library" on the ground that it is vague and ambiguous.

**RESPONSES TO REQUESTS FOR ADMISSION**

1. For each Work listed on Schedule A hereto, admit that the Library acquired one or more original printed copies of the Work for its collection.

RESPONSE: Defendant objects to Request No. 1 on the ground that it is vague and ambiguous in that "original printed copies" is not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of the phrase is not clear in the context of the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant admits that the Library lawfully acquired for its collection one or more print copies of each of the Works listed on Schedule A to Plaintiffs' First Set of Requests for Admission to Defendant Kevin Reilly ("Schedule A").

2. For each Work listed on Schedule A hereto, admit that one or more original printed copies of the Work are currently in the collection of the Library.

RESPONSE: Defendant objects to Request No. 2 on the ground that it is vague and ambiguous in that "original printed copies" is not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of the phrase is not clear in the context of the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant admits that Library currently has in its collection one ore more lawfully acquired print copies of each of the Works listed on Schedule A.

3. For each Work listed on Schedule A hereto, admit that the Work is protected by copyright under the United States Copyright Act.

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant avers that, at all material times, the University and the Library have treated each of the Works listed on Schedule A as if they are subject to copyright protection under the United States Copyright Act. Defendant further avers that, because knowledge concerning the current copyright status of the Works listed on Schedule A is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 3, and on that basis can neither admit nor deny it.

4. For each Work listed on Schedule A hereto, admit that the Work is published within the meaning of the United States Copyright Act.

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant avers that at all material times, the University and the Library have treated each of the Works listed on Schedule A as if they are published within the meaning of the United States Copyright Act. Defendant further avers that, because knowledge concerning the true publication status of the Works listed on Schedule A is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 4, and on that basis can neither admit nor deny it.

5. For each Work listed on Schedule A hereto, admit that the Library could, after a reasonable effort, obtain an unused replacement of the Work at a fair price.

RESPONSE: Defendant objects to Request No. 5 on the ground that it is vague and ambiguous in that “reasonable effort” and “fair price” are not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of these phrases is not clear in the context of the



Request. Defendant further objects to Request No. 5 on the ground that it seeks an admission based on speculation. Defendant further objects to Request No. 5 on the ground that it is vague and ambiguous in that it requests information that may change on a periodic basis without specifying the time or time period for which the information is sought. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 5.

6. For each Work listed on Schedule A hereto, admit that the Library has not made a reasonable effort to determine whether an unused replacement of the Work can be obtained at a fair price.

RESPONSE: Defendant objects to Request No. 6 on the ground that it is vague and ambiguous in that “reasonable effort” and “fair price” are not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of these phrases is not clear in the context of the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 6.

7. For each Work listed on Schedule A hereto, admit that the copyright holder of the Work did not authorize the Library to reproduce it.

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant avers that because knowledge concerning the current copyright status of the Works listed on Schedule A is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to any authorizations the copyright holder may have made. Defendant avers that neither the University nor the Library has any specific written authorizations on file regarding any of the Works listed on Schedule A but that no such authorization is required for the lawful uses of the Works made by the Library.

8. For each Work listed on Schedule A hereto, admit that the Library's original printed copy or copies of the Work:

- a. are not damaged;
- b. are not deteriorating;
- c. were not lost;
- d. were not stolen.

RESPONSE: Defendant objects to Request No. 8 on the ground that it is vague and ambiguous in that "original printed copy," "damaged," and "deteriorating" are not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of these phrases is not clear in the context of the Request, and in that it requests information that may change on a periodic basis without specifying the time or time period for which the information is sought. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, on the date the Library conducted its assessment, none of the Library's lawfully acquired print copies of the Works listed on Schedule A were classified as lost or stolen, and none of the Works listed on Schedule A were damaged, deteriorating or at substantial risk of deteriorating in the near future.

9. For each Work listed on Schedule A hereto, admit that the format in which the Work is stored at the Library has not become obsolete.

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant admits that hard-copy printed books are not obsolete as that term is defined in 17 U.S.C. § 108(c).

10. Admit that on or about December 14, 2004, the UM Regents and the Library entered into a Cooperative Agreement with Google (the "Cooperative Agreement").

RESPONSE: Subject to the foregoing general objections, and without waiving the same, Defendant denies Request No. 10.

11. Admit that the document annexed hereto as Schedule B is a true and correct copy of the Cooperative Agreement.

RESPONSE: Defendant objects to Request No. 11 insofar as the document attached as Schedule B speaks for itself. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 11.

12. For each Work listed on Schedule A hereto, admit that the Library caused an original printed copy of the Work to be delivered to a facility occupied by Google personnel and scanning equipment.

RESPONSE: Defendant objects to Request No. 12 on the ground that it is vague and ambiguous in that “facility occupied by Google personnel and scanning equipment” and “original printed copy” are not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of these phrases are not clear in the context of the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant admits that the Library’s lawfully acquired print copy of each of the Works listed on Schedule A was prepared by the Library’s staff for shipment to one of Google, Inc.’s (“Google”) scanning centers. Defendant further avers that Google arranged for transportation of these print copies from, and back to, the Library.

13. For each Work listed on Schedule A hereto, admit that Google used the Library’s original printed copy of the Work to create one or more digital copies of the Work.

RESPONSE: Defendant objects to Request No. 13 on the ground that it is vague and ambiguous in that “original printed copy” is not defined in the Requests, 17 U.S.C. § 101, or

Local Rule 26.3, and the meaning of the phrase is not clear in the context of the Request. Defendant further objects to Request No. 13 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, upon information and belief, Google prepared a digital copy of each Work listed on Schedule A based on print copies obtained from the Library, but further information concerning such digital copies lies with third parties and is not in Defendant's possession, custody, or control.

14. For each Work listed on Schedule A hereto, admit that the digital copies of the Work created by Google included each of the following:

- a. image files representing photographic reproductions of the pages of the Work ("Image Files");
- b. ASCII text files representing the entire text of the Work in machine-readable format ("Text Files");
- c. coordinate OCR files containing information about the location of each word on each page of the Work;
- d. METS files containing bibliographic and other information about the Work.

RESPONSE: Defendant objects to Request No. 14 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 14 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, because knowledge concerning any digital copies made of the Works listed

on Schedule A—including without limitation knowledge concerning the file types within such copies and the manner of information included within such file types—is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 14, and on that basis can neither admit nor deny it.

15. For each Work listed on Schedule A hereto, admit that the Image Files constitute:
  - a. a reproduction of the Work within the meaning of 17 U.S.C. § 106(1);
  - b. a derivative work based upon the Work within the meaning of 17 U.S.C. § 106(2).

RESPONSE: Defendant objects to Request No. 15 on the ground that it presumes the existence of certain digital copies, and the existence of certain file types within such copies, that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 15 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, because knowledge concerning any digital copies made of the Works listed on Schedule A—including without limitation knowledge concerning the file types within such copies and the manner of information included within such file types—is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 15, and on that basis can neither admit nor deny it.

16. For each Work listed on Schedule A hereto, admit that the Text Files constitute:
  - a. a reproduction of the Work within the meaning of 17 U.S.C. § 106(1);

- b. a derivative work based upon the Work within the meaning of 17 U.S.C. § 106(2).

RESPONSE: Defendant objects to Request No. 16 on the ground that it presumes the existence of certain digital copies, and the existence of certain file types within such copies, that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 16 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, because knowledge concerning any digital copies made of the Works listed on Schedule A—including without limitation knowledge concerning the file types within such copies and the manner of information included within such file types—is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 16, and on that basis can neither admit nor deny it.

17. For each Work listed on Schedule A hereto, admit that after creating digital copies of the Work, Google caused the Library's original print copy of the Work to be returned to the Library.

RESPONSE: Defendant objects to Request No. 17 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 17 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University, or the Library. Subject to the foregoing general and specific objections, and without waiving the same,

Defendant avers that Google returned to the Library the Library's lawfully acquired print copies of the each of the Works listed on Schedule A.

18. For each Work listed on Schedule A hereto, admit that after creating digital copies of the Work, Google retained in its possession one or more digital copies of the Work.

RESPONSE: Defendant objects to Request No. 18 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 18 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, because knowledge concerning any digital copies made of the Works listed on Schedule A is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 18, and on that basis can neither admit nor deny it.

19. For each Work listed on Schedule A hereto, admit that Google provided one or more digital copies of the Work to the Library.

RESPONSE: Defendant objects to Request No. 19 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 19.

20. For each Work listed on Schedule A hereto, admit that Google provided one or more digital copies of the Work to one or more parties other than the Library.

RESPONSE: Defendant objects to Request No. 20 on the ground that it presumes the existence of certain digital copies that may not exist, or that may exist in the possession, custody, or control of third parties and without Defendant's knowledge. Defendant further objects to Request No. 19 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that the Library requested that Google provide to the University of Michigan library digital copies of each of the Works listed on Schedule A based on print copies obtained from the Library and, on information and belief, these digital works are now a part of the HathiTrust Digital Library, but because knowledge concerning any digital copies made of the Works listed on Schedule A is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 20, and on that basis can neither admit nor deny it.

21. For each Work listed on Schedule A hereto, admit that after receiving one or more digital copies of the Work from Google, the Library created additional digital copies of the Work.

RESPONSE: Defendant objects to Request No. 21 on the ground that it presumes the existence and transfer of certain digital copies that may not exist and that were not transferred in the manner described in the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 21.

22. For each Work listed on Schedule A hereto, admit that after receiving one or more digital copies of the Work from Google, the Library provided one or more digital copies of the Work to HathiTrust.



RESPONSE: Defendant objects to Request No. 22 on the ground that it presumes the existence and transfer of certain digital copies that may not exist and that were not transferred in the manner described in the Request. Defendant further objects to Request No. 22 on the ground that HathiTrust is not a separate entity capable of being “provided” digital copies. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 22.

23. For each Work listed on Schedule A hereto, admit that after receiving one or more digital copies of the Work from Google, the Library provided one or more digital copies of the Work to one or more parties other than HathiTrust.

RESPONSE: Defendant objects to Request No. 23 on the ground that it presumes the existence and transfer of certain digital copies that may not exist and that were not transferred in the manner described in the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 23.

24. For each Work listed on Schedule A hereto, admit that one or more digital copies of the Work are currently in the Library’s collection.

RESPONSE: Defendant objects to Request No. 24 on the ground that it presumes the existence of certain digital copies that may not exist. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 24.

25. Admit that the University is one of the founders of HathiTrust.

RESPONSE: Defendant objects to Request No. 25 on the ground that it is vague and ambiguous in that “founders” is not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of this term is not clear in the context of the Request. Subject to the

foregoing general and specific objections, and without waiving the same, Defendant admits that the University is a participant in the HathiTrust service but otherwise denies Request No. 25.

26. Admit that the University is the third largest contributor to the HathiTrust Digital Library.

RESPONSE: Defendant objects to Request No. 26 on the ground that it is vague and ambiguous in that “contributor” is not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of this term is not clear in the context of the Request. Defendant further objects to Request No. 26 on the ground that it is vague and ambiguous in that it requests information that may change on a periodic basis without specifying the time or time period for which the information is sought. Defendant further objects to Request No. 26 to the extent that it seeks information in the possession, custody, or control of third parties and not in the possession, custody, or control of Defendant, the University or the Library. Subject to the foregoing general and specific objections, and without waiving the same, Defendant avers that, upon information and belief and as of December 9, 2011, the University had provided Google with 511,432 printed volumes that, upon information and belief, were digitized by Google and are now in the HathiTrust Digital Library. Defendant further avers that, because knowledge concerning the sources of specific works within the HathiTrust Digital Library is in the possession, custody, or control of third parties, Defendant lacks first-hand knowledge as to the substance of Request No. 26, and on that basis can neither admit nor deny it.

27. Admit that the Library has provided to HathiTrust over 3 million digital copies of volumes of printed works.

RESPONSE: Defendant objects to Request No. 27 on the ground that “provided to” and “volumes of printed works” are not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3,

and the meaning of these phrases is not clear in the context of the Request. Defendant further objects to Request No. 27 on the ground that HathiTrust is not a separate entity capable of being “provided” digital copies. Subject to the foregoing general and specific objections, and without waiving the same, Defendant denies Request No. 27.

28. Admit that the Library is a participant in the so-called “Orphan Works Project.”

RESPONSE: Defendant objects to Request No. 28 on the ground that “participant” is not defined in the Requests, 17 U.S.C. § 101, or Local Rule 26.3, and the meaning of this term is not clear in the context of the Request. Subject to the foregoing general and specific objections, and without waiving the same, Defendant responds that, aside from the Library generally indicating its support for the initiative on April 25, 2011, it has not participated in, nor taken any actions whatsoever in connection with, the University of Michigan library’s initiative to, *inter alia*, identify “orphan works”—in-copyright works for which the copyright holder cannot be found—and eventually to make lawful uses of these works, which the University of Michigan library calls the “Orphan Works Project.” Defendant otherwise denies Request No. 28.

DATED: February 8, 2012

Respectfully Submitted,



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