

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., ET AL.,

Plaintiffs,

v.

HATHITRUST, ET AL.,
Defendants.

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DATE FILED: 1/6/15

Case No. 11 Civ. 6351 (NRB)

STIPULATION

WHEREAS, on June 10, 2014, the Second Circuit issued a decision in the above-captioned action (this "Action"), affirming in part, vacating in part, and remanding in part the October 10, 2012 judgment of the late Honorable Judge Harold Baer;

WHEREAS, the issue remanded to this Court is whether certain plaintiffs (the "Remaining Plaintiffs") have standing to challenge the Defendants making replacement copies of books that have been lost, destroyed, or stolen (the "Remanded Claim"), *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87, 103-104 (2d Cir. 2014);

WHEREAS, the parties wish to resolve this Action while reserving their respective positions on the Remanded Claim and without waiving their respective rights and defenses, including the Remaining Plaintiffs' rights under Section 106 of the Copyright Act and Defendants' rights to make fair uses and other non-infringing uses, including those authorized under Section 108 of the Copyright Act;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by the parties, as follows:

1. Defendants hereby represent that the libraries at the University of Michigan, the University of California, the University of Wisconsin, Indiana University, and Cornell University (the "Libraries") have, to the best of Defendants' knowledge, only

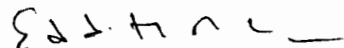
made a “replacement of a copy” (as that term is used in section 108(c) of the Copyright Act) from the HathiTrust Digital Library where: (i) the original copy that was being replaced was damaged, deteriorating, lost, or stolen; and (ii) it was determined, after a reasonable effort, that an unused replacement could not be obtained at a fair price;

2. Defendants hereby agree for a period of five (5) years from the date of this Stipulation to provide written notice to the Remaining Plaintiffs as soon as reasonable in the event the Libraries dispense with either of the practices, (i) or (ii), described in the previous clause (1), with such notice being sent by overnight delivery service to the undersigned counsel for the Remaining Plaintiffs and to the Authors Guild, which, although not a Remaining Plaintiff in this Action, will accept notice via its Executive Director, The Authors Guild, 31 East 32nd Street, 7th Floor, New York, NY 10016; and

3. Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Remanded Claim is hereby dismissed with prejudice, with each party to bear its own attorneys’ fees and costs.

Dated: New York, New York
December 23, 2014

**FRANKFURT KURNIT KLEIN &
SELZ, P.C.**

By: 

Edward H. Rosenthal (ER-8022)
488 Madison Avenue
New York, NY 10022
(212) 980-0120

Attorneys for Remaining Plaintiffs

**KILPATRICK TOWNSEND &
STOCKTON LLP**

By: 

Joseph Petersen (JP-9071)
1114 Avenue of the Americas
New York, New York 10036
(212) 775-8700


Attorneys for Defendants

SO ORDERED:

Dated: New York, New York
December 30, 2014

**THE LAW OFFICE OF
ROBERT J. BERNSTEIN**

By:


Robert J. Bernstein (RB 4230)

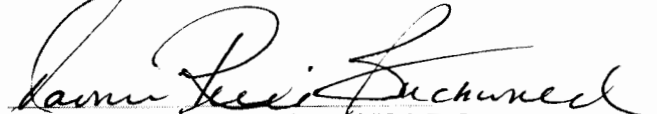
43 West 43rd Street, Suite 39
New York, NY 10036-7474
(203) 253-0353

Daniel F. Goldstein (admitted *pro hac vice*)
BROWN GOLDSTEIN & LEVY, LLP
120 East Baltimore Street
Baltimore, MD 21202
(410) 962-1030

PETER JASZI (admitted *pro hac vice*)
5401 Surrey Street
Chevy Chase, MD 20815
(301) 656-1753

Attorneys for Defendants-Intervenors

SO ORDERED:


Hon. Naomi Reice Buchwald U.S.D.J.

1/6/15 rnc