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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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**ANSWER OF ROSETTA BOOKS LLC AND ARTHUR M. KLEBANOFF TO THE COMPLAINT OF RANDOM HOUSE, INC.**

Defendants Rosetta Books LLC (“Rosetta”) and Arthur M. Klebanoff  
 (collectively referred to hereinafter as “defendants”), by their undersigned attorneys, answer the  
 Complaint of plaintiff Random House, Inc. (“plaintiff”) as follows:

**NATURE OF THE ACTION**

1. Defendants deny the allegations of paragraph 1, except admit that plaintiff seeks injunctive relief.

2. Defendants deny the allegations of paragraph 2, except admit that Rosetta has acquired the electronic publishing rights to literary works by William Styron, Kurt Vonnegut and Robert B. Parker (the “Works”), and further admit that Rosetta intends to expand its eBook offerings.

3. Defendants deny the allegations of paragraph 3, except admit that Rosetta has converted literary works into digital formats, placed those digitized files onto computer servers, and offered for sale and sold copies of those digitized files to the public via the internet.

4. Defendants deny the allegations of paragraph 4, except admit that Rosetta has offered the Works for sale without seeking consent from plaintiff. Defendants further aver that defendants did not need plaintiff’s consent.

### **THE PARTIES**

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, except admit that Random House is a large publisher with many divisions and imprints and contracts granting it limited rights to the works of numerous authors.

6. Defendants admit the allegations of paragraph 6.

7. Defendants admit the allegations of paragraph 7.

### **JURISDICTION AND VENUE**

8. The allegations of paragraph 8 constitute legal conclusions to which no responsive pleading is required. To the extent a response is deemed to be required, defendants

admit that plaintiff has alleged that this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338 and 1367.

9. The allegations of paragraph 9 constitute legal conclusions to which no responsive pleading is required. To the extent a response is deemed to be required, defendants admit that Plaintiff has alleged that venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c). Defendants deny that they conducted any unlawful activities within or outside of this judicial district.

### **BACKGROUND**

10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10, except that defendants admit that plaintiff is in the book publishing business. Defendants deny that “book form” has evolved over the years, but instead aver that as new media were developed for the display and transmission of literary works, specific subsidiary rights to those works were recognized, and when granted by licence from authors to publishers, were separately enumerated in the respective publishing contracts. Defendants admit that it is now economically viable to deliver electronic publications, including eBooks, to end users.

11. Defendants deny the allegations of paragraph 11.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Defendants admit that plaintiff entered into contracts with Mr. Styron and refer to each of those agreements for their contents. Defendants further aver that they lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the number of copies of the works sold by plaintiff and plaintiff's plans, if any, to sell electronic versions of these titles.

18. To the extent that paragraph 18 purports to describe the terms of the Styron Agreements, defendants refer to each of those agreements for their contents.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19. Defendants refer to the agreement for its contents.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Defendants admit the allegations of paragraph 21.

22. The allegations of paragraph 22 constitute legal conclusions to which no responsive pleading is required. To the extent a response is deemed required, defendants deny the allegations of paragraph 22, and defendants refer to the Styron Agreements for their contents.

23. Defendants admit that plaintiff entered into contracts with Mr. Vonnegut and refer to each of those agreements for their contents. Defendants further aver that they lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the number of Mr. Vonnegut's works sold by plaintiff and plaintiff's plans, if any, to publish electronic versions of these works.

24. To the extent that paragraph 24 purports to describe the terms of the Vonnegut Agreements, defendants refer to each of those agreements for their contents.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25. Defendants refer to the Vonnegut Agreements from their contents.

25. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26.

26. Defendants admit the allegations of paragraph 27.

27. The allegations of paragraph 28 constitute legal conclusions to which no responsive pleading is required. To the extent a response is deemed to be required, defendants deny the allegations of paragraph 28 and refer to the Vonnegut Agreements for their contents.

28. Defendants admit that plaintiff entered into a contract with Mr. Parker and refer to that agreement for the contents. Defendants further aver that they lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the number of Mr. Parker's books sold by plaintiff and plaintiff's plans, if any, to publish electronic versions of Mr. Parker's books.

29. To the extent that paragraph 30 purports to describe the terms of the Parker Agreement, defendants refer to that agreement for its contents.
30. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and refer to the Parker Agreement for its contents.
31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.
32. Defendants admit the allegations of paragraph 33.
33. The allegations of paragraph 34 constitute legal conclusions to which no responsive pleading is required. To the extent a response is deemed required, defendants deny the allegations of paragraph 34, and refer to the Parker Agreement for its contents.
34. Defendants deny the allegations of paragraph 35.
35. Defendants deny the allegations of paragraph 36.
36. Defendants deny the allegations of paragraph 37, except that defendants admit that eBook files can be displayed on computers and other electronic devices.
37. Defendants deny the allegations of paragraph 38, except that defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the amount of money plaintiff has invested in electronic publishing.
38. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.
39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40.
40. Defendants admit the allegations of paragraph 41.

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

42. Defendants admit the allegations of paragraph 43.

43. Defendants deny the allegations of paragraph 44.

44. Defendants deny the allegations of paragraph 45, except admit that Rosetta plans to acquire rights to enable it to build up a large library of electronic publications that it will offer for sale to the public.

45. Defendants admit the allegations of paragraph 46, except that defendants aver that the Glassbook platform is now known as Adobe eReader.

46. Defendants deny the allegations of paragraph 47, except that defendants admit that Exhibit C to the Complaint appears to be a photocopy of plaintiff's print version of the cover and first chapter of *Slaughterhouse-Five*.

47. Defendants deny the allegations of paragraph 48.

48. Defendants deny the allegations of paragraph 49, except that defendants admit that Rosetta has featured, among other works, *Slaughterhouse-Five* and *Sophie's Choice* on its website.

49. Defendants deny the allegations of paragraph 50.

50. The allegations of paragraph 51 constitute legal conclusions to which no responsive pleading is required. To the extent that a response is deemed required, defendants deny the allegations of paragraph 51.

51. Defendants deny the allegations of paragraph 52.

52. Defendants deny the allegations of paragraph 53.

53. Defendants deny the allegations of paragraph 54.

54. Defendants deny the allegations of paragraph 55, except that defendants admit that Rosetta plans to continue expanding the list of electronic publications it offers for sale.

55. Defendants deny the allegations of paragraph 56.

## COUNT I

### **Copyright Infringement**

56. Defendants repeat and reallege their responses to paragraphs 1 through 56 as if fully set forth herein in response to paragraph 57.

57. Defendants deny the allegations of paragraph 58.

58. Defendants deny the allegations of paragraph 59.

59. Defendants deny the allegations of paragraph 60.

60. Defendants deny the allegations of paragraph 61.

## COUNT II

### **Tortious Interference With Contracts**

61. Defendants repeat and reallege their responses to paragraphs 1 through 61 as if fully set forth herein in response to paragraph 62.

62. Defendants deny the allegations of paragraph 63.

63. Defendants deny the allegations of paragraph 64.

64. Defendants admit the allegations of paragraph 65.

65. Defendants deny the allegations of paragraph 66.

66. Defendants deny the allegations of paragraph 67.

67. Defendants deny the allegations of paragraph 68.



68. Defendants deny the allegations of paragraph 69.

69. Defendants deny the allegations of paragraph 70.

Defendants deny any allegations not herein expressly admitted.

### **PRAYER FOR RELIEF**

Defendants deny Plaintiff is entitled to any of the relief prayed for at pp. 22-23 of its complaint.

### **DEFENSES**

Defendants set forth the following defenses in further opposition to the Complaint, without assuming any burden of proof on such defenses that otherwise would rest with the plaintiff.

FIRST DEFENSE: The Complaint and each claim alleged therein fails to state a claim against either Defendant upon which relief can be granted.

SECOND DEFENSE: To the extent plaintiff ever had, pursuant to the contracts at issue in this litigation, any exclusive license to electronic publication of the Works at issue, plaintiff has waived or forfeited such licenses due to its failure to make reasonable efforts to exploit such licenses.

THIRD DEFENSE: The relief sought by plaintiff is barred, in whole or in part, because plaintiff has failed to mitigate any alleged damages.

FOURTH DEFENSE: The relief sought by plaintiff is barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE: The relief sought by plaintiff is barred, in whole or in part, by the doctrine of laches.

Defendants reserve the right to assert other defenses as discovery proceeds.

### **DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury.

Dated: April 6, 2001

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