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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 HELEN BRANN

1. I hold the position of President and Owner of The Helen Brann Agency, Inc., 94 Curtis Road, Bridgewater, CT 06752.

2 I have worked in the field of book publishing in the United States for 39 years, and have owned The Helen Brann Agency, Inc. since 1973.

3 . During this time, I have negotiated approximately 5,000 book publishing contracts. I have personal knowledge of the trade usage of the words used in the book publishing industry in the United States, and the process by which authors convey licenses to publishers.

4. As Robert B. Parker's literary agent, I negotiated the terms of the contract dated February 4, 1982 between Dell Publishing Co., Inc., and Robert B. Parker for four books, one of which is PROMISED LAND.

5. I believe that the words "print, publish and sell the work in book form" in a publishing contract means that the publisher has obtained only the right of first publication of that work in the format of a physical book, i.e. printing the work with ink on sheets of paper which are sewn or glued between covers of a volume. The phrase to my knowledge has never been understood in the industry to convey any broader grant than this.

6. As additional rights beyond this primary right were sought to be obtained by the publisher, they have been the subject of separate negotiation, which is often intense, and have involved separate contractual language added either in the basic contract itself, or in amendments to the contract. These additional rights would include in my opinion the following: first serial, paperback, book club, British, translation, motion picture, television and all other dramatic uses of the work, etc.

7. In the 1950's when the paperback industry grew, rights to publish a book in paperback form were not considered to be conveyed to the author to "print, publish and sell the work in book form," especially where (as is usually the case) the paperback is a reprint rather than an original first publication. The soft-cover rights normally involved separate negotiation and separate contractual language.

8. In the 1970's, the technology for recording an author's work on magnetic tape became available (e.g. "audio books", or "books on tape"). Either the author, or another, read the full or partial text of the work onto tape. This was not considered in trade usage to be included in the right to "print, publish and sell the work in book form". For the publishers to obtain these

rights from the author involved separate negotiation and consideration, and separate contractual language.

9. By the 1970's, it became common to speak of an author granting to the publisher a group of "standard rights". Those "standard rights" included: the right of first publication of the hardback edition (i.e., the right to "print, publish and sell in book form"), the rights to book club, soft-cover reprints, second serialization (i.e., serialization after the hardcover had been published), and permissions (the right to grant permissions to other publishers to quote portions of the work). All other rights (such as first serialization and foreign translations) were reserved to the author.

10. In the late 80's and early 1990's, the possibility of "electronic publishing" first became available in the industry, i.e., delivering an author's work through software on a CD Rom, or more recently through the world wide web, accompanied in various degrees with features not found in printed books, such as the ability for an electronic full-text search of the work, multimedia features, hyperlinks to dictionaries and other sites, and so forth.

11. I was not aware of the possibility of electronic publishing until the late 1980's. I first became aware through reading articles in PW, and The New York Times, and discussions with other literary agents.

12. To my knowledge, in trade usage, electronic publishing was not considered to be part of the right to "print, publish and sell in book form." As the other rights and licenses discussed above, it involved a separate grant by the author or separate rights, separate consideration, and separate contractual language.

13. I have read Mr. Green and Mr. Miller's affidavits and to my knowledge, no one in the industry has ever used the phrase, "distribute the full content of the work in a linear text

fashion.” That phrase has never appeared in any author’s contract that I have negotiated with any publisher in any country.

14. On February 28, 2001, I wrote Mr. Rich at Weil, Gotshal & Manges LLP the following letter: “I am writing to confirm that my client Robert B. Parker owns the electronic rights in PROMISED LAND, a Spenser novel published in paperback by Dell in 1982, and that Random House does not own these rights. Accordingly, I have negotiated a contract with Rosetta Books dated January 18, 2001 for eBooks rights in this title and Mr. Parker has signed said contract. In view of the dispute between Random House and Rosetta Books, I thought it important for you to know these facts.”

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 fourth day of April, 2001.



Helen Brann

Subscribed and sworn to before me, _____,
Notary Public, in and for County of LITCHFIELD
and State of Connecticut, this 4TH day of
APRIL, 2001
Margaret S. Bouton
Notary Public
Date Commission Expires: 4-30-01

The Helen Brann Agency, Inc.

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BRIDGEWATER, CT 06752

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FAX: 860-366-2572

CAROL WHITE
ASSISTANT

FLORA ROBERTS, INC.
DRAMATIC RIGHTS

NEW YORK OFFICE:
FAX: 212-246-7138

February 28, 2001

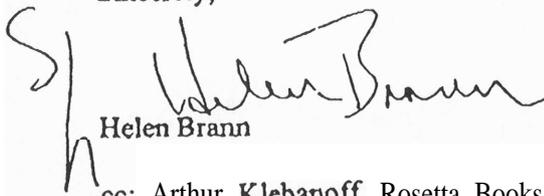
Mr. R. Bruce Rich
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119

VIA FACSIMILE

Dear Mr. Rich:

I am writing to confirm that my client Robert B. Parker owns the **electronic** rights in PROMISED LAND, a Spenser novel published in paperback by Dell in 1982, and that Random House does not own **these** rights. Accordingly, I have negotiated a **contract with** Rosetta Books dated **January 18, 2001** for **eBooks rights** in this title and Mr. **Parker** has signed said contract. In view of the dispute **between Random** Howe and Rosetta Books, I thought it important for you to **know these facts**.

Sincerely,


Helen Brann

cc: Arthur Klebanoff, Rosetta Books
Robert B. Parker

email address:

helenbrannagency@attglobal.net