

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 ANDRÉ ROY

I, André Roy, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.

2. I am a poet, literary critic, film critic, and Vice President of the Plaintiff Union des Écrivaines et des Écrivains Québécois (“UNEQ”). I won the Canada Council for the Arts Governor General’s Poetry Award for *Action Writing*, and I have twice been a finalist for that award.

The Work At Issue

3. I am the joint author and joint copyright owner of the non-fiction work *Marguerite Duras à Montréal*.

4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of *Marguerite Duras à Montréal*, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to *Marguerite Duras à Montréal*. I never assigned to any third party the copyright to *Marguerite Duras à Montréal*.

Unauthorized Uses Of My Work

5. It has come to my attention that a print copy of *Marguerite Duras à Montréal* was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with HathiTrust as “Defendants”) in partnership with Google, as part of the HathiTrust and/or Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of *Marguerite Duras à Montréal*. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of *Marguerite Duras à Montréal*.

Harm Resulting From Defendants’ Use Of My Work

6. As an author who depends in large part on the value of my work to earn a living, I brought this action because the Defendants’ unauthorized digitization and use of *Marguerite Duras à Montréal* has harmed or threatens to harm me in a number of ways.

7. I have reviewed the Declaration of T.J. Stiles and I agree with and incorporate by reference Mr. Stiles’ descriptions of the various harm and potential harm caused by the Defendants’ actions. Two differences between Mr. Stiles and me are that (as described below) *Marguerite Duras à Montréal* is out-of-print and I have not yet chosen to make it available in digital form. These differences do not, however, change the fact that Defendants’ actions are causing and threatening to cause damage to me and to the value of *Marguerite Duras à Montréal*.

8. While *Marguerite Duras à Montréal* is no longer in print, the harms articulated in the Declaration of T.J. Stiles nevertheless apply to me because *Marguerite Duras à Montréal* is still protected by copyright law and I still hold the copyright. Whether *Marguerite Duras à*

Montréal is in print or not, I have the right choose whether or not to engage in licensing agreements for emerging uses of *Marguerite Duras à Montréal*, be they digital archiving, non-consumptive research, full-text searching, or other derivative uses. By preempting my right to make a decision as to how I wish to exploit *Marguerite Duras à Montréal*, Defendants have narrowed the scope of my rights and lessened the strength of my control over my own work.

9. New technology is opening new possibilities in publishing and it is now possible, for the first time in history, to self-publish a book in print or digital forms without the aid of a publishing company. While I have not yet made a decision on how to proceed with my out-of-print Works, I am aware of this option and consider it a possibility for the future. This is why even my currently out-of-print book is affected by the Defendants' unauthorized copying.

10. I believe that I am entitled to determine whether, when and under what circumstances *Marguerite Duras à Montréal* is scanned, digitized, copied and used. Defendants' insistence that the new, complex, technologically-enabled uses they intend to make of *Marguerite Duras à Montréal* should be permitted without my consent dangerously presupposes that copyright law does not give authors any right to control how their works are used and exploited in these contexts. To the best of my knowledge, this is not the law in the United States. While *Marguerite Duras à Montréal* is not yet available in digital form, I reserve the right to license the creation of digital versions of *Marguerite Duras à Montréal* when I choose to.

11. Defendants argue that uses of *Marguerite Duras à Montréal* that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of *Marguerite Duras à Montréal* or deprive me of licensing opportunities and therefore do not require my permission. This is not so. As the Declaration of T.J. Stiles points out, these kinds of uses represent a new market whose value is evidenced by Defendants' use of

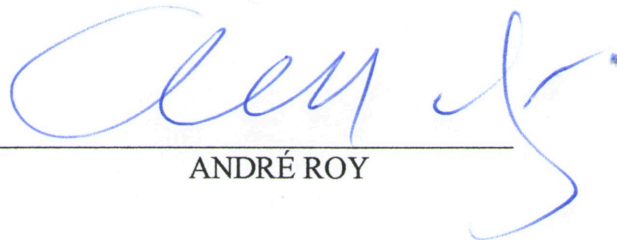
Marguerite Duras à Montréal, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and copied. I believe that I have the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if I do decide to allow them. Defendants could have asked my permission to digitize *Marguerite Duras à Montréal*, but did not do so.

12. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. Without such a contract, I am rendered powerless to dictate terms as to how *Marguerite Duras à Montréal* may or may not be used. I also have no ability to insist that HathiTrust take security measures to protect my work. I have no power to ensure that the infringing copies of my work are truly in a “dark archive” that is not accessible for viewing or further copying. I have no assurance that Defendants’ actual use of my work is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

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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: the 27th, Québec, Canada
June __, 2012



ANDRÉ ROY