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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 ARTHUR M. KLEBANOFF

I declare as follows:

1. I am the founder and Chief Executive Officer of RosettaBooks LLC. I make this Declaration in support of my and RosettaBooks' response in opposition to the motion of Random House, Inc. for a preliminary injunction.
2. I graduated from Harvard Law School in 1973 and was admitted to the bar in the Southern District of New York in 1974. I practiced law with the firm of Janklow and Traum (later Janklow, Traum & Klebanoff) from 1973 until

1983.

3. I was a co-founder of the literary agency Morton L. Janklow Associates, Inc. in 1977 (the “Janklow Agency”).
4. Between 1973 with its first book deal for William Safire and my first client deal for former New York senator Daniel P. Moynihan and 1983 when I sold my interest in the Janklow Agency to Mort Janklow, the Janklow Agency emerged as one of the pre-eminent fiction and non-fiction literary agencies in the world. The successor agency, Janklow & Nesbit, enjoys that reputation today and I have worked closely on the contracts of such authors as Sidney Sheldon, Barbara Taylor Bradford, Judith Krantz, Jackie Collins, David McCullough, Danielle Steele, William Safire and others who continue as clients of that agency today.
5. In 1983 I established my own literary agency, Arthur M. Klebanoff P.C., whose clients include Roger Tory Peterson, the ornithologist (Peterson Field Guides), Linda Goodman, the astrologer, Sheila Lukins, whose cookbooks are among the ten best selling cookbooks ever published, and Easton Press, the leading leather-bound publisher in the United States for whom I have licensed approximately 2,000 titles from publishers and agents throughout the world. Among other bestsellers, I represented former President Richard Nixon for two books.
6. Between 1990 and 1993 I headed the publishing division of International Management Group, a leading international agency mainly focused on sports.

7. In 1993, after Scott Meredith's death, I acquired the Scott Meredith Literary Agency ("Scott Meredith"), which was founded in 1946. Scott Meredith is the "agent of record" for a backlist of approximately 1,500 titles. Since acquiring Scott Meredith, I have added as clients Mayo Clinic, Michael Bloomberg and the Honorable William Bradley, former senator from New Jersey.
8. I have active negotiating experience regarding electronic rights for Mayo Clinic (a major individual title electronic rights negotiation) and the Haldeman Diaries (the first ever coordinated release of a CD-ROM, produced by Sony, simultaneously with the release of a hardcover bestseller).
9. I have served on the Board of Directors of Webcasts.com (now part of publicly held iBeam Broadcasting), a Company active in convergence issues in electronic media.
10. I conceived of RosettaBooks approximately eighteen months ago as an electronic publisher that would celebrate the achievements of the quality authors of the twentieth century and bring enhanced digital versions of their work to the emerging e-reading marketplace for both the consumer and educational marketplace.
11. Having spent more than twenty-five years negotiating contracts and rights in the trade publishing business, I have come to understand that, with respect to standard publishing contracts, authors own all rights to the work that are not explicitly granted to the publisher, including electronic rights. I know that

electronic rights clauses had, in general, not been included in publishing contracts before the 1980's.

12. I have also come to understand that authors in the United Kingdom have in general sold "volume rights" to their United Kingdom publishers. Agents and the Society of Authors in the United Kingdom view volume rights as conveying only print rights.
13. My feeling was that the World Wide Web and very recent developments with electronic book technology, hardware, software and delivery systems meant that e-reading would finally become a reality. I formed RosettaBooks with the initial mission of publishing digital editions of quality backlist titles and, later, publishing electronic editions of frontlist books with the cooperation of publishers.
14. At its core, RosettaBooks is a promotional company. Our goal is to achieve the maximum number of "exposures" for each of our original "jackets" on the Web. Our original electronic "jackets" are branded with the RosettaBooks name and logo. Our goal is to align with major electronic partners who are themselves developing large electronic audiences. Examples of how we do this include:
 - a. A series of ongoing promotions with Adobe in cooperation with bn.com (barnesandnoble.com). The first promotion, for Ray Bradbury's short story The Playground, was part of a 3,000,000 circulation e-mail and was promoted for two weeks

on bn.com's home electronic page. The site has more than 7,000,000 visitors monthly. The Playground became the number three Adobe format bestseller on bn.com. Our next promotion with Adobe in a similar format will be for Sir Arthur C. Clarke's short story Death and the Senator.

- b. A series of promotions with Microsoft. The first promotion, for Aldous Huxley's Brave New World, was launched on March 19, 2001 as part of Microsoft's re-launch of its new Microsoft Reader page. Exposures for the "jacket" will be many millions.
- c. A dedicated MS Reader "boutique" on bn.com that assures prominent treatment for RosettaBooks titles. The boutique is highlighted on the MS Reader home page of bn.com and leads to a page dedicated to RosettaBooks titles. This assures far higher visibility than a simple listing on the bn.com site. Random House does not have such a "boutique" at this time.
- d. An alliance with DataPlay, an award winning compression and digital storage technology that could change consumer habits for music, photography and e-books. We introduced at the January 2001 Consumer Electronics Show with DataPlay the first ever e-book/unabridged audio book on the same platform (Brave New World). While DataPlay has achieved a wide

range of high profile music label partnerships, we are to date its only electronic publishing partner.

- e. An alliance with Baker & Taylor, the largest independent book wholesaler to public libraries in the United States, to sell our titles to public libraries. RosettaBooks was the only electronic publisher willing to offer a demonstration title to Baker & Taylor for this year's American Library Convention.
- f. An alliance with Overdrive, a company appointed by Follett's, the largest independent book wholesaler to school libraries in the United States, to offer RosettaBooks to hundreds of college campuses. The first title, Pat Conroy's Prince of Tides, appears on efollett's home page, which is being co-promoted by Overdrive and Microsoft and was announced on March 26, 2001.
- g. An alliance with Peanut Press, just acquired by Palm, to promote RosettaBooks titles prominently on the Palm platform.
- h. An alliance with Gemstar to promote RosettaBooks in REB 1100 (Rocket Book) formats.
- i. Alliances in development with Amazon, Contentville and AMS, the leading wholesaler to the warehouse selling clubs (Price-Costco, Sam's, BJ's, etc) for further exposure.

15. Prominent authors and their representatives have been willing to license

electronic rights to RosettaBooks because of our quality approach, our promotional exposure, the relatively short license term we offer and the fact that we pay an advance against royalties. Under Random House's interpretation of the rights, the Kurt Vonnegut, William Styron and Robert Parker titles would be committed for the life of the copyright without advance payment and with no assurance of quality or promotional publication.

16. RosettaBooks was conceived as an "author-centric" publisher. We work closely with authors and their representatives and cross-promote on the Web author opportunities. We have and will always work with contracts signed by the authors, negotiated and reviewed by their representatives and with appropriate representations and warranties as to ownership.
17. Agents and authors generally perceive that their backlist books, i.e., works more than one year in print, have not been promoted or aggressively marketed by the publishers. From my experience and from what is generally recognized in the publishing industry, editors generally focus their efforts on acquisition of titles for future publication and frontlist efforts. Of Random House's \$100,000,000 in promotional expenditures (which according to Publishers Weekly, themselves represent less than five per cent of sales), a very tiny fraction are allocated to the backlist (which Random House states represent 40% of sales). Random House's expenditures for editors, promotion, advances to authors and the like are focused on the frontlist.
18. I have read the affidavit of Edward Miller in support of Random House's

motion for a preliminary injunction. Based on nearly thirty years of experience in the publishing business and negotiating and review experience with hundreds of publishing contracts, I disagree with his interpretation of the phrase “in book form.” During the 1970’s and 1980’s, neither I nor the authors I represented knew of or contemplated the “e-book” as it has taken technological shape today. As sellers, we did not sell the right. I do not believe that buyers believed they were acquiring such a right. Contracts frequently withheld rights (dramatic, television and motion picture, first serial, British and translation, merchandising, audio book and other rights). Included rights had specific grant clauses and royalty rates (as Random House agreements have today).

19. The fiction title that put the Janklow Agency on the map was *Scruples*, by Judith Krantz, negotiated in 1977. The contract is with Crown, now a unit of Random House. The book is actively in print. I personally negotiated that contract and reviewed it line by line with Judith Krantz in my office. At the time, our office at 375 Park Avenue had only IBM Selectric typewriters. The PC itself was on the horizon, let alone the World Wide Web. We sold Crown print rights to a book in multiple edition formats in a range of territories and languages, nothing more. We went on to sell separately a very successful television mini-series from withheld rights. We did not foresee the electronic world as a seller nor did Crown perceive it as a buyer. The rights were not conveyed and, as is customary in the publishing industry, were withheld by the

author.

20. I have read the affidavit of Ashbel Green in support of Random House's motion for a preliminary injunction. The thrust of Green's affidavit is that publishers take risks to publish books and therefore need broad rights (including e-book rights) to justify their investment. This is precisely the argument Random House used in 1994 (and uses today) to sign its current authors to contracts with e-book rights provisions. The argument has nothing to do with older contracts which are silent about e-book rights, when books were acquired with no thought of the unknown e-book technology. In general, Green's arguments relate to frontlist acquisition practices which since 1994 for Random House have included electronic rights clauses.
21. My experience has led me to conclude that the promotion, marketing and sales of e-books will enhance rather than hinder the sales of print books. That has certainly been my experience after nearly twenty years of licensing for leather-bound editions for Easton Press. Quality promotion for those editions have stimulated sales of less heavily promoted paperback editions. That is the experience of many publishers, e.g., the science fiction publisher Baen, that are experimenting with the Web as a marketing and sampling tool. That is the conclusion of an Accenture (formerly Andersen Consulting) study for the Association of American Publishers, which concluded that 70% of all e-book sales would be made to people who would not have otherwise bought the physical book. Attached hereto as Exhibit A is a copy of the Andersen

Consulting (now called Accenture) study. Note the chart on page 8 of the study.

22. I have read the affidavit of Richard Sarnoff in support of Random House's motion for a preliminary injunction. The thrust of Sarnoff's affidavit is that Random House "owns" the reputations of the authors it publishes, including William Styron, Kurt Vonnegut and Robert Parker and that Random House publishing efforts over the years created the values in their titles. In fact, of course, authors achieve their reputations for their creativity and more often than not help create the reputation of their publishers rather than the other way around. Sarnoff cites sales figures with Sophie's Choice by far the largest at 3,200,000 copies. Consistent with my experience and industry experience, most of these sales were in response to the success of the film version of Sophie's Choice (rights which were sold directly by William Styron). Most of Sarnoff's discussion of Random House's investments in e-book technology concern frontlist titles and systems. Sarnoff touts in paragraph 22 Random House's partnership with Reciprocal, a digital rights management company, as evidence of their commitment to e-book marketing. RosettaBooks has a partnership with Reciprocal as well and has already launched highly visible promotions with Reciprocal.
23. RosettaBooks receives all of its revenue with computerized accountings and can easily track its revenues from the eight titles in question in Random House's litigation. Those revenues in the coming months are almost certain to

be a tiny fraction of the revenues from the print editions of the titles. And, as stated, the print revenues themselves will actually benefit from our promotions.

24. If Random House is granted the injunctive relief it seeks, RosettaBooks will suffer the following hardships:
 - a. Access to up to one-third of attractive trade titles (based on Random House's overall market share) will be denied to RosettaBooks for exploration of electronic rights licensing;
 - b. Since several other major publishers have said publicly that they support Random House in this litigation, there will be a chilling effect on authors and agents from those houses as to licensing the electronic rights to their works.
 - c. Venture capital and other funding sources will likely dry up.
 - d. Third party alliance partners (for example, bn.com, Amazon, AMS and Baker & Taylor) will likely lose confidence in our ability to deliver titles and maintain our business as a going concern.
25. Granting a preliminary injunction would discourage authors and agents throughout the community from selling their backlist electronic rights. Since publishers (including Random House) plan to publish backlist electronic rights slowly if at all, the effect is to "warehouse" thousands of electronic rights, thereby denying authors the opportunity to share their work in this emerging

marketplace. In turn, readers will be denied the opportunity to read these books in these new formats, thereby discouraging the growth of a new market for older titles.

26. In sum, granting the preliminary injunction could be tantamount to a death sentence for RosettaBooks. However, if the preliminary injunction were denied, Random House would still have ample opportunity to pursue its remedies, which are adequately protected by monetary damages from sales in any event.

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

Executed on this 5th day of April, 2001 in New York, New York.

Arthur Klebanoff

