

Re UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF OWEN ATKINSON

I, Owen Atkinson, hereby declare as follows:

1. I am the Chief Executive of The Authors’ Licensing and Collecting Society (the “ALCS”), one of the plaintiffs in the above-captioned action
2. I submit this declaration in support of Plaintiffs’ motion for summary judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently at a hearing or trial if called upon to do so.
3. ALCS is the United Kingdom collecting society for authors of all genres of literary and dramatic copyright works. Since its founding in 1977, ALCS has paid more than £250 million to its writer-members for secondary uses of their works, including photocopying, scanning, and digital copying of its member’ works. Among its more than 80,000 members, ALCS represents more than 50,000 book authors.
4. ALCS research shows that about half of all books copied under its agreements are out of print. As a consequence, as part of its routine operations, ALCS identifies and pays authors of out-of-print works. Over a ten-year period, ALCS has found that it identifies, contacts and pays the contributors to more than 95% of the most commonly copied out-of-print books.

The Works At Issue

5. It is my understanding that more UK books were digitized as part of the Google Library Project than any other country other than the United States. Upon information and belief, Defendants have digitized without authority more than 35,000 books by ALCS members (the “ALCS Works”), including at least two books that Defendants had deemed “orphan work candidates” – Frederick Copelston’s *The History of Philosophy: Volume II* and Eleanor Farjeon’s *A Nursery in the Nineties*.

Harm Resulting From Defendants’ Use Of The Works

6. The ALCS agreed to join this lawsuit as an associational plaintiff after learning that tens of thousands of print copies of ALCS Works and millions of other copyrighted books were digitized and being used as part of the Google Library Project, and that Defendants planned to begin making digital copies of purported “orphan works” available for free.

7. I have reviewed the declarations of several individual authors who are plaintiffs in this litigation, including the declarations of Fay Weldon (who is a member of ALCS), T.J. Stiles, Pat Cummings and Roxana Robinson. I believe that the works written by those authors provide a fair sampling of the types of works authored by members of ALCS.

8. I agree with and incorporate by reference the description in those declarations of the various harms and potential harms that result from Defendants’ unauthorized digitization and use of copyrighted works. Those descriptions need not be repeated here in full, but can be summarized as follows.

9. *First*, each digital copy of an ALCS Work that is created by Defendants without purchase or license represents a lost sale to the associated rightsholder. Defendants could have purchased a copy but instead had it scanned without compensating the copyright owner. As

ALCS administers digitization rights on behalf of its members, Defendants could have investigated with ALCS the potential for a license. Whenever ALCS receives individual digitization requests, we act as an intermediary contacting the relevant member(s) to ascertain whether or not they wish to give permission.

10. *Second*, Defendants' storage of the ALCS Works in an online digital repository exposes that property to security risks for which the rightsholders receive no commensurate remuneration. Unauthorized access to copyrighted books leading to widespread piracy would gravely impact the market for those works.

11. *Third*, Defendants' various uses of the ALCS Works undermine various licensing opportunities for rightsholders. For example, authors routinely grant online distributors like Amazon a license to index their books and make them searchable as part of a commercial arrangement targeted at promoting book sales. Defendants do the same thing, but without a license and without the search function being part of an effort to sell the books and provide revenue to the author. Defendants also permit the books to be used for non-consumptive research, an emerging field that represents another potential licensing stream for authors.

12. *Fourth*, Defendants' mass digitization and orphan works programs undercut opportunities for authors to generate royalty streams by entering into collective licensing agreements. As part of a major copyright review, the UK Government is currently considering new legislation to facilitate licensing of high-volume collections of works, such as archives comprising orphan works. ALCS has been involved throughout the consultation process for this.

13. *Fifth*, making books available through the Orphan Works Project will directly undermine efforts to revive out of print books and will impact future sales of such books. The fact that Defendants' orphan works candidates list included at least two UK books whose rights

are administered by the ALCS shows the international reach of Defendants' program and the mistakes made thereunder. As mentioned, the ALCS routinely monetizes out-of-print works of its members by negotiating licenses for secondary rights.

14. In short, Defendants activities have harmed or have the potential to cause enormous harm to the rights of authors.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: London, England
June ~~27~~ 2012



OWEN ATKINSON