



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RANDOM HOUSE, INC.,

Plaintiff,

v.

01 Civ. 1728 (SHS)

ROSETTA BOOKS LLC
and ARTHUR M. KLEBANOFF, in his individual
capacity and as principal of ROSETTA BOOKS LLC,

Defendants.
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**MEMORANDUM OF PENGUIN PUTNAM INC., SIMON AND SCHUSTER,
INC., TIME WARNER TRADE PUBLISHING INC., AND THE PERSEUS
BOOKS GROUP IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE A
BRIEF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

This memorandum is submitted on behalf of Penguin Putnam Inc., Simon and Schuster, Inc., Time Warner Trade Publishing Inc., and The Perseus Books Group in support of their motion for an order granting them leave to participate as *amici curiae* and to file a brief *amicus curiae* in support of Plaintiff Random House's motion for a preliminary injunction. Proposed *amici curiae* have requested the consent of the parties to file the brief. Plaintiff has consented and Defendants do not oppose. (Affidavit of Kevin W. Goering, sworn April 25, 2001, ¶ 5).

STATEMENT OF FACTS

The issues presented in this case are of vital importance to *Amici*. The *Amici* are book publishers who collectively publish thousands of books each year. Although the extent of their “backlists” varies, all of the *Amici* derive substantial revenue from books written and first published decades ago.

On or about February 28, 2001, Random House filed this action to enforce five exclusive publishing contracts entered into with Kurt Vonnegut, William Styron, and Robert Parker. While the enforcement of only five contracts are directly before this Court, a ruling against Random House would result in thousands of publishing contracts being renegotiated, striking at the heart of the publishing industry. The ramifications of this case extend far beyond Random House, and are certain to effect the most well-respected publishing houses in America. This Court has granted a motion from The Author’s Guild, Inc. and the Association of Author’s Representatives, Inc., to file an brief *amicus curiae* in support of Defendants. No other publisher has been made a party to this suit.

ARGUMENT

PROPOSED AMICI CURIAE SHOULD BE PERMITTED TO FILE A BRIEF TO BRING THE INTERESTS OF THE NONPARTY PUBLISHERS BEFORE THE COURT

Plaintiff's motion simply seeks to enforce the standard terms of its publishing contract. The common contractual language "in book form" at issue in this case has been used in thousands of publishing contracts over the last century. This broad language was intended by publishers to prevent an author from attempting to allow a rival publisher later to sell the very same text of the book in the marketplace. With as much as forty percent of a publisher's income derived from backlist sales, these common terms are essential to the economics of the book publishing industry. While the outcome of this case will affect many influential publishers throughout America, only Random House is a party to this suit.

It is therefore essential that the Court have before it the *amicus curiae* brief of additional publishers to explain the broader effect the denying of the motion will have on the industry as a whole. See British Airways Board v. Port Authority of New York and New Jersey, 71 F.R.D. 583 (S.D.N.Y. 1976) ("a third party can contribute usually most effectively and always most expeditiously by a brief *amicus curiae* and not be intervention").

CONCLUSION

Penguin Putnam Inc., Simon and Schuster, Inc., Time Warner Trade Publishing Inc., and The Perseus Books Group are submitting herewith a memorandum of law in support of Plaintiff's motion for a preliminary injunction, and respectfully request that their motion for an order to file this brief *amici curiae* be granted.

Dated: New York, New York
April 30, 2001

COUDERT BROTHERS

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NOTICE OF MOTION

Defendants.
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PLEASE TAKE NOTICE THAT, pursuant to Rule 7 of the Federal Rules of Civil Procedure and Local Rule 6.1, Penguin Putnam Inc., Simon and Schuster, Inc., Time Warner Trade Publishing Inc., and The Perseus Books Group, upon the annexed affidavit of Kevin W. Goering sworn to April 30, 2001, and accompanying memorandum in support of their motion, will move this Court at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312, in Courtroom 23A, on the 7th of May, 2001, or as soon thereafter as counsel may be heard, for an order granting them leave to participate as *amici curiae* in this case and to file the accompanying memorandum in support of Plaintiff.

Dated: New York, New York
April 30, 2001

COUDERT BROTHERS

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**AFFIDAVIT OF
KEVIN W. GOERING
IN SUPPORT OF
MOTION OF *AMICI
CURIAE***

Defendants.

-----X
STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

KEVIN W. GOERING, being duly sworn, deposes and says:

1. I am a partner at Coudert Brothers, attorneys for proposed *amici curiae* Penguin Putnam Inc., (“Penguin Putnam”) Simon and Schuster, Inc., (“Simon and Schuster”), Time Warner Trade Publishing Inc. (“Time Warner”) and The Perseus Books Group (“Perseus”). I submit this affidavit in support of the motion of proposed *amici curiae* Penguin Putnam, Simon and Schuster, Time Warner, and Perseus for an order granting them leave to file an *amicus* brief in this action in support of Plaintiff.

2. Plaintiff’s motion for a preliminary injunction asks the Court to enforce the plain and obvious interpretation of various exclusive publishing agreements. While

the Court's ruling will significantly affect well-respected publishers throughout the country, only Random House is a party to the suit.

3. This Court has already granted a motion from The Author's Guild, Inc. and the Association of Author's Representatives, Inc., to file an brief *amicus curiae* in support of Defendants.

4. Proposed *Amici* are major publishers who publish thousands of books each year.

5. Plaintiff has consented to the filing of a brief *amicus curiae* on the hearing of Plaintiff's motion for a preliminary injunction. Defendants do not oppose this motion.

Kevin W. Goering

Sworn to before me this
30th day of April, 2001

Notary Public