

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

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X	
THE AUTHORS GUILD, INC., et al,	: :
	: :
Plaintiffs,	: :
	: :
- against -	: :
	: :
HATHITRUST, et al.	: :
	: :
Defendants.	: :
-----X	

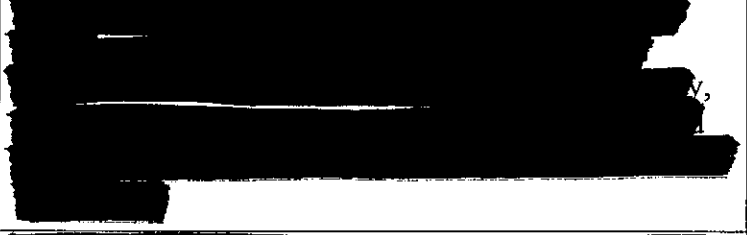


Index No. 11 Civ. 6351 (HB)

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, Plaintiffs The Authors Guild, Inc. (“Authors Guild”), The Authors League Fund, Inc. (“ALF”), The Australian Society of Authors Limited (“ASA”), Union Des Écrivaines et des Écrivains Québécois (“UNEQ”), Authors’ Licensing and Collecting Society (“ALCS”), Sveriges Författarförbund, Norsk Faglitterær Forfatter- Og Oversetterforening (“SFF”), The Writers’ Union of Canada (“TWUC”), Trond Andreassen (“Andreassen”), Pat Cummings (“Cummings”), Erik Grundström (“Grundström”), Angelo Loukakis (“Loukakis”), Roxana Robinson (“Robinson”), Helge Rønning (“Rønning”), André Roy (“Roy”), Jack R. Salamanca (“Salamanca”), James Shapiro (“Shapiro”), Danièle Simpson (“Simpson”), T.J. Stiles (“Stiles”) and Fay Weldon (“Weldon”) (collectively, “Plaintiffs”), by

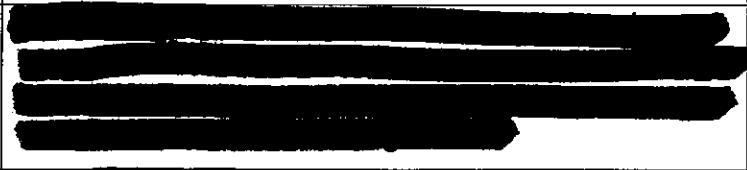
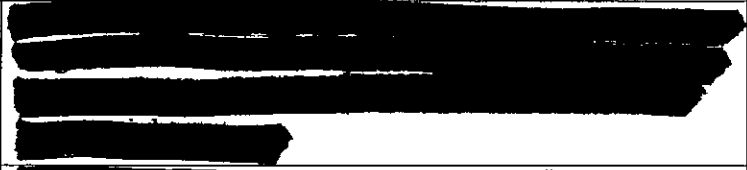


and through their attorneys, Frankfurt Kurnit Klein & Selz, P.C., hereby submit this statement of material facts as to which Plaintiffs contend there is no genuine issue to be tried, as well as citations to the admissible evidence in support of each fact. Except where specifically defined in the chart below, capitalized terms shall have the meanings ascribed to them in the “Definitions” set forth in Appendix A to this Statement.






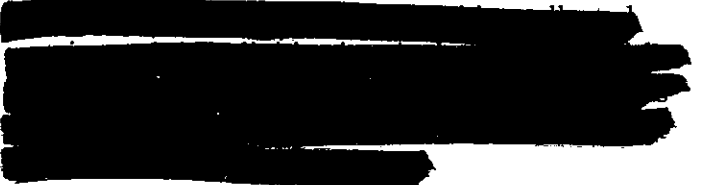

No.	PLAINTIFFS’ UNDISPUTED FACT	SUPPORTING EVIDENCE
	GOOGLE LIBRARY PROJECT ORIGINS	
1.	<p>Marybeth Peters, formerly the Register of Copyrights of the United States, submitted a statement to the Committee on the Judiciary of the United States House of Representatives at 111th Congress, 1st Session on September 10, 2009 which included the following:</p> <p>“The Copyright Office has been following the Google Library Project since 2003 with great interest. We first learned about it when Google approached the Library of Congress, seeking to scan all of the Library’s books. At that time, we advised the Library on the copyright issues relevant to mass scanning, and the Library offered Google the more limited ability to scan books that are in the public domain. An agreement did not come to fruition because Google could not accept the terms.”</p>	<p>Statement of Marybeth Peters, The Register of Copyrights, before the Committee on the Judiciary, United States House of Representatives, 111th Congress 1st Session, September 10, 2009, <i>Competition and Commerce in Digital Books: The Proposed Google Book Settlement</i>, http://www.copyright.gov/docs/regstat091009.html.</p>
2.	<p>[REDACTED]</p>	<p>Wilkin Tr. 35:20-36:3, 43:18-25.</p>
3.	<p>[REDACTED]</p>	<p>Wilkin Tr. 54:8-21; <i>see also</i> Courant Tr. 38:14-39:5.</p>
4.	<p>[REDACTED]</p>	<p>Wilkin Tr. 137:12-138:18.</p>


No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
5.	Wilkin "heard that Harvard publicly asserted that they didn't allow Google to digitize in-copyright works."	Wilkin Tr. 119:12-14.
6.	On December 14, 2004, Google issued a press release announcing "that it was working with the libraries of Harvard, Stanford, the University of Michigan and the University of Oxford as well as The New York Public Library to digitally scan from their collections so that users worldwide can search them in Google."	Wilkin Tr. 33:24-34:16, JW2.
7.	James Hilton, who at one time held the position of UM's Associate Provost for Academic Information and Instructional Technology Affairs, told Wilkin that he had been warned by Dale Flecker, who at one time held the position of Associate Director for Planning and Systems at the Harvard University Library, that UM had not "done much deep thinking on copyright issues" in connection with UM's decision to allow Google to digitize in-copyright works.	Wilkin Tr. 122:7-124:15.
8.	Microsoft funded a mass digitization project at several university libraries that intended to scan only public domain books.	Christenson Tr. 24:9-17; Hirtle Tr. 50:24-52:16; Farley Tr. 11:16-14:14.
GOOGLE BOOK SEARCH PROJECT		
9.		Clancy Tr. 17:5-11.
10.		Clancy Tr. 20:24-21:5.
11.		Clancy Tr. 17:12-18:6.

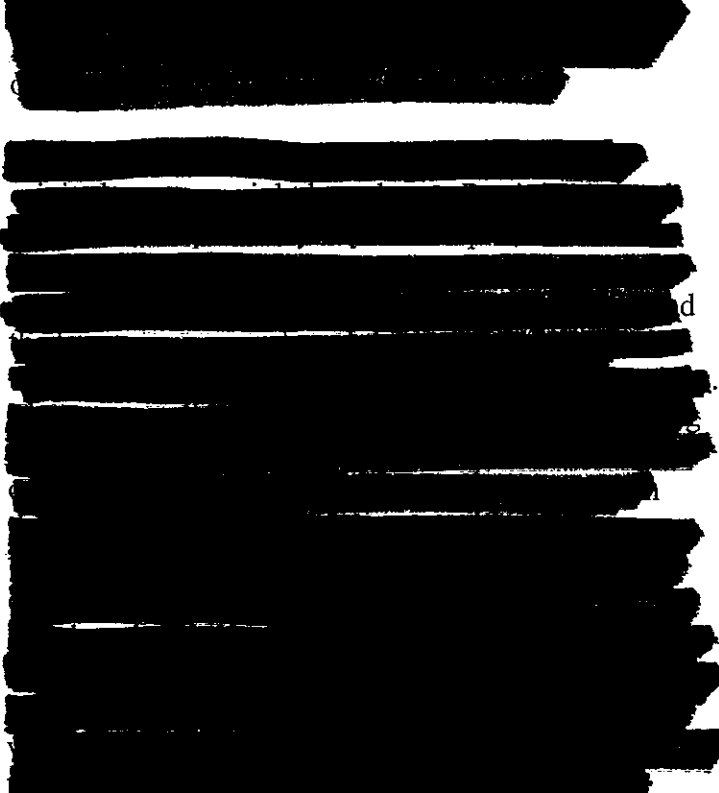



No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
12.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] in</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Clancy Tr. 17:12-18:6.
GOOGLE COOPERATIVE AGREEMENTS		
13.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Answer ¶ 34; UM ROG No. 3(k); Rosenthal Decl., Ex. 80 (UM-Google Cooperative Agreement).
14.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Answer ¶ 35; Christenson Tr. 39:19-40:4; Rosenthal Decl., Ex. 82 (UC-Google Cooperative Agreement).
15.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Answer ¶ 36; Rosenthal Decl., Ex. 85 (UW-Google Cooperative Agreement).
16.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	Answer ¶ 37; Rosenthal Decl., Ex. 83 (CIC-Google Cooperative Agreement).
17.	<p>[REDACTED]</p> <p>[REDACTED]</p>	Answer ¶ 38; Rosenthal Decl., Ex. 84 (Cornell-Google Cooperative Agreement) at ¶ 3; Hirtle Tr. 71:2-6.









No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
	SCOPE OF PROJECT	
18.	In 2004, Google announced that it planned to create an online database of all the world's books, beginning with agreements with major universities in the United States.	Rosenthal Decl., Ex. 96 (Clancy Exhibit No. 3).
19.	[REDACTED]	Clancy Tr. 54:10-20.
20.	[REDACTED]	Clancy Tr. 54:21-55:1.
21.	[REDACTED]	Wilkin Tr. 100:8-13.
22.	As of December 20, 2011, UM had incorporated into the HDL 4,490,155 digitized volumes.	UM RFA No. 32.
23.	With the exception of digitizing books to make them available to people with print disabilities, the University Librarian of UM was not aware of any instance prior to entering into the UM-Google Cooperative Agreement in which UM digitized works that were still protected by copyright.	Courant Tr. 31:12-25.
24.	As of December 9, 2011, UC had provided Google with 3,105,945 printed volumes that were digitized by Google and are now in the HDL.	UC RFA No. 26; Farley Tr. 63:14-18.
25.	[REDACTED]	Christenson Tr. 103:10-11.
26.	UC was prepared to provide up to five million books for digitization, including works protected by copyright.	Farley Tr. 90:13-91:6.
27.	As of December 9, 2011, UW 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.	UW RFA No. 26.
28.	[REDACTED]	Hirtle Tr. 123:25-124:13; 178:20-179:10.

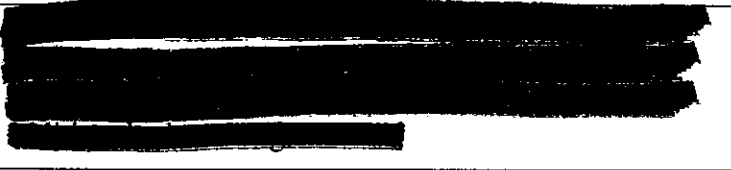
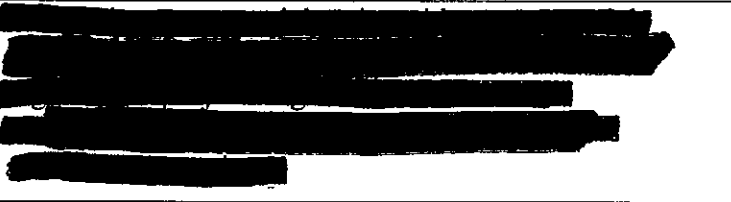

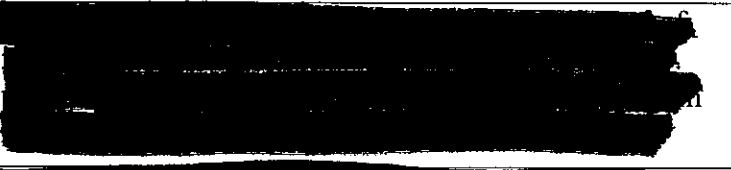
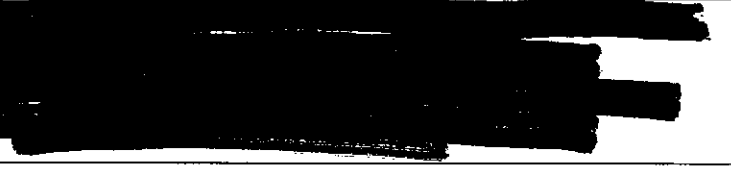
No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
	OPERATIONS	
	<i>Selection/Collection</i>	
29.	Pursuant to the UM-Google Cooperative Agreement, UC-Google Cooperative Agreement, UW-Google Cooperative Agreement, CIC-Google Cooperative Agreement and Cornell-Google Cooperative Agreement (collectively, the "Google Cooperative Agreements"), each Defendant cooperates with Google to identify works from its individual collection to be digitized.	Answer ¶ 50.
30.	The books selected for digitization pursuant to the Google Cooperative Agreements are not limited to works in the public domain, unpublished works or deteriorating published works that cannot be replaced, and include in-print books that are commercially available and books that are protected by copyright.	Answer ¶ 50.
31.	It was UM's and MLibrary's intent to digitize essentially all of the collections of the library except for works that were fragile, not of the size that would fit the digitization process or unable or difficult to be copied for one reason or another.	Courant Tr. 64:15-25.
32.		Farley Tr. 41:2-19.
33.		Wilkin Tr. 148:9-149:7; Christenson Tr. 68:6-11; Hirtle Tr. 153:12-18; Farley Tr. 44:20-45:2, 49:5-18; 52:21-53:17.
34.		Hirtle Tr. 153:12-18.
35.		Clancy Tr. 47:16-49:8; Christenson 68:18-70:15; Hirtle Tr. 152:16-153:9.



No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
36.		Clancy Tr. 49:9-50:21.
37.		Christenson Tr. 76:3-77:12.
38.		Hirtle Tr. 135:2-16.
39.	Witnesses from UC and Cornell were not aware of any person at any time analyzing any of the four fair use factors set forth in 17 U.S.C. § 107 with respect to any particular book that was digitized from their library collections.	Christenson 145:20-149:14; Hirtle Tr. 227:13-229:14.
40.		UM/UC ROG No. 2; Christenson Tr. 65:8-65:24.
41.		Clancy Tr. 42:19 – 43:5; Christenson Tr. 67:8-14.
42.		UM/UC/UW ROG No. 2; Wilkin Tr. 143:6-145:18; Farley Tr. 45:10-47:17.
43.		Hirtle Tr. 128:12-129:3.
	<i>Shipment/Delivery</i>	

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
44.	Library staff at each of the University prepared print copies of works from the University's library collection, including the Infringed Books, for shipment to one of Google's scanning centers.	UM/UC/UW RFA No. 12.
45.		Christenson Tr. 77:19-78:25.
46.	Google arranged for transportation of print copies of works in the Universities' collection, including the Infringed Books, from, and back, to the library that prepared the print copies for shipment.	UM/UC/UW RFA No. 12.
47.	Pursuant to the Google Cooperative Agreements, the works selected for digitization are delivered to a facility that is located either on or off the Defendant's campus and that is occupied by Google personnel and scanning equipment.	Answer ¶ 50.
	<i>Scanning</i>	
48.	Google prepared a digital copy of each Infringed Book based on a print copy of the work obtained from one of the Universities (each such copy, a "Master Digital Copy").	UM/UC/UW RFA Response No. 13.
49.	Each Master Digital Copy created by Google includes an image component representing photographic reproductions of the pages of the Work ("Image File") and a Unicode text component representing text in machine-readable format ("Text File").	UM RFA Response No. 14; Answer ¶ 52; Clancy Tr. 64:13-16; Christenson Tr. 91:12-23; Hirtle Tr. 109:10-15.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
50.		Courant Tr. 68:14-69:23.
51.		Clancy Tr. 64:17-65:9.
	<i>Digitization Costs</i>	
52.		Clancy Tr. 57:20-58:5.
53.	Some libraries have estimated their costs of performing the act of digitization at approximately \$100 per volume.	Answer ¶ 53.
54.	UM estimates it costs somewhere between \$35 and several hundred dollars per volume and that an estimate of \$60 per book sounds "a bit low."	Wilkin Tr. 99:4-8; 102:11.
55.		Wilkin Tr. 156:3-10; Rosenthal Decl., Ex. 92.













No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
56.		Wilkin Tr. 156:16-157:3.
57.		Hirtle Tr. 146:7-136:22; 140:16-25.
58.		Farley Tr. 36:21-37:19, 64:3-18.
59.		Hirtle Tr. 149:21-151:9.
60.		Farley Tr. 63:19-64:1.
61.	For 2011 the general fund budget for UM's libraries was between \$50 and \$55 million.	Courant Tr. 25:3-25.
	<i>University Copy</i>	
62.	Pursuant to the Google Cooperative Agreements, after digitizing a book from the collection of a Defendant, Google has provided digital copies of books from a Defendant's library collections either to that Defendant or, at the Defendant's request, to MLibrary.	Answer ¶¶ 2, 52.
63.	Google provided one or more digital copies of each of the Infringed Books to UM.	UM RFA No. 19.
64.		UC/UW RFA No. 20; Farley Tr. 70:6-18.
	GOOGLE COMMERCIAL PURPOSES	
65.		Courant Tr. 52:3-25.
66.		Wilkin Tr. 131:2-8.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
67.		Wilkin Tr. 131:24-132:22.
68.		Christenson Tr. 98:3-99:12.
69.	If a user conducts a search on the website books.google.com for the phrase "secure cheap advertising," which appears in the text of page 287 in the book <i>Good Troupers All</i> by Gladys Malvern, the copyright in which is owned by Plaintiff ALF, the search results page includes a link to the work (without displaying the content), as well as various advertisements from which Google will earn revenue if the user clicks on one of the advertisements.	Clancy Tr. 87:17 – 89:23; Rosenthal Decl. ¶ 88, Ex. 86 (6/4/12 Printout of Google Books Search Results).
70.		Clancy Tr. 108:11-22.
71.		Clancy Tr. 117:4-20.
72.		Clancy Tr. 121:19-122:10.
	HATHITRUST	
73.	<i>HathiTrust Overview</i>	
74.	On October 13, 2008, the thirteen universities comprising the CIC, led by UM; UC's libraries, led by the CDL; and the University of Virginia announced the launch of the HathiTrust Service and the HathiTrust Digital Library ("HDL"), the shared digital repository of digital collections of institutions participating in the HathiTrust Service.	Answer ¶ 62.

NO.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
75.	Defendants store digital copies of the books that were provided to them by Google in the HDL.	Answer ¶ 2.
76.	As of October 5, 2011, the HDL contained 9,709,348 volumes, amounting to 435 terabytes of data.	Answer ¶ 39.
77.	As of June 25, 2012, the HDL included 10,405,889 total volumes, 5,519,596 book titles, 272,002 serial titles, 3,642,061,150 pages, 466 terabytes of data, the equivalent of 123 miles and 8,455 tons of printed materials. Of the 10,405,889 volumes, 3,097,761 volumes (~ 30%) are considered as being in the public domain, meaning that 7,308,128 (~ 70%) of the total are protected by copyright.	Rosenthal Decl., Ex. 105.
78.	HathiTrust receives the "overwhelming" majority of its revenues from participating academic libraries that "contribute" to HathiTrust.	Courant Tr. 119:5-20.
	<i>HathiTrust Revenues</i>	
79.		Wilkin Tr. 204:10-19; Rosenthal Decl., Ex. 93.
80.	"[T]here are years in which HathiTrust has brought in more than it spent" to cover "the expectation of future equipment upgrades" and "to be able to develop new projects and such."	Courant Tr. 127:20-129:4.
81.		Wilkin Tr. 205:8-206:21; Rosenthal Decl., Ex. 93.
	<i>HathiTrust Architecture</i>	
82.	The architecture for storing the HDL and operating the HathiTrust Service employs two synchronized instances of server farms (each including at least two web servers, a database server and a storage cluster), with the primary site located at UM's Ann Arbor, Michigan campus where incorporation into the HDL occurs, and a mirror site located at IU's Indianapolis campus.	Answer ¶ 66.

NO.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
83.	The incorporation of digital works and their associated metadata into the HDL is performed at MLibrary.	Answer ¶ 64.
84.	The digital works and associated metadata incorporated into the HDL are replicated to an active mirror site located on IU's Indianapolis campus.	Answer ¶ 64.
85.	The HathiTrust Service includes routine tape backups of all data in the HDL, which are stored at a facility on UM's campus and are replicated to create a second backup stored at a separate location on UM's campus.	Answer ¶¶ 64, 66.
86.	Four "HathiTrust Digital Copies" of each of the Infringed Books are maintained in the HDL: (1) the "Initial HathiTrust Digital Copy" received from Google, (2) the "Mirror Site HathiTrust Digital Copy," (3) the "First Backup Tape Digital Copy," and (4) the "Second Backup Tape HathiTrust Digital Copy."	UM/HathiTrust/UC/UW ROG No. 3.
87.	Each Initial HathiTrust Digital Copy received from Google includes an Image File and Text File.	UM RFA Response No. 14.
88.	The Initial HathiTrust Digital Copy is stored on a server (a) connected to the HathiTrust private computer network and the UM campus computer network and (b) physically located at Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan.	HT/UM ROG Nos. 3(h) & (i).
89.	The Mirror Site HathiTrust Digital Copy is stored on a server (a) connected to the HathiTrust private computer network and the IU – Purdue University Indianapolis campus computer network and (b) physically located at Informatics & Communications Technology Complex, Room IT 024, 535 West Michigan Street, Indianapolis, Indiana.	HT/UM ROG Nos. 3(h) & (i).
90.	The Initial HathiTrust Digital Copy and Mirror Site HathiTrust Digital Copy are stored on media connected to World Wide Web servers.	HT/UM ROG No. 3(g).
91.	The First Backup HathiTrust Digital Copy is stored on a server (a) connected to the UM campus computer network and (b) physically located at Michigan Academic Computing Center, Room 100, 1000 Oakbrook Drive, Ann Arbor, Michigan.	HT/UM ROG Nos. 3(h) & (i).

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
92.	The Second Backup HathiTrust Digital Copy is stored on a server (a) connected to the UM campus computer network and (b) physically located at Arbor Lakes Data Facility, Room 9100, Arbor Lakes Building 1, 4251 Plymouth Rd., Ann Arbor, Michigan.	HT/UM ROG Nos. 3(h) & (i).
	<i>HathiTrust Uses</i>	
93.	The HathiTrust Service includes a search tool that permits users to conduct full-text searches of the works in the HDL to determine the number of times a searched term appears, and the page numbers on which the searched term appears, in books in the HDL (including public domain and in-copyright works).	Answer ¶ 68.
94.	It is theoretically possible to “reverse engineer” a search index to display snippets, meaning to display the words in a book that precede and follow the queried text.	Wilkin Tr. 234:3-236:13.
95.	The HathiTrust Service permits certain users to view, search, print, and download full copies of certain volumes in the HDL, with the level of access determined in part by the identity of the user and the copyright status of the work.	Answer ¶ 69.
96.	The “HathiTrust Rights Database” includes categorizations of copyright status for each work in the HDL, as determined through processes conducted as part of the HathiTrust Service or through other resources.	Answer ¶ 70.
97.	A work stored in the HDL may be assigned the attribute “OPB” (an acronym standing for Out of Print and Brittle) – in the HathiTrust Rights Database, which indicates that the work has been determined to be out of print and unusable or no longer in the library’s collection because it is missing.	Wilkin Tr. 85:6-88:23.
98.	The “OPB” attribute is typically assigned after digitization.	Wilkin Tr. 88:7-20.
99.	The “OPB” attribute are made available to UM authenticated users and users of the UM library to view, print and download.	Wilkin Tr. 222:2-227:17; JW7 at 7, No. 2.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
	<i>HathiTrust User Access and Security</i>	
100.	Ninety-three (93) individuals located in Michigan, New York, Minnesota, Wisconsin and California have "privileged access" to materials stored in the HDL.	HT ROG No. 3(l); Wilkin Tr. 190:21-23, 192:11-19.
101.	Authenticated users with "privileged access" to the HDL can view and download any work that is stored in the HDL one page at a time.	Wilkin Tr. 192:21-194:9.
102.	Approximately five (5) users and thirty-two students (32) or faculty with print disabilities may obtain "privileged access" to the HDL without authenticating onto the system from a particular workstation.	HT ROG No. 3(l); Wilkin Tr. 193:20-194:6.
103.	Fourteen (14) different individuals located in Michigan and Indiana have physical access to one or more of the servers or backup tapes comprising storing the digital content in the HDL.	HT ROG No. 3(l).
104.		Clancy Tr. 94:1-99:20, 104:2-18.
105.		Christenson Tr. 120:14-24.
106.		Wilkin Tr. 198:13-200:19; Rosenthal Decl., Exs. 87   88    , 89    

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
107.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Rosenthal Decl., Ex. 88</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
108.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Wilkin Tr. 174:23-178:17.</p>
109.	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Wilkin Tr. 174:23-178:17.</p>
BOOK EXAMINATION		
110.	<p>UM evaluated the physical condition of the Infringed Books that came from MLibrary and conducted searches of the databases it uses to identify the availability and price of a new book in response to Plaintiffs' discovery requests.</p>	<p>Wilkin Tr. 74:16-75:5; 78:24-79:5.</p>
111.	<p>When, in response to Plaintiffs' discovery requests, UM and UC performed a search to determine whether unused replacement copies of the Infringed Books from their libraries could be obtained at a "fair price," they reported that new copies of identical versions of many Infringed Books were advertised for sale for under \$20 a copy.</p>	<p>UM/UC RFA No. 5 (admitting that new copies of identical versions of many Infringed Books could be purchased for under \$20).</p>
112.	<p>When, in response to Plaintiffs' discovery requests, UM, UC and UW evaluated the physical condition of the Infringed Books, only six were identified as "damaged" and only twenty-six were identified as "deteriorating or at substantial risk of deteriorating in the near future."</p>	<p>UM/UC/UW RFA No. 8.</p>

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
113.	Works published between 1850 and 1990 were typically printed with acid content in the paper and that he considers any such works to be "deteriorating with the natural process of decay."	Wilkin Tr. 66:8-67:25; <i>see also</i> Courant Tr. 43:11-44:10.
	ORPHAN WORKS PROJECT	
114.	The Orphan Works Project ("OWP") is an initiative to, <i>inter alia</i> , identify amongst the in-copyright works in the HDL so-called "orphan works" – in-copyright works for which the copyright holder cannot be found. "[U]nder the OWP pilot process, OWP staff undertook a multistep due diligence process to check whether a work is commercially available for sale and, if it is not, to attempt to locate and contact the copyright holder. If the OWP staff were unsuccessful in identifying the copyright holder, the bibliographic information for the work would have been listed on the HathiTrust Service for ninety days." Furthermore, "under the pilot process, if no copyright holder emerged during the ninety days, and if UM owned a physical copy of the work in its collection, UM, through the HathiTrust Service, planned to make the work available on a limited basis to UM students, professors, and other authenticated users and visitors to the libraries at UM's campuses, to view the work in full, print the work one page at a time, and download the work one page at a time in single-page PDF files."	Answer ¶¶ 3, 73, 74.
115.	UM decided to engage in the OWP in the months following, and in light of, Judge Chin's rejection of the Amended Settlement Agreement ("ASA") in the Google Books case because the ASA had provided "a mechanism whereby orphan works could be used without negative consequences . . . [a]nd when the settlement didn't go through, that avenue for making these works useable was blocked off and we asked ourselves the question, is there some way we can get some benefit out of these works for digital uses."	Courant Tr. 141:22-144:20.
116.	Books determined to be orphan works under the OWP will be made available to "tens of thousands" of people, including currently registered UM students, faculty, staff and people who walk into the MLibrary facilities.	Courant Tr. 146:7-20.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
117.	On May 16, 2011, MLibrary announced the launch of the OWP.	FAC ¶ 73; Answer ¶ 73.
118.	On June 23, 2011, UW's intention to participate in the OWP became public.	Answer ¶ 36.
119.	On August 24, 2011, UC announced its intention to join the OWP.	Answer ¶ 35.
120.	On August 24, 2011, Cornell announced its intention to join the OWP.	Answer ¶ 38.
121.	A book entitled <i>Good Troupers All: The Story of Joseph Jefferson</i> by Gladys Malvern was digitized and included in the HDL and was preliminarily identified as a book that UM planned to make available on a limited basis contemplated as part of the OWP if the copyright holder were not identified.	Answer ¶ 13.
122.	A book entitled <i>Lost Country</i> by Jack Salamanca was digitized and included in the HDL and was preliminarily identified as a book that UM planned to make available on a limited basis contemplated as part of the OWP if the copyright holder were not identified.	Answer ¶ 29.
123.	On September 16, 2011, UM announced that there were "number of errors, some of them serious," in the process that had been used to identify orphan candidates as part of the Orphan Works Project.	Rosenthal Decl., Ex. 94 (9/16/11 UM Library Announcement); Answer ¶ 78; Wilkin Tr. 241:24-242:14.
124.	UM suspended work in the OWP.	Courant Tr. 159:8-11.
125.	Under the OWP, several books whose authors should have been easily locatable but were not located were wrongly identified as orphan candidates.	Wilkin Tr. 241:24-242:14; Courant Tr. 159:12-19, 173:8-23.
126.	Wilkin characterized the "errors" in the OWP process as "errors of execution of management" – meaning that steps that had been designed were not followed, so "closer management" is required.	Wilkin Tr. 241:24-242:14.
127.	UM intends to proceed with identifying prospective orphan works and expects to list candidate orphan works on a website and plausibly other locations.	Courant Tr. 158:20-25, 161:6-10. Answer ¶ 78.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
	MARKET HARM	
128.	Defendants' unlicensed digitization and use of the Infringed Books has harmed or threatens to harm Plaintiffs' interests in the Infringed Books in several ways, including those described below.	<p>In addition to the evidence cited below, descriptions of the various harms to the Individual Plaintiffs are set forth at:</p> <p>Stiles Decl. ¶¶ 10-19; Andreassen Decl. ¶¶ 6-10; Cummings Decl. ¶¶ 6-13; Grundstrom Decl. ¶¶ 6-12; Robinson Decl. ¶¶ 6-10; Ronning Decl. ¶¶ 6-11; Shapiro Decl. ¶¶ 6-10; Simpson Decl. ¶¶ 6-10; Weldon Decl. ¶¶ 6-10; and White Decl. ¶¶ 7-10, 12-17.</p> <p>Descriptions of the various harms to the Associational Plaintiffs are set forth at:</p> <p>AG Decl. ¶¶ 27-34; ALF Decl. ¶¶ 5-18; NFF Decl. ¶¶ 5-12; SFF ¶¶ 5-12; TWUC Decl. ¶¶ 7-15; and UNEQ Decl. ¶¶ 5-12.</p>
129.	(a) Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiffs' copyrighted works to Defendants for inclusion in a digital archive for preservation or other purposes;	<p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5; Stiles Decl. ¶¶ 11-12, Exs. B-D; Stiles Tr. 22:25-23:3; 104:14-22, 105:4-9; 163:6-9, 166:4-23; Cummings Tr. 63:25-64:19.</p>
130.	(b) Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiffs' copyrighted works for use in connection with non-consumptive research;	<p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5; Stiles Tr. ¶ 13; Stiles Tr. 35:15-20; 168:6-19.</p>

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
131.	(c) Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiffs' copyrighted works for use purely in connection with full-text searching, including disruption of commercial licenses granted to online booksellers such as Amazon, whereby authors (or their publishers) authorize their books to be indexed and made fully searchable in order to promote sales.	Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5; Stiles Decl. ¶ 14; Rosenthal Decl., Ex. 104 (Amazon Search Inside License); Stiles Tr. 180:10-182:11, 184:18-23, 189:14-191:17.
132.	(d) Loss or potential loss of revenue from sale or licensing of derivative uses, including derivative uses made possible by artificial intelligence and other technologies to create translations, anthologies, abridgments and versions suited for new and emerging platforms and devices;	Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5.
133.	(e) Loss or potential loss of revenue from sale or licensing of digital copies of Plaintiffs' copyrighted works due to the availability of such works for tens of thousands of people to view, print and download as a result of the accidental or mistaken identification of such works as public domain or "orphan works";	Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5; White Decl. ¶¶ 7-10, Exs. C & D; ALF Decl. ¶¶ 12-18, Exs. D & E; UNEQ Decl. ¶ 10, Ex. A; White Tr. 98:2-18; Stiles Tr. 188:1-189:13.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
134.	(f) Exposure of Plaintiffs' copyrighted works to virtually unlimited piracy due to breaches in security without providing Plaintiffs any contractual protections or financial remuneration in exchange for that risk;	<p>Edelman Decl., <i>passim</i>; Stiles Decl. ¶ 16; Stiles Tr. 130:4-14, 167:1-4; Cummings Tr. 63:25-64:19; Cummings Tr. 108:13-20; 110:19-11:2; Rønning Tr. 102:11-18;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon ROG Nos. 6-7; AG/ALCS/ALF/ASA/TWUC ROG Nos. 8-9;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC RFA Nos. 9-11;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5.</p>
135.	(g) Loss or potential loss of control over the reproduction and distribution of plaintiffs' copyrighted works.	<p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon ROG Nos. 6-7; AG/ALCS/ALF/ASA/TWUC ROG Nos. 8-9;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC RFA Nos. 9-11;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronnin g/Roy/Salamanca/Shapiro/Simp son/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5.</p>

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
136.	(h) Loss or potential loss of revenue from sale and/or licensing of hardcopies and digital copies of Plaintiffs' copyrighted works to libraries and/or archives.	<p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon ROG Nos. 6-7; AG/ALCS/ALF/ASA/TWUC ROG Nos. 8-9;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC RFA Nos. 9-11;</p> <p>Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 5;</p> <p>Christenson Tr. 136:25-139:4 (existence of digital copy in HDL may impact library's decision whether to acquire print copy of book), Rosenthal Decl., Ex. 103 (Christenson article discussing cost-savings by libraries resulting from HathiTrust);</p> <p>Cummings Tr. 64:10-19 (lost library book sales); Rønning Tr. 106:4-10.</p>
137.	(i) Loss or potential loss of revenue from entering into collective licensing agreements for mass digitization of works, including disruption of existing programs to digitize library collections	Gervais Decl., <i>passim</i> ; NFF Decl. ¶¶ 7, 10, Ex. A; SFF Decl. ¶¶ 7, 10, Ex. A¶.
COPYRIGHT OWNERSHIP		
138.	Andreassen owns the copyright in and to the Andreassen Works.	Andreassen Decl. ¶ 3.
139.	Cummings owns the copyright in and to the Cummings Works.	Cummings Decl. ¶ 3, Exs. A & B.
140.	Grundström owns the copyright in and to the Grundström Works.	Grundström Decl. ¶ 3.

NO.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
141.	Loukakis owns the copyright in and to the Loukakis Works.	Loukakis ROG No. 1, Schedule A.
142.	Robinson owns the copyright in and to the Robinson Works.	Robinson Decl. ¶ 3, Exs. A & B.
143.	Rønning owns the copyright in and to the Rønning Works.	Rønning Decl. ¶ 3.
144.	Roy owns the copyright in and to the Roy Works.	Roy Decl. ¶ 3.
145.	Salamanca owns the copyright in and to the Salamanca Works.	White Decl. ¶ 5, Exs. A & B.
146.	Shapiro owns the copyright in and to the Shapiro Works.	Shapiro Decl. ¶ 3, Ex. A.
147.	Simpson owns the copyright in and to the Simpson Works.	Simpson Decl. ¶ 3.
148.	Stiles owns the copyright in and to the Stiles Works.	Stiles Decl. ¶ 6, Ex. A.
149.	Weldon owns the copyright in and to the Weldon Works.	Weldon Decl. ¶ 3, Exs. A & B.
150.	AG owns the copyrights in and to the AG Works.	AG Decl. ¶ 26, Ex. A.
151.	ALF owns the copyright in and to the ALF Works.	ALF Decl. ¶ 4, Exs. A-C.
152.	ASA owns the copyright in and to the ASA Works.	ASA ROG No. 1, Schedule A.
153.	TWUC owns the copyright in and to the TWUC Works.	TWUC Decl. ¶ 6, Exs. A & B.
	PUBLICATION	
154.	Each of the Infringed Books is published.	Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Rønning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALF/ASA/TWUC ROG No. 1, Ex. A.
155.	Only published works were digitized in the Google Library Project.	UM/UC/UW RFA No. 4; Clancy Tr. 45:3 – 46:8; Hirtle Tr. 191:7-20.
	COPYING OF INFRINGED BOOKS	
156.	Pursuant to one or more of the Google Cooperative Agreements, the Andreassen Works were digitized and included in the HDL.	Answer ¶ 22; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
157.	Pursuant to one or more of the Google Cooperative Agreements, the Cummings Works were digitized and included in the HDL.	Answer ¶ 23; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
158.	Pursuant to one or more of the Google Cooperative Agreements, the Grundstrom Works were digitized and included in the HDL.	Answer ¶ 24; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
159.	Pursuant to one or more of the Google Cooperative Agreements, the Loukakis Works were digitized and included in the HDL.	Answer ¶ 25; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
160.	Pursuant to one or more of the Google Cooperative Agreements, the Ronning Works were digitized and included in the HDL.	Answer ¶ 26; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
161.	Pursuant to one or more of the Google Cooperative Agreements, the Robinson Works were digitized and included in the HDL.	Answer ¶ 27; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
162.	Pursuant to one or more of the Google Cooperative Agreements, the Roy Works were digitized and included in the HDL.	Answer ¶ 28; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
163.	Pursuant to one or more of the Google Cooperative Agreements, the Salamanca Works were digitized and included in the HDL.	Answer ¶ 29; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
164.	Pursuant to one or more of the Google Cooperative Agreements, the Shapiro Works were digitized and included in the HDL.	Answer ¶ 30; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
165.	Pursuant to one or more of the Google Cooperative Agreements, the Simpson Works were digitized and included in the HDL.	Answer ¶ 31; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
166.	Pursuant to one or more of the Google Cooperative Agreements, the Stiles Works were digitized and included in the HDL.	Answer ¶ 32; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
167.	Pursuant to one or more of the Google Cooperative Agreements, the Weldon Works were digitized and included in the HDL.	Answer ¶ 33; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
168.	Pursuant to one or more of the Google Cooperative Agreements, the AG Works were digitized and included in the HDL.	http://www.hathitrust.org/hathifiles ; UM RFA No. 35.

No.	PLAINTIFFS' UNDISPUTED FACT	SUPPORTING EVIDENCE
169.	Pursuant to one or more of the Google Cooperative Agreements, the ALF Works were digitized and included in the HDL.	Answer ¶ 13; http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
170.	Pursuant to one or more of the Google Cooperative Agreements, the TWUC Works were digitized and included in the HDL.	http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
171.	Pursuant to one or more of the Google Cooperative Agreements, the ASA Works were digitized and included in the HDL.	http://www.hathitrust.org/hathifiles ; UM RFA No. 35.
172.	Defendants admit that the Image File and Text File, which were generated through the digitization process for each Infringed Book and incorporated into the HDL, each "implicates the right of reproduction referenced in 17 U.S.C. § 106(1)."	UM RFA No. 15.
173.	Plaintiffs never authorized any of the Defendants to digitize, copy or make any other uses of any of the Infringed Books.	Stiles Decl. ¶ 9; White Decl. ¶ 11; Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Shapiro/Simpson/Weldon Decl. ¶ 5; AG Decl. ¶ 26; ALF ¶ 4; TWUC ¶ 6; UM/UC/ UW RFA No. 7.
174.	Of the 116 Infringed Books, 77 are in print and 30 are available for purchase in digital format.	Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 1; Andreassen/Cummings/Grundstrom/Loukakis/Robinson/Ronning/Roy/Salamanca/Shapiro/Simpson/Stiles/Weldon/AG/ALCS/ALF/ASA/TWUC ROG II No. 4.

Dated: New York, New York
June 29, 2012

FRANKFURT KURNIT KLEIN & SELZ, P.C.

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

Attorneys for Plaintiffs

APPENDIX A
DEFINITIONS

Parties

Associational Plaintiffs

1. “AG” means Plaintiff The Authors Guild, Inc.
2. “ALF” means Plaintiff The Authors League Fund, Inc.
3. “ASA” means Plaintiff The Australian Society of Authors Limited.
4. “UNEQ” means Plaintiff Union Des Écrivaines et des Écrivains Québécois.
5. “ALCS” means Plaintiff Authors’ Licensing and Collecting Society.
6. “SFF” means Plaintiff Sveriges Författarförbund.
7. “NFF” means Plaintiff Norsk Faglitterær Forfatter- Og Oversetterforening.
8. “TWUC” means Plaintiff The Writers’ Union of Canada.
9. “Associational Plaintiffs” means AG, ALF, ASA, UNEQ, ALCS, SFF, NFF and TWUC, collectively.

Individual Plaintiffs

10. “Andreassen” means Plaintiff Trond Andreassen.
11. “Cummings” means Plaintiff Pat Cummings.
12. “Grundström” means Plaintiff Erik Grundström.
13. “Loukakis” means Plaintiff Angelo Loukakis.
14. “Robinson” means Plaintiff Roxana Robinson.
15. “Rønning” means Plaintiff Helge Rønning.
16. “Roy” means Plaintiff André Roy.
17. “Salamanca” means Plaintiff Jack R. Salamanca.
18. “Shapiro” means Plaintiff James Shapiro.
19. “Simpson” means Plaintiff Danièle Simpson.

20. “Stiles” means Plaintiff T.J. Stiles.

21. “Weldon” means Plaintiff Fay Weldon.

22. “Individual Plaintiffs” means Andreassen, Cummings, Grundstrom, Loukakis, Robinson, Ronning, Roy, Salamanca, Shapiro, Simpson, Stiles and Weldon, collectively.

Defendants

23. “UM” means The Regents of The University of Michigan which, pursuant to a stipulation between the parties, Plaintiffs have sued herein by naming as a defendant Mary Sue Coleman in her official capacity as President of UM.

24. “UC” means the Board of Regents of the University of California which, pursuant to a stipulation between the parties, Plaintiffs have sued herein by naming as a defendant Mark G. Rudof in his official capacity as President of UC.

25. “UW” means The Board of Regents of The University of Wisconsin which, pursuant to a stipulation between the parties, Plaintiffs have sued herein by naming as a defendant Kevin Reilly in his official capacity as President of UW.

26. “IU” means The Trustees of Indiana University which, pursuant to a stipulation between the parties, Plaintiffs have sued herein by naming as a defendant Michael McRobbie in his official capacity as President of IU.

27. “Cornell” means defendant Cornell University.

28. “HathiTrust” means defendant HathiTrust which, according to Defendants’ Answer (defined below), “is the name of a service provided by UM under agreements with member institutions including [UM, UC, UW, IU and Cornell] (but only to the extent that HathiTrust constitutes an entity capable of being sued, which Defendants contend it does not) (‘HathiTrust Service’).”

29. “Defendants” means HathiTrust, UM, UC, UW, IU and Cornell, collectively.

30. “University” or “Universities” means UM, UC and UW, collectively or individually, as the case may be.

Non-Parties

31. “Google” means Google Inc.

Pleadings

32. “FAC” means Plaintiffs’ First Amended Complaint dated October 5, 2011.

33. “Answer” means Defendants’ Joint Answer and Defenses dated December 2, 2011.

Declarations

Attorneys

34. “Rosenthal Declaration” means the Declaration of Edward H. Rosenthal dated June 29, 2012.

Individual Plaintiffs

35. “Andreassen Declaration” means the Declaration of Plaintiff Trond Andreassen dated June 22, 2012.

36. “Cummings Declaration” means the Declaration of Plaintiff Pat Cummings dated June 28, 2012.

37. “Grundström Declaration” means the Declaration of Plaintiff Erik Grundström dated June 26, 2012.

38. “Robinson Declaration” means the Declaration of Plaintiff Roxana Robinson dated June 26, 2012.

39. “Rønning Declaration” means the Declaration of Plaintiff Helge Rønning dated June 27, 2012.

40. “Roy Declaration” means the Declaration of Plaintiff André Roy dated June 27, 2012.

41. “Shapiro Declaration” means the Declaration of James Shapiro dated June 25, 2012.

42. “Simpson Declaration” means the Declaration of Danièle Simpson dated June 25, 2012.

43. “Stiles Declaration” means the Declaration of Plaintiff T.J. Stiles dated June 26, 2012.

44. “Weldon Declaration” means the Declaration of Plaintiff Fay Weldon dated June 25, 2012.

45. “White Declaration” means the Declaration of John White, literary agent for Plaintiff Jack R. Salamanca, dated June 21, 2012.

Associational Plaintiffs

46. “AG Declaration” means the Declaration of Paul Aiken dated June 29, 2012.

47. “ALCS Declaration” means the Declaration of Owen Atkinson dated June 27, 2012.

48. “ALF Declaration” means the Declaration of Isabel Howe dated June 26, 2012.

49. “UNEQ Declaration” means the Declaration of Francis Farley-Chevrier dated June 26, 2012.

50. “SFF Declaration” means the Declaration of Louise Hedberg dated June 26, 2012.

51. “NFF Declaration” means the Declaration of Jan Terje Helmi dated June 27, 2012.

52. “TWUC Declaration” means the Declaration of Kelly Duffin dated June 28, 2012.

Experts

53. “Gervais Declaration.” means the Declaration of Professor Daniel Gervais dated June 29, 2012.

54. “Edelman Declaration” means the Declaration of Professor Benjamin Edelman dated June 29, 2012.

Deposition Transcripts

Depositions of Plaintiffs

55. “Cummings Tr.” means the transcript from the deposition of Pat Cummings dated May 22, 2012, a copy of which is annexed as Exhibit 1 to the Rosenthal Declaration.

56. “Rønning Tr.” means the transcript from the deposition of Helge Rønning dated May 29, 2012, which is annexed as Exhibit 2 to the Rosenthal Declaration.

57. “Stiles Tr.” means the transcript from the deposition of T.J. Stiles dated May 31, 2012, which is annexed as Exhibit 3 to the Rosenthal Declaration.

58. “White Tr.” means the transcript from the deposition of John White, literary agent for Plaintiff J.R. Salamanca, dated June 8, 2012, which is annexed as Exhibit 4 to the Rosenthal Declaration.

Depositions of Defendants

59. “Christenson Tr.” means the transcript from the deposition of Heather Christenson (University of California) dated April 11, 2012, which is annexed as Exhibit 5 to the Rosenthal Declaration.

60. Courant Tr.” means the transcript from the deposition of Paul Courant (HathiTrust/University of Michigan) dated April 24, 2012, which is annexed as Exhibit 6 to the Rosenthal Declaration.

61. “Farley Tr.” means the transcript from the deposition of Laine Farley (University of California) dated April 12, 2012, which is annexed as Exhibit 7 to the Rosenthal Declaration.

62. “Hirtle Tr.” means the transcript from the deposition of Peter Hirtle (Cornell University) dated April 18, 2012, which is annexed as Exhibit 8 to the Rosenthal Declaration.

63. “Wilkin Tr.” means the transcript from the deposition of John Wilkin (HathiTrust/University of Michigan) dated April 25, 2012, which is annexed as Exhibit 9 to the Rosenthal Declaration.

Depositions of Non-Parties

64. “Clancy Tr.” means the transcript from the deposition of Dan Clancy (Google) dated June 1, 2012, excerpts of which are annexed as Exhibit 10 to the Rosenthal Declaration.

Written Discovery Responses

Responses from Individual Plaintiffs

65. “Andreassen ROG” means Objections and Responses of Plaintiff Trond Andreassen to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012, a copy of which is annexed as Exhibit 11 to the Rosenthal Declaration.

66. “Andreassen RFA” means Objections and Responses of Plaintiff Trond Andreassen to Defendants’ First Set of Requests for Admission dated January 6, 2012, a copy of which is annexed as Exhibit 12 to the Rosenthal Declaration.

67. “Andreassen ROG II” means Objections and Responses of Plaintiff Trond Andreassen to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 13 to the Rosenthal Declaration.

68. “Cummings ROG” means Objections and Responses of Plaintiff Pat Cummings to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012, a copy of which is annexed as Exhibit 14 to the Rosenthal Declaration.

69. “Cummings RFA” means Objections and Responses of Plaintiff Pat Cummings to Defendants’ First Set of Requests for Admission dated January 6, 2012, a copy of which is annexed as Exhibit 15 to the Rosenthal Declaration.

70. “Cummings ROG II” means Objections and Responses of Plaintiff Pat Cummings to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 16 to the Rosenthal Declaration.

71. “Grundstrom ROG” means Objections and Responses of Plaintiff Erik Grundstrom to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012, a copy of which is annexed as Exhibit 17 to the Rosenthal Declaration.

72. “Grundstrom RFA” means Objections and Responses of Plaintiff Erik Grundstrom to Defendants’ First Set of Requests for Admission dated January 13, 2012, a copy of which is annexed as Exhibit 18 to the Rosenthal Declaration.

73. “Grundstrom ROG II” means Objections and Responses of Plaintiff Erik Grundstrom to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 19 to the Rosenthal Declaration.

74. “Loukakis ROG” means Objections and Responses of Plaintiff Angelo Loukakis to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012, a copy of which is annexed as Exhibit 20 to the Rosenthal Declaration.

75. “Loukakis RFA” means Objections and Responses of Plaintiff Angelo Loukakis to Defendants’ First Set of Requests for Admission dated January 12, 2012, a copy of which is annexed as Exhibit 21 to the Rosenthal Declaration.

76. “Loukakis ROG II” means Objections and Responses of Plaintiff Angelo Loukakis to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 22 to the Rosenthal Declaration.

77. “Robinson ROG” means Objections and Responses of Plaintiff Roxana Robinson to Defendants’ First Set of Interrogatories and Requests for the Production of Documents with Amended Schedule A dated January 9, 2012, a copy of which is annexed as Exhibit 23 to the Rosenthal Declaration.

78. “Robinson RFA” means Objections and Responses of Plaintiff Roxana Robinson to Defendants’ First Set of Requests for Admission dated January 9, 2012, a copy of which is annexed as Exhibit 24 to the Rosenthal Declaration.

79. “Robinson ROG II” means Objections and Responses of Plaintiff Roxana Robinson to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated March 28, 2012, a copy of which is annexed as Exhibit 25 to the Rosenthal Declaration.

80. “Ronning ROG” means Objections and Responses of Plaintiff Helge Ronning to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 12, 2012, a copy of which is annexed as Exhibit 26 to the Rosenthal Declaration.

81. “Ronning RFA” means Objections and Responses of Plaintiff Helge Ronning to Defendants’ First Set of Requests for Admission dated January 12, 2012, a copy of which is annexed as Exhibit 27 to the Rosenthal Declaration.

82. “Ronning ROG II” means Objections and Responses of Plaintiff Helge Ronning to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 28 to the Rosenthal Declaration.

83. “Roy ROG” means Objections and Responses of Plaintiff Andre Roy to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012, a copy of which is annexed as Exhibit 29 to the Rosenthal Declaration.

84. “Roy RFA” means Objections and Responses of Plaintiff Andre Roy to Defendants’ First Set of Requests for Admission dated January 13, 2012, a copy of which is annexed as Exhibit 30 to the Rosenthal Declaration.

85. “Roy ROG II” means Objections and Responses of Plaintiff Andre Roy to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 31 to the Rosenthal Declaration.

86. “Salamanca ROG” means Amended Objections and Responses of Plaintiff Jack R. Salamanca to Defendants’ First Set of Interrogatories and Requests for the Production of Documents with Second Amended Schedule A dated April 10, 2012, a copy of which is annexed as Exhibit 32 to the Rosenthal Declaration.

87. “Salamanca RFA” means Objections and Responses of Plaintiff Jack R. Salamanca to Defendants’ First Set of Requests for Admission dated January 12, 2012, a copy of which is annexed as Exhibit 33 to the Rosenthal Declaration.

88. “Salamanca ROG II” means Objections and Responses of Plaintiff Jack R. Salamanca to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 34 to the Rosenthal Declaration.

89. “Shapiro ROG” means Amended Objections and Responses of Plaintiff James Shapiro to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated March 26, 2012, a copy of which is annexed as Exhibit 35 to the Rosenthal Declaration.

90. “Shapiro RFA” means Amended Objections and Responses of Plaintiff James Shapiro to Defendants’ First Set of Requests for Admission dated April 3, 2012, a copy of which is annexed as Exhibit 36 to the Rosenthal Declaration.

91. “Shapiro ROG II” means Objections and Responses of Plaintiff James Shapiro to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 37 to the Rosenthal Declaration.

92. “Simpson ROG” means Objections and Responses of Plaintiff Daniele Simpson to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 13, 2012, a copy of which is annexed as Exhibit 38 to the Rosenthal Declaration.

93. “Simpson RFA” means Amended Objections and Responses of Plaintiff Daniele Simpson to Defendants’ First Set of Requests for Admission dated April 3, 2012, a copy of which is annexed as Exhibit 39 to the Rosenthal Declaration.

94. “Simpson ROG II” means Objections and Responses of Plaintiff James Shapiro to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 40 to the Rosenthal Declaration.

95. “Stiles ROG” means Objections and Responses of Plaintiff T.J. Stiles to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 6, 2012, a copy of which is annexed as Exhibit 41 to the Rosenthal Declaration.

96. “Stiles RFA” means Objections and Responses of Plaintiff T.J. Stiles to Defendants’ First Set of Requests for Admission dated January 6, 2012, a copy of which is annexed as Exhibit 42 to the Rosenthal Declaration.

97. “Stiles ROG II” means Objections and Responses of Plaintiff T.J. Stiles to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 43 to the Rosenthal Declaration.

98. “Weldon ROG” means Objections and Responses of Plaintiff Fay Weldon to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 12, 2012, a copy of which is annexed as Exhibit 44 to the Rosenthal Declaration.

99. “Weldon RFA” means Objections and Responses of Plaintiff Fay Weldon to Defendants’ First Set of Requests for Admission dated January 12, 2012, a copy of which is annexed as Exhibit 45 to the Rosenthal Declaration.

100. “Weldon ROG II” means Objections and Responses of Plaintiff Fay Weldon to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 10, 2012, a copy of which is annexed as Exhibit 46 to the Rosenthal Declaration.

Responses from Associational Plaintiffs

101. “AG ROG” means Amended Objections and Responses of Plaintiff The Authors Guild to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated April 3, 2012, a copy of which is annexed as Exhibit 47 to the Rosenthal Declaration.

102. “AG RFA” means Amended Objections and Responses of Plaintiff The Authors Guild to Defendants’ First Set of Requests for Admission dated April 3, 2012, a copy of which is annexed as Exhibit 48 to the Rosenthal Declaration.

103. “AG ROG II” means Objections and Responses of Plaintiff The Authors Guild to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 49 to the Rosenthal Declaration.

104. “ALCS ROG” means Objections and Responses of Plaintiff The Authors’ Licensing and Collecting Society to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated February 4, 2012, a copy of which is annexed as Exhibit 50 to the Rosenthal Declaration.

105. “ALCS RFA” means Objections and Responses of Plaintiff The Authors’ Licensing and Collecting Society to Defendants’ First Set of Requests for Admission dated February 4, 2012, a copy of which is annexed as Exhibit 51 to the Rosenthal Declaration.

106. “ALCS ROG II” means Objections and Responses of Plaintiff The Authors’ Licensing and Collecting Society to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 52 to the Rosenthal Declaration.

107. “ALF ROG” means Objections and Responses of Plaintiff The Authors League Fund to Defendants’ First Set of Interrogatories and Requests for the Production of Documents with Amended Schedule A dated January 25, 2012, a copy of which is annexed as Exhibit 53 to the Rosenthal Declaration.

108. “ALF RFA” means Objections and Responses of Plaintiff The Authors League Fund to Defendants’ First Set of Requests for Admission dated January 25, 2012, a copy of which is annexed as Exhibit 54 to the Rosenthal Declaration.

109. “ALF ROG II” means Objections and Responses of Plaintiff The Authors League Fund to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 55 to the Rosenthal Declaration.

110. “ASA ROG” means Objections and Responses of Plaintiff The Australian Society of Authors to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated February 10, 2012, a copy of which is annexed as Exhibit 56 to the Rosenthal Declaration.

111. “ASA RFA” means Objections and Responses of Plaintiff The Australian Society of Authors to Defendants’ First Set of Requests for Admission dated February 10, 2012, a copy of which is annexed as Exhibit 57 to the Rosenthal Declaration.

112. “ASA ROG II” means Objections and Responses of Plaintiff The Australian Society of Authors to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 58 to the Rosenthal Declaration.

113. “SFF ROG” means Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers’ Union) to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 23, 2012, a copy of which is annexed as Exhibit 59 to the Rosenthal Declaration.

114. “SFF RFA” means Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers’ Union) to Defendants’ First Set of Requests for Admission dated January 23, 2012, a copy of which is annexed as Exhibit 60 to the Rosenthal Declaration.

115. “SFF ROG II” means Objections and Responses of Plaintiff Sveriges Författarförbund (The Swedish Writers’ Union) to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 61 to the Rosenthal Declaration.

116. “NFF ROG” means Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 26, 2012, a copy of which is annexed as Exhibit 62 to the Rosenthal Declaration.

117. “NFF RFA” means Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants’ First Set of Requests for Admission dated January 26, 2012, a copy of which is annexed as Exhibit 63 to the Rosenthal Declaration.

118. “NFF ROG II” means Objections and Responses of Plaintiff Norsk Faglitterær Forfatter- og Oversetterforening (The Norwegian Non-Fiction Writers and Translators Association) to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 64 to the Rosenthal Declaration.

119. “TWUC ROG” means Objections and Responses of Plaintiff The Writers’ Union of Canada to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 30, 2012, a copy of which is annexed as Exhibit 65 to the Rosenthal Declaration.

120. “TWUC RFA” means Objections and Responses of Plaintiff The Writers’ Union of Canada to Defendants’ First Set of Requests for Admission dated January 30, 2012, a copy of which is annexed as Exhibit 66 to the Rosenthal Declaration.

121. “TWUC ROG II” means Objections and Responses of Plaintiff The Writers’ Union of Canada to Defendants’ Second Set of Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 67 to the Rosenthal Declaration.

122. “UNEQ ROG” means Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants’ First Set of Interrogatories and Requests for the Production of Documents dated January 26, 2012, a copy of which is annexed as Exhibit 68 to the Rosenthal Declaration.

123. “UNEQ RFA” means Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants’ First Set of Requests for Admission dated January 26, 2012, a copy of which is annexed as Exhibit 69 to the Rosenthal Declaration.

124. “UNEQ ROG II” means Objections and Responses of Plaintiff Union des Écrivaines et des Écrivains Québécois (Quebec Union of Writers) to Defendants’ Second Set of

Interrogatories and Requests for the Production of Documents dated April 20, 2012, a copy of which is annexed as Exhibit 70 to the Rosenthal Declaration.

Responses from Defendants

125. “HT ROG” means Responses to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust dated February 8, 2012, a copy of which is annexed as Exhibit 71 to the Rosenthal Declaration.

126. “HT ROG II” means Supplemental Responses to Plaintiffs’ First Set of Interrogatories to Defendant HathiTrust dated April 9, 2012, a copy of which is annexed as Exhibit 72 to the Rosenthal Declaration.

127. “UC ROG” means Responses to Plaintiffs’ First Set of Interrogatories to Defendant Mark G. Yudof (University of California) dated February 8, 2012, a copy of which is annexed as Exhibit 73 to the Rosenthal Declaration.

128. “UC RFA” means Responses to Plaintiffs’ First Requests for Admission to Defendant Mark G. Yudof (University of California) dated February 8, 2012, a copy of which is annexed as Exhibit 74 to the Rosenthal Declaration.

129. “UM ROG” means Responses to Plaintiffs’ First Set of Interrogatories to Defendant Mary Sue Coleman (University of Michigan) dated February 8, 2012, a copy of which is annexed as Exhibit 75 to the Rosenthal Declaration.

130. “UM ROG II” means Supplemental Responses to Plaintiffs’ First Set of Interrogatories to Defendant Mary Sue Coleman (University of Michigan) dated April 9, 2012, a copy of which is annexed as Exhibit 76 to the Rosenthal Declaration.

131. “UM RFA” means Responses to Plaintiffs’ First Requests for Admission to Defendant Mary Sue Coleman (University of Michigan) dated February 8, 2012, a copy of which is annexed as Exhibit 77 to the Rosenthal Declaration.

132. “UW ROG” means Responses to Plaintiffs’ First Set of Interrogatories to Defendant Kevin Reilly (University of Wisconsin) dated February 8, 2012, a copy of which is annexed as Exhibit 78 to the Rosenthal Declaration.

133. “UW RFA” means Responses to Plaintiffs’ First Requests for Admission to Defendant Kevin Reilly (University of Wisconsin) dated February 8, 2012, a copy of which is annexed as Exhibit 79 to the Rosenthal Declaration.

Infringed Works

134. “Infringed Works” means all of the works defined below, collectively.

Individual Plaintiffs’ Works

135. “Andreassen Works” means the work or works identified on Schedule A to the Andreassen ROG.

136. “Cummings Works” means the work or works identified on Schedule A to the Cummings ROG.

137. “Grundström Works” means the work or works identified on Schedule A to the Grundström ROG.

138. “Loukakis Works” means the work or works identified on Schedule A to Loukakis ROG.

139. “Robinson Works” means the work or works identified on Schedule A to the Robinson ROG.

140. “Rønning Works” means the work or works identified on Schedule A to the Rønning ROG.

141. “Roy Works” means the work or works identified on Schedule A to the Roy ROG.

142. “Salamanca Works” means the work or works identified on Schedule A to Salamanca ROG.

143. “Shapiro Works” means the work or works identified on Schedule A to the Shapiro ROG.

144. “Simpson Works” means the work or works identified on Schedule A to Simpson ROG.

145. “Stiles Works” means the work or works identified on Schedule A to the Stiles ROG.

146. “Weldon Works” means the work or works identified on Schedule A to Weldon ROG.

Associational Plaintiffs' Works

147. "AG Works" means the work or works identified on Schedule A to the AG ROG.
148. "ALF Works" means the work or works identified on Schedule A to the ALF ROG.
149. "ASA Works" means the work or works identified on Schedule A to the ASA ROG.
150. "TWUC Works" means the work or works identified on Schedule A to the TWUC ROG.