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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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. . .

DECLARATION OF DAVID FARBER

1. I am the Alfred S. Fitler Moore Professor of Telecommunications Systems at the Moore School of Electrical Engineering at the University of Pennsylvania. A copy of my abbreviated c-v., and the more expanded C.V. used in connection with my testimony in the recent U.S. v. Microsoft trial, are attached. I was qualified as an expert witness in that case, and testified on behalf of the United States.

2 . I have been shown the affidavit of Andries Van Dam and asked to comment.

3. I understand the issue before the Court to be whether, when William Styron, Kurt Vonnegut, and Robert Parker (and by implication other authors) signed contracts with Random House in the 1960's, 1970's, and early 1980's, they or the United States publishing industry could have reasonably foreseen a market for distribution of their works over the internet. This distribution involves formatting large text files in computer code, transmitting them over telephone lines and the world wide web, and downloading them into computers to be viewed on a computer screen via software like Adobe Acrobat Reader.

4. In my opinion, no market for electronic or digital distribution was reasonably understood by the publishing industry during this time period. Rather, it required the convergence of the following different technological developments:

A. The development of personal computers which had the capacity to store, retrieve, manipulate and display large text files. Initially, only large mainframe computers weighing many tons and located at universities, large businesses, and the U.S. **Government** could transmit data, and the text they could handle was quite limited. Further, even if one had managed to transmit or download a work, it would have required carrying around a bag of hundreds or thousands of computer punch cards or tapes which could only be "read" by the computer.

B. The development of specialty software like Adobe Acrobat Reader, to petit large text files to be read on a computer screen in relatively high resolution and as the author/publisher designed (and hence easy to read) in a relatively low bandwith file format, the pdf (portable document format).

C. The development of high speed modems, to permit a network connection fast enough to deliver material to the user. For example, the "state of the art" modems in the early 1980's would have required a long time to transmit or receive the computer code for a 200 page work.

D . The development of a commercial network space, the internet, where a consumer and seller could meet and conduct commerce. Without this critical development, commercial electronic publishing is merely a pipe dream, because there is no effective way of distributing the work for profit.

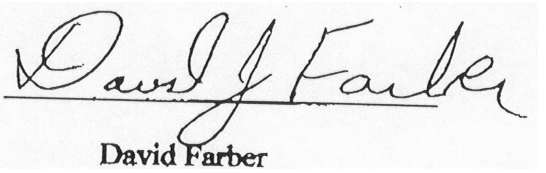
5. These technology developments did not begin to converge in the U.S. economy until the mid 1980's at the earliest. In my opinion, there could be no effective market for digital or electronic distribution of large text works until this convergence.

6. Dr. Van. Dam takes the position that these developments were anticipated by such events as Vannevar Bush's 1945 article in the Atlantic Monthly concerning storing books on microfilm, early experiments in academia to transmit data, ox experiments Dr. Van Dam conducted with a poetry class at Brown.

7. Every scientific advance has historical antecedents. For example, Leonardo Da Vinci made rather sophisticated calculations anticipating air flight by humans. However, commercial airplane travel did not become reasonably foreseeable until many centuries later. The history of science is littered with dreams that do not come to fruition, or which take decades or centuries to have any reasonable possibility of achievement

8. In my opinion, digital and electronic distribution is a different medium from print medium. Its technology is different, one experiences it differently, and it has different potentials. As it continues to evolve, electronic distribution offers the possibility of many features not found in print., such as electronic full text searches of works, hyperlinks to a variety of dictionaries and other resources, and multi-media formats in which visual text, sound, and still or moving pictures can be delivered simultaneously in the same work.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 6 day of April, 200 1.



David Farber