

EXHIBIT B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
THE AUTHORS GUILD, INC., et al,	:	
	:	Index No. 11 Civ. 6351 (HB)
Plaintiffs,	:	
	:	
- against -	:	
	:	
HATHITRUST, et al.	:	
	:	
Defendants.	:	
-----X	:	

OBJECTIONS AND RESPONSES OF PLAINTIFF THE AUTHORS GUILD TO DEFENDANTS’ FIRST SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Plaintiff The Authors Guild, Inc. (“Plaintiff”) hereby submits, pursuant to Rules 26, 34 and 36 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Rules for the United States District Courts for the Southern Districts of New York (the “Local Rules”), Plaintiff’s objections and responses to Defendants’ First Set of Interrogatories and Requests for the Production of Documents (“Requests”).

GENERAL STATEMENTS

A. Plaintiff incorporates by reference each and every General Objection set forth below into each and every specific response. From time to time a specific response may restate a General Objection for emphasis or some other reason. The failure to include any General

Objection in any specific response shall not constitute a waiver of any General Objection with respect to that request.

B. No incidental or implied admissions are intended by the responses herein. That Plaintiff has answered or objected to any interrogatory or document request should not be taken as an admission that Plaintiff accepts or admits the existence of any fact set forth or assumed by such interrogatory or document request. The fact that Plaintiff has answered part or all of any interrogatory or document request is not intended to be, and shall not be construed to be, a waiver by Plaintiff of any part of any objection to that interrogatory or document request.

C. These responses are made solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any documents produced or information provided by Plaintiff at time of trial. By responding to Defendants' interrogatories or document requests, Plaintiff does not waive any objection that may be applicable to: (1) the use, for any purpose, by Defendant of any documents, things or information provided in response to Defendants' interrogatories or document requests; or (2) the admissibility, privilege, relevancy, authenticity, or materiality of any of such documents, things or information to any issue in the case. Plaintiff expressly reserves the right to object to the use of documents or things produced, or information provided, in connection herewith during any subsequent proceeding, including the trial of this or any other action.

D. Plaintiff has not completed an investigation of all of the facts relating to this case, has not completed discovery in this action, and has not completed Plaintiff's preparation for trial. The documents and things produced, or information provided, in response to Defendants' interrogatories or document requests are without prejudice to Plaintiff's rights to produce

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

GENERAL OBJECTIONS

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

B. Plaintiff objects to each of the requests seeking information covered by the attorney-client privilege, work product immunity, joint defense privilege, or otherwise covered by any other applicable privilege, immunity, or other protection.

C. Plaintiff objects to each of the requests to the extent it seeks documents or information that are already in Defendants' possession, are a matter of public record, or are otherwise equally available to Defendants.

D. Plaintiff objects to each of the requests with respect to which any benefit of the production to Defendants is outweighed by the burden and expense to Plaintiff, taking into account the needs of the case.

E. Plaintiff objects to each of the requests seeking through definitions and instructions to impose obligations beyond what is required in accordance with the Federal Rules of Civil Procedure, the Local Rules, applicable court orders, or stipulations or agreements of the parties (collectively, “the Rules”). Plaintiff will respond to Defendants’ requests only to the extent required by the Rules.

F. Plaintiff objects to each of the requests seeking material that Plaintiff is under an obligation to any third-party not to disclose, including documents that would require breach of a contract, protective order, settlement, or other duty to maintain confidentiality.

G. Plaintiff objects to each of the requests seeking the same information requested by one or more of Defendants’ requests for production or any interrogatory served by Defendants at any time in this case. Plaintiff will provide information or documents only once, regardless of the number of requests to which the same may be responsive.

H. Plaintiff objects to each of the requests to the extent that it seeks information not relevant to any claim or defense and/or not reasonably calculated to lead to the discovery of admissible evidence, including but not limited to, information beyond the relevant temporal and/or geographic scope of this matter.

I. Plaintiff objects to each of the requests that purports to attribute any special or unusual meaning to any technical terms or phrases.

J. Plaintiff objects to each of the requests, and to the incorporated definitions and instructions contained in such request, that purports to alter the plain meaning and/or scope of any specific request and thereby renders such request vague, ambiguous, overbroad, or uncertain.

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

L. Plaintiffs object to each of the requests to the extent they seek legal opinions that are not properly the subject of rule 26 discovery.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. *Identify each work for which [Plaintiff] is the legal or beneficial owner of a copyright or an exclusive right under a copyright that [Plaintiff] claims has been infringed by one or more of the Defendants, and provide the following information for each such work: (i) title; (ii) author; (iii) date and location of first publication; (iv) date and location of any subsequent publication; (v) the date and registration number of any U.S. copyright registration and/or renewals; and, if applicable, (vi) the specific exclusive right for which [Plaintiff] is the legal or beneficial owner; (vii) the manner in which [Plaintiff] became the legal or beneficial owner of that exclusive right; and (viii) any person or entity, including without limitation co-authors or publishers, that is not a member of [Plaintiff] but is also a legal or beneficial owner of a copyright or an exclusive right under a copyright for that work, and identify any specific exclusive right for which that person or entity is the legal or beneficial owner.*

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the date and location of every publication of each work infringed by Defendants, as well as the information requested in subparagraphs (vi) through (viii) above, are not necessary to establish either Plaintiff's (a) legal or beneficial ownership of the copyright at issue, or (b) standing to bring a claim against Defendants arising from their infringement of Plaintiff's copyright. Moreover, the aforementioned requests are both overbroad and unduly burdensome.

Subject to and without waiving any of the foregoing objections or the General Objections, Plaintiff's response to this interrogatory, which is provided to the best of Plaintiff's knowledge, is set forth in Schedule A.

2. *For each member of [Plaintiff], identify each work for which that member is a legal or beneficial owner of a copyright or an exclusive right under a copyright that [Plaintiff] claims has been infringed by one or more of the Defendants, and provide the following information for each such work: (i) title; (ii) author; (iii) date and location of first publication; (iv) date and location of any subsequent publication; (v) the date and registration number of any U.S. copyright registration and/or renewals; (vi) the name of [Plaintiff]'s member that is a legal or beneficial owner of a copyright or an exclusive right under a copyright in the work; and, if applicable, (vii) the specific exclusive right for which [Plaintiff]'s member is the legal or beneficial owner; (viii) the manner in which that member became the legal or beneficial owner of that exclusive right; and (ix) any person or entity, including without limitation co-authors or publishers, that is not a member of [Plaintiff] but is also a legal or beneficial owner of a copyright or an exclusive right under a copyright for that work, and identify any specific exclusive right for which that person or entity is the legal or beneficial owner.*

RESPONSE:

Plaintiff objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the identity of and details concerning each and every work for which each and every member of Plaintiff's organization is a legal or beneficial owner of a copyright or an exclusive right under a copyright that Plaintiff claims has been infringed by one or more of the Defendants is not necessary to establish Plaintiff's associational standing to bring a claim against Defendants for copyright infringement. Furthermore, to the extent this interrogatory seeks to require Plaintiff to identify each and every one of its members' copyrighted works and detailed information concerning those works, Plaintiff objects to the request on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing objection or the General Objections, in response to Defendants' discovery requests, Plaintiff is willing to identify works that are responsive to this interrogatory and the same categories of information concerning those works that are being provided in response to Interrogatory No. 1 for a mutually-agreeable number of randomly selected members, in addition to the works that have already been identified in

response to Defendants' discovery requests separately issued to Plaintiffs James Shapiro, T.J. Stiles, Roxana Robinson, Pat Cummings.

3. *For each work identified in response to Interrogatory Nos. 1 or 2, identify the most recent date on which that work was published, in hardcopy or electronic form, for distribution and commercial sale.*

RESPONSE:

With respect to the request for information relating to works identified in response to Interrogatory No. 2, Plaintiff repeats and restates its objections to Interrogatory No. 2. Subject to and without waiving the foregoing objection or any General Objections, Plaintiff's response to the portion of the interrogatory requesting information relating to the works identified in response to Interrogatory No. 1, which is provided to the best of Plaintiff's knowledge, is set forth in Schedule A.

4. *For each work identified in response to Interrogatory Nos. 1 or 2: (i) indicate whether any copyright in the work, or any exclusive right under a copyright in the work, was previously licensed, transferred or assigned to any person and has since reverted to the current legal or beneficial owner of such copyright or exclusive right; and, if applicable, (ii) identify the specific exclusive right that has so reverted.*

RESPONSE:

With respect to the request for information relating to works identified in response to Interrogatory No. 2, Plaintiff repeats and restates its objections to Interrogatory No. 2. Plaintiff further objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that the information requested is not necessary to establish either Plaintiff's (a) legal or beneficial ownership of the copyright at issue, or (b) standing to bring a claim against Defendants arising from their infringement of Plaintiff's copyright. Moreover, the interrogatory is both overbroad and unduly burdensome.

Subject to and without waiving any of the foregoing objections or the General Objections, Plaintiff states that for each of Plaintiff's works identified on Schedule A, Plaintiff's predecessor-in-interest granted the exclusive right to publish the work to one or more publishers for a period of time in exchange for the payment of royalties. Irrespective of whether those rights reverted, at all times, Plaintiff or Plaintiff's predecessor-in-interest was and continues to be either the legal or beneficial owner of the exclusive rights to reproduce and distribute the work, which are the exclusive rights Plaintiff claims to have been violated by Defendants in this action.

5. *For each work identified in response to Interrogatory Nos. 1 or 2, identify any license or other agreement permitting or requiring the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities—as well as any documents concerning such license or agreement.*

RESPONSE:

With respect to the request for information relating to works identified in response to Interrogatory No. 2, Plaintiff repeats and restates its objections to Interrogatory No. 2. Plaintiff further objects to this interrogatory on the ground that it seeks information beyond the scope of discovery in this action, including without limitation, in that publishing licenses and agreements may be ambiguous as to whether digital reproduction and distribution rights are covered by the grant of rights, and neither Plaintiff's claims nor Defendants' defenses in this action require the resolution of any such ambiguity.

Subject to and without waiving the foregoing objections or any General Objections, to date Plaintiff has not identified any license or other agreement expressly permitting or requiring the digitization of any work identified in response to Interrogatory No. 1.

6. *For each work identified in response to Interrogatory No. 1, identify any past, present, or planned efforts made by, on behalf of or with the knowledge of [Plaintiff], to enter any license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities—as well as any documents concerning such efforts.*

RESPONSE:

Subject to and without waiving any General Objections, for each of Plaintiff's works identified on Schedule A, Plaintiff will conduct a reasonable search and produce any documents concerning any specific past, present or planned efforts made by Plaintiff, or made by others on Plaintiff's behalf or with Plaintiff's knowledge, to enter into a license or other agreement allowing for the digitization of the work for any purpose. In addition, Plaintiff has considered, is presently considering and will continue to consider pursuing licenses or other agreements to digitize and distribute in digital form the works identified in response to Interrogatory No. 1 that to date have only been published in paper form.

7. *For each work identified in response to Interrogatory No. 2, identify any past, present, or planned efforts made by, on behalf of or with the knowledge of [Plaintiff], to enter any license or other agreement allowing for the digitization of the work for any purpose—including without limitation for use in digital distribution, in an electronic database, for archiving or preservation purposes, for non-consumptive research, for full-text searching, and/or for use in formats accessible by the blind or others with print disabilities—as well as any documents concerning such efforts.*

RESPONSE:

Plaintiff repeats and restates its objections and response to Interrogatory No. 2.

8. *For each work identified in response to Interrogatory Nos. 1 or 2, identify any harm that has occurred or is expected to occur to any market or potential market for that work by virtue of Defendants' alleged conduct described in the First Amended Complaint, including without limitation the identification of (i) the market or potential market at issue (by name and/or brief description); (ii) any licensee or potential licensee of the work within that market; and (iii) all documents concerning the alleged harm that has occurred or is expected to occur.*

RESPONSE:

With respect to the request for information relating to works identified in response to Interrogatory No. 2, Plaintiff repeats and restates its objections to Interrogatory No. 2. Plaintiff further objects to this interrogatory on the ground that it seeks information beyond the scope of the parties' agreement concerning the appropriate use of interrogatories in this action. Plaintiff further objects to this interrogatory on the ground that Plaintiff does not seek actual damages in this action, but an injunction under 17 U.S.C. § 502 and impoundment under 17 U.S.C. § 503, for which it is not necessary to quantify monetary damages.

Subject to and without waiving the foregoing objections or any General Objections, Plaintiff's responds to the portion of the interrogatory requesting information relating to the works identified in response to Interrogatory No. 1 as follows:

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

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

Plaintiff has to date not been able to quantify any specific revenues lost as a result of Defendants' infringing conduct and Plaintiff is not aware of any documents in Plaintiff's possession, custody or control that could be employed to quantify any specific damages incurred as a result of Defendants' infringing conduct.

9. *For each work identified in response to Interrogatory Nos. 1 or 2, identify any reduction to the value or potential value of that work by virtue of Defendants' alleged conduct described in the First Amended Complaint, including without limitation the identification of (i) the decline in value, measured in dollars, of each such work; and (ii) all documents and other evidence that support the alleged decline in value.*

RESPONSE:

Plaintiff repeats and restates its objections and response to Interrogatory No. 8.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUEST

1. *Documents sufficient to identify each member of [Plaintiff].*

RESPONSE:

Plaintiff objects to this request to the extent that, by virtue of Defendants' definition of the term "identify," the request would require Plaintiff to identify "the present or last known address, and when referring to a natural person, additionally, the present or last known place of employment," of each and every one of its members, on the ground that it seeks confidential information that is beyond the scope of discovery in this action.

Subject to and without waiving the foregoing objection or any General Objections, Plaintiff will produce documents sufficient to identify the names of each of its members.

2. *All documents identified by you in response to Defendants' First Set of Interrogatories to Plaintiff.*

RESPONSE:

Subject to and without waiving any General Objections or other objections as set forth herein, with the exception of Schedule A produced herewith, Plaintiff has identified no

documents in Plaintiff's possession, custody or control as responsive to the foregoing interrogatories.

Dated: New York, New York
January 23, 2012

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SCHEDULE A

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Michael Drury	Writers Roundtable	1959/New York: Harper	1971/Westport, CT: Greenwood Press	Hardcopy	A00000389215 1959-04-29 RE0000364008 1987-12-30
Mignon Eberhart	The Unknown Quantity	1953/New York: Random House	1953/New York: W.J. Black 1957/New York: Dell 1963-11/New York: Popular Library 1985/New York: Warner Books Inc 1990-03/New York: Warner Books	Hardcopy	A00000095320 1953-05-12 RE0000093135 1981-02-25
Mignon Eberhart	While the Patient Slept	1931/New York: Grosset & Dunlap	1936/London: Heinemann 1963/McFadden 1966-01-01/MacFadden 1995/Lincoln: University of Nebraska Press	Hardcopy	TX0004037316 1995-05-01

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Mignon Eberhart	Message from Hong Kong	1968/New York: Random House	1969/New York: Random House 1977/New York: Popular Library 1989/New York: Carroll & Graf 1990/New York: Carroll & Graf	Hardcopy	A0000092703 1969-02-10 RE0000787812 1998-01-09
Mignon Eberhart	The Mystery of Hunting's End	1930/New York: Doubleday	1952/London: J. Lane 1998/Lincoln: University of Nebraska Press	Hardcopy	TX0004808570 1998-06-26
Mignon Eberhart	Two Little Rich Girls	1971/Random House	1971/New York: Popular Library 1971/London: Amereon 1971/New York: Walter J. Black 1972/London: Collins 1973/New York: Walter J. Black 1991/England: Chivers (Audio) 1993/Maine: Thorndike	Hardcopy	A00000354733 1971-11-30; RE0000813229 1999-12-27

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Mignon Eberhart	A Fighting Chance	1986/New York: Random House	1986/Maine: Thorndike Press 1987/New York: Warner Books 1987/London: Collins 1987/Vancouver: Library Services Branch (Audio) 1994/New York: Time Warner	Hardcopy	TX0001843584 1986-05-23
Sax Rohmer	The Dream Detective	1925/New York: Doubleday, Page & Company	1926/London : Jarrolds 1940-06/London: Amereon 1966/New York: Pyramid Books 1977-06/New York: Dover Publications	Hardcopy	A 855292 1925-05-08 R 94771 1952-05-09
Sax Rohmer	The Emperor of America	1929/New York: Doubleday	1929/London: Cassell 1930/Leipzig, B. Tauchnitz	Hardcopy	A 17222 1929-11-08 R 181188 1956-11-13
Sax Rohmer	The Day the World Ended	1930/Garden City, N.Y.: Doubleday, Doran & Co.	1965-01-01/New York: Ace Books 1976-06-01/London: Amereon	Hardcopy	A 26002 1930-07-25 R 196417 1957-07-29

AUTHOR	TITLE	FIRST PUBLICATION	SUBSEQUENT PUB(S).	MOST RECENT PUB. HARDCOPY OR ELECTRONIC?	U.S. COPYRIGHT REGISTRATIONS OR RENEWALS
Sax Rohmer	The Trial of Fu Manchu	1934/New York: Doubleday	1957/London: Cassell 1964/U.S.: Pyramid 1966/U.S.: Pyramid	Hardcopy	(First published serially in London) A 76528 1934-09-12
Sax Rohmer	President Fu Manchu	1936/New York: Doubleday	1963/U.S.: Pyramid 1969/U.S.: Pyramid 1973/London Littlehampton Book Services 2008-01-12/England: House of Stratus	Hardcopy	A 94548 1936-05-22 R 316244 1963-05-28
Victor Searcher	Lincoln's Journey to Greatness	1960/Philadelphia: J. C. Winston		Hardcopy	A00000443382 1960-04-25 RE0000392867 1988-08-22
Barbara Hunt Watters	A Little Night Music	1947-01-01/New York: Rinehart & Company		Hardcopy	A 13296 1947-05-29 R 596472 1975-02-04

VERIFICATION

I, Jan Constantine, General Counsel for Plaintiff The Authors Guild, Inc., have read the foregoing Responses to Interrogatory Numbers 1 through 9 and know their contents. The responses provided therein are true to my knowledge, and as to those matters stated upon information and belief, I believe them to be true. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 23, 2012.



Jan Constantine