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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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|--|---|--------------------|
| RANDOM HOUSE, INC.,                              | : |                    |
|  | : |                    |
|  | : |                    |
| Plaintiff,                                       | : | 01 Civ. 1728 (SHS) |
|  | : |                    |
| v.   | : |                    |
|  | : |                    |
| ROSETTA BOOKS LLC                                | : |                    |
| and ARTHUR M. KLEBANOFF, in his individual       | : |                    |
| capacity and as principal of ROSETTA BOOKS LLC., | : |                    |
|  | : |                    |
| Defendants.                                      | : |                    |

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DECLARATION OF DOROTHY KAUFFMAN

I declare as follows:

1. Since October 2, 2000, I have been employed by RosettaBooks, Inc. as its Chief Marketing and Editorial Officer. I submit this Declaration in support of RosettaBooks’ opposition to the motion by Random House.
2. I graduated Barnard College (Phi Beta Kappa; summa cum laude) in 1984. I received a Master’s Degree with Honors from the Columbia University Graduate School of

Journalism. I am currently earning an MBA from Fordham University's Global Professional Program.

3. Previous to my current employment at RosettaBooks, I was the Associate Music Director and on-air host and producer of several programs at WQXR-FM, one of America's premier classical music radio stations. WQXR is a broadcast property of *The New York Times*.

4. After WQXR, I worked at BMG Direct, the direct marketing arm of BMG Entertainment, which is part of Bertelsmann, A.G., the German media and entertainment conglomerate (which at the present is the parent of Random House). I was brought on board to spearhead the A&R (artists and repertoire) department for the BMG Classical Music Service, the world's largest and most profitable classical music record club. Over time, my responsibilities were enlarged to include A&R and marketing responsibilities for all the Specialty Clubs (Classical, Jazz, Christian and Latin) as well as for the Pop Club. My final position at BMG Direct was Senior Director of A&R.

5. I left BMG Direct in the Fall of 2000 to accept the position of Chief Marketing and Editorial Officer at RosettaBooks. RosettaBooks is the leading independent electronic publisher of classic works of fiction and non-fiction.

6. I have reviewed the brief filed by Random House in support of its motion for an injunction. In its brief Random House accuses RosettaBooks of free riding on Random House and other print book publishers. (Plaintiff's Brief at 2.) RosettaBooks is not a free rider. Quite the contrary: RosettaBooks not only burnishes its books with visual, editorial and electronic enhancements (to be discussed in detail later), but also offers compelling marketing

alliances and distribution deals with companies such as DataPlay, BN.com (where we have our own boutique site), Microsoft, Adobe, Follet, Palm, to name only a few. Any publisher that puts the type of intense effort into the presentation and promotion of a book that RosettaBooks does could not be described as a free rider. Why would respected authors sign a license agreement for electronic rights with a young and new company such as RosettaBooks instead of with their own much larger, well-established physical publisher? One reason is clear: their backlist books have received little or no attention from their physical publishers.

7. RosettaBooks is founded on the following philosophies of publishing: both a passionate and serious approach to the presentation of the book, as well as imaginative and aggressive sales, marketing and distribution initiatives. RosettaBooks is an “author-centric” electronic publisher. Our website provides an environment in which readers of fiction and non-fiction can explore multiple aspects of an author’s legacy.

8. The RosettaBooks approach incorporates the belief that there are opportunities to add significant value to the experience of reading works electronically. The enhancement of RosettaBooks titles contains at least three major components: electronic, editorial and visual.

9. ELECTRONIC. RosettaBooks employs the full resources of the Web on behalf of an author and his works. RosettaBooks creates and offers hyperlinks, collectively known as “The RosettaBooks Connection,” as part of our effort to maximize an electronic title’s exposure on the Web. These hyperlinks, which can be as promotional, whimsical, esoteric or serious as the author wishes, places the author, his work and his world in context for the reader. As its name indicates, The RosettaBooks Connection, *connects* the reader to the world of the

author in a manner that enhances the reader experience and leaves the reader with a more comprehensive understanding of the writer and his world. For Aldous Huxley's *Brave New World*, for example, we might offer a link to a website about bioethics. A link for William Styron's *Sophie's Choice* takes the reader to the Holocaust Memorial Museum in Washington. For Kurt Vonnegut's *Slaughterhouse Five*, we offer an historical perspective from an online archive of European history about the 1945 bombing of Dresden, a central event of the book.

10. EDITORIAL. The quality of the editorial support with which RosettaBooks provides each individual title is a crucial difference in the RosettaBooks approach compared to that of other publishers. The copy on the RosettaBooks website is not generic; it does not come from a database. Working with gifted freelance writers, RosettaBooks provides substantial copy devoted to the book, the author's life and career and other elements that enhance understanding of the work as well as positioning it within cultural, social and historical contexts. The copy offers a distinct tonality and authority. The editorial support also serves dual functions: to inform bibliophiles and underscore the seriousness of our approach as well as to provide the type of information that a less committed reader might find compelling enough to purchase the book.

11. Every downloaded work from RosettaBooks is also accompanied by an "e-Foreward," which provides a summation of the work, information about the author and a description of the book's place in the literary tradition. The e-Foreward invites the reader back to the RosettaBooks website for continued exploration of other titles by the same author and/or searches for other authors.

12. VISUAL. RosettaBooks is the only e-publisher that I know of that creates unique electronic “jackets” for its titles. These eye-catching, customized “e-jackets” serve aesthetic as well as practical functions. RosettaBooks covers are designed specifically for the Web and with a thumbnail size in mind. Because RosettaBooks customizes each design, we have a unique flexibility to emphasize (or de-emphasize) those elements of the work that are the most compelling to lead a consumer to a purchase. So if a well-known film was inspired by a less well-known book (for example, Red Alert being the basis of Stanley Kubrick’s Dr. Strangelove), RosettaBooks is able to shift the emphasis through the design so that the title takes on a new commercial life by virtue of its association with the more celebrated film. In terms of functionality, the e-book “jacket” can be enabled to provide a one-button, click-through capability so that a consumer can purchase a Rosetta book anywhere on the Web where the “e-jacket” in question appears. The effort to customize all e-book “jackets” is a costly one, but one that RosettaBooks feels is worth it in order to capture the attention of the electronic consumer as well as to provide the author with an appropriate and striking image for his work.

13. Random House contends that the sale of e-books by RosettaBooks will erode Random House’s sales of the same works in print format. That contention is belied by my experience in e-commerce, marketing and sales.

14. E-commerce and web marketing are variants of direct marketing. One reason that direct marketers tend to do well in electronic space is that Internet marketing is at its most basic level simply another type of direct marketing. Web marketing is a paperless version of classic direct marketing.

15. For industries in their embryonic stage (and all would agree that electronic publishing is), revenue generation is not (and cannot be) a compelling short term goal. For embryonic industries, electronic commerce represents an alternative distribution channel. It does not remotely represent cannibalization of sales. (Since launching our website, RosettaBooks has sold extremely modest numbers of electronic books.)

16. To the contrary, selling in the electronic space is currently viewed as an effective means of ultimately selling more print books. Seth Godin, a highly respected marketing guru (Business Week called him “the ultimate entrepreneur of the Information Age”), offered his new book Unleashing the Ideavirus for free online in the belief that the online exposure would help sales of the physical books – which it did. After giving away hundreds of downloads, the book then sold thousands of copies in hardcover. Web exposure not only did not cannibalize sales, but also created media buzz and set the stage for the physical book launch.

17. What RosettaBooks offers in a very concrete way is exposure of the work in question; such exposure will surely help sell print books. When was the last time that anyone saw a serious marketing or advertising campaign for William Styron’s *Sophie’s Choice* or Kurt Vonnegut’s *Slaughterhouse Five* or Robert Heinlein’s *The Puppet Masters*? RosettaBooks, by virtue of our new electronic book jackets, our marketing alliances and our extensive distribution network re-establishes these classic but commercially overlooked titles in the public’s consciousness. We treat backlist titles with the care, attention and effort that the major publishers reserve exclusively for their frontlist titles.

18. Let me provide another example of the benefits of exposure. BMG Direct, a division of Bertelsmann A.G., consists of the world’s largest and most profitable record clubs.

When I worked for BMG Direct, we spent millions of dollars on advertising. We hoped for a 1-3% return on certain ads. In other words, the vast majority of consumers who saw our ads in a magazine or newspaper did not join the record club to buy compact discs. They purchased them instead at retail. But – and this was one of the major reasons that the record labels did business with us – all the ads that we bought literally kept thousands of music albums in front of the public at large – and therefore on its purchasing radar. The huge exposure benefit to the industry in general and to the artists in particular, while difficult to strictly quantify, was powerful, undeniable and understood by all participants.

19. In addition, on the RosettaBooks website we offer the consumer the ability to buy print versions (hard and soft cover) of the books in question. We do so by including a link to Internet book retailers. Our feeling is that while we naturally would prefer that visitors purchase an electronic book from us, if they choose not to (or do not yet have the electronic capability to do so) we want to be as consumer-friendly and author-friendly as possible and at least offer them the chance to buy the print book – including titles from Random House.

20. Random House’s position that its pre-1994 standard publishing contacts confer electronic rights on Random House is inconsistent with the perception of authors and agents, with whom Random House supposedly had a “meeting of the minds” concerning that grant of rights. As demonstrated by the amicus brief filed by The Authors Guild, authors and agents maintain they never granted to Random House electronic rights to their work unless they expressly did so.

21. RosettaBooks sought to publish in electronic format The Diary of Anne Frank, the print version of which is published by Doubleday (a Random House division). On

February 28, 2001, I received a letter from the Swiss literary agency that represents the estate of Anne Frank. The letter declines RosettaBooks' request, and states:

I went back to the Anne Frank Fonds after we talked on the phone. We informed them about RosettaBooks, about your enthusiasm, your readiness to come to Switzerland for a presentation, and also about your personal involvement.

However, I regret to have to tell you that at the last board meeting the Anne Frank Fonds decided to decline the RosettaBook offer for an e-book.

The negative answer has nothing to do with RosettaBooks but is based on general decisions made by the board with regard to e-books. For the time being the Anne Frank Fonds does not wish to guarantee electronic rights to anyone. (Emphasis added.)

The letter is attached hereto as Exhibit A.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this \_\_\_\_\_ day of April, 2001 in \_\_\_\_\_.

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Dorothy Kauffman