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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____
                                                    :
RANDOM HOUSE, INC.,   :
                                                    :
                          Plaintiff,   :   01 Civ. 1728 (SHS)
                                                    :
      v.   :
                                                    :   **DECLARATION OF**
ROSETTA BOOKS LLC   :   **LEO DAVID**
and ARTHUR M. KLEBANOFF, in his individual   :   **DWYER**
capacity and as principal of ROSETTA BOOKS LLC.,   :
                                                    :
                          Defendants.   :
_____:

LEO DAVID DWYER, under penalty of perjury, declares:

1.   I am currently employed by RosettaBooks, LLC ("Rosetta") as its

Chief Operating Officer. I submit this Declaration in support of Rosetta's defense against

a motion for a preliminary injunction sought by Random House.

2.   I have been employed by Rosetta since October 2000. Prior to

joining Rosetta I worked as an independent consultant providing advisory services

to corporate clients. In my last assignment as an independent consultant I assisted the

founding partners of Rosetta in the development of a business plan and in

assembling the elements required to start the electronic publishing business. This advisory relationship grew into full time employment as COO starting October 1, 2000.

3.   I received a Bachelor of Arts degree from Washington University in Saint Louis, Missouri in 1979, a Master of Architecture degree from the Harvard Graduate School of Design in 1983, and a Master of Business Administration Degree from the Harvard Business School in 1986.

4.   My duties as COO for Rosetta cover a wide range of diverse activities including general business administration, contract negotiation & administration, finance, accounting, enhancement and packaging of electronic content, development and maintenance of strategic relationships and general technology management. I am familiar with the platforms in which eBook digital files can be read and manipulated by end-users.

5.   We (usually via a third-party vendor) convert each Rosetta work to a digital electronic format, after which we edit the digital file. During the conversion and editing process, the digital text file is converted to hypertext markup language or some other similarly tagged file code. This code, among other things, enables many of the functions discussed below.

6.   A description of the some of the principal functions of the various eBook platforms illustrates the vast differences between print books and electronic books. Although the industry is in its nascent stage, and the possibilities for future versions of this technology are expanding, there are already differences in the experiences of an eBook user as compared to a reader of a print book. For example:

a. When the work is displayed in a computer or reader device, the pagination is different from that in the print version. Moreover, in most platforms the user can change font sizes and styles to satisfy personal preference (poor eyesight – large type), which leads to a complete re-pagination of the entire work.

b. Through the use of hyperlinks, eBook users can instantaneously move from tables of content and/or indexes (user-created or supplied by the publisher) to specific points in the text;

c. eBook users can create an unlimited number of bookmarks, which can be automatically indexed and accessed via hyperlinks;

d. eBook users can create and delete notes and annotations, which (among other things) can be automatically indexed, sorted and filed in various ways, and which can be automatically accessed through hyperlinks embedded into the text;

e. eBook users can create and delete highlighting in various colors, paste notes directly into the text (which notes can be displayed or hidden, according to the users' needs), and otherwise mark-up the text in different ways, all of which can be selectively hidden and/or deleted by the user at any time;

f. eBook users can automatically and instantaneously search the electronic file for words or phrases;

g. eBook users can automatically access dictionary definitions of words appearing in the text; and

h. eBook users can, where such functions have been built into the file (and assuming the reading device is connected to the Internet), automatically click on a word, phrase or other link and be transported to related pages or sites of interest on the World Wide Web.

i. Some platforms provide audio pronunciation when a word is selected and/or may "read" aloud the entire text.

None of these functions are part of the print book reading experience.

Moreover, these are merely a selection of some of the functions available today, and do not include functions that will appear in subsequent generations of eBooks

7. **Selected platforms and functionality**. The number and variety of file

formats is evolving quickly. I anticipate that this will be an ongoing evolutionary process

as new software and hardware is invented. A sampling of current eBook formats and the

functionalities associated with the reader software and or hardware for each, includes:

> **MS Reader** – (Runs on a desktop, laptop, or in a condensed form on a
> Pocket PC) A user is greeted with a library function that lists the titles
> of all MS Reader format eBooks loaded on the device including a
> small graphic icon that represents the title along with an indication of
> author, book size, and date last opened or date acquired depending on
> the sort function selected by the user. The library also has a search
> function for locating specific titles by searching for author name or
> titles. Upon selecting a title, a reader momentarily views a large
> "Cover" image and is then shown a title page with options to jump to
> the table of contents, the most recent page read, the start of the book,
> the furthest page previously read, an index of annotations previously
> made by the reader, or a return to the cover graphic.
>
> The table of contents is hyperlinked to the various points in the index,
> which allows easy and immediate navigation to all indexed points in
> the text. Once in the file, a user can click on any word in the text and is
> offered options, including: a) adding a bookmark (multiple color
> choices,), b) highlighting a portion of text (multiple color choices), c)
> adding a note, d) adding a drawing over the top of the text, e) finding
> the word or phrase at other locations in the text, and f) looking up the
> word instantly in a dictionary and having the definition appear on
> screen.
>
> A drop down dialogue box, which appears when the "title" at the
> upper left hand corner of the screen is clicked, provides additional user
> options, including the ability to jump back to the table of contents,
> jump to the index of annotations created by the user, return to the
> library, jump to an online book store, or view a screen that allows for
> the modification of the global settings for the book.
>
> Global settings for the book include options to turn off/on the display
> of bookmarks, notes, drawings, highlights, and visual guides. The user
> is also allowed to adjust font size which results in a complete "reflow"
> of all the text in the book – i.e. books with larger font sizes have more
> pages and the position and amount of the text on a given page changes
> as the font size is adjusted.
>
> MS Reader also features "Clear Type," a technology developed by
> Microsoft to improve the readability of text on a screen.

The annotations index, mentioned earlier, allows a reader to view notes made while reading the text in a central location with sorts and filters that allow for numerous display options – including sorting by annotation type, page number, date created, date last modified – as well as options such as show all, show highlighted text, show bookmarks, show drawings, and show notes.

The books that are subject to the claims by Random House are distributed with MS Reader Level 5 security. Level 5 security does not allow copying or printing by the consumer. Each book is "bound" to the hardware on which it is initially downloaded and though a file might be duplicated on another PC, it cannot be opened or read except on the PC from which it was purchased without contacting the DRM provider to have a license reissued (such as in the instance where a PC drive crashed). In my review of the papers filed by Random House, I noticed that several exhibits submitted with the affidavit of Lisa Cantos contain screen prints of pages from Rosetta eBooks. In printing these pages, Ms. Cantos bypassed the built-in security features, and in so doing appears to have violated her end-user license agreement with Microsoft, which forbids printing or otherwise copying from the MS Reader, unless such features have been enabled and authorized by the eBook publisher or provider. Rosetta neither enables nor authorizes copying in any manner whatsoever.

Acrobat eBook Reader (Formerly GlassBook - Runs on a desktop or laptop PC) The "home page" of the Acrobat eBook Reader is a page that displays the "covers" of all of the Acrobat eBook Reader books on the PC. However, if the reader software was previously closed with an eBook file open, the reader automatically goes to the last page viewed during the previous read. The display of covers can be filtered by category (defined by the user) and sorted by author, title, date acquired, or date last accessed. A unique design feature is the ability to rotate the screen 90 degrees – intended primarily for a laptop situation – which allows the reader to hold the laptop horizontally or vertically, depending on the user's comfort. If a user leaves the screen in the standard orientation he or she has the additional option of viewing two electronic pages side by side.

Clicking on the cover icon opens a text. This takes the reader to the full screen "cover" graphic. A push of the forward arrow key or the designated directional navigation icon moves the reader to the first page. A few pages into the eBook the reader finds the table of contents with hyperlinks to the various chapters and sections of the file.

A bar across the bottom of the screen allows instant browsing to any location in the text. Additional functionality available on the right hand menu bar includes highlighting text with a highlighter (multiple

colors), inserting notes that appear on the digital page, and zoom in zoom out to enlarge or shrink text. (As opposed to other formats that reflow the text, current versions of the Acrobat eBook Reader keep the relation of text to page constant and simply enlarge the image. Adobe has indicated that new versions currently on the drawing board will be capable of re-flowing the text.)

Double clicking on a word in the text activates a dictionary and brings up the definition in a window while the computer (if sound enabled) pronounces the target word aloud. The volume of the voice can be varied with the normal volume control on the PC. An interesting capability of the Adobe eBook Reader is its read aloud function (disabled in the titles subject to the claim by Random House) that allows the software to read the text aloud in a synthesized voice.

Selecting the "Menu" icon at the bottom of the right hand task bar, opens a new task bar across the bottom of the screen. The first tab, "Info," brings up a thumbnail of the "cover" of the text that is open and gives information about the text and whether the permissions – print, copy, lend, etc. – are enabled or disabled. The second tab, "Bookmarks," allows the reader to create, manage and review bookmarks. The third tab, "Find," allows the reader to search the text for a particular word or phrase. The "Dictionary" tab is an alternate way to initiate the lookup function discussed above. The "Preferences" tab allows the user to determine categories used in her library as well as setting reader defaults.

The titles mentioned in the Random House complaint are distributed with Acrobat eBook Reader security that does not allow copying, lending, read aloud or printing of the eBooks by the consumer. Each eBook is "bound" to the hardware on which it is initially downloaded and though a file might be duplicated on another PC, it cannot be opened or read except on the PC from which it was purchased without contacting the DRM provider to have a license reissued (such as if a PC drive crashes).

Adobe Acrobat Reader – File formats are similar to Acrobat eBook Reader, described above, however the reader software is less refined. The reader facilitates rotation of display, adjustable zoom, search for words/phrases, and hot linked table of contents navigation. The books subject to the claims by Random House are distributed with Adobe Acrobat Reader "Web Buy" security that does not allow copying or printing by the consumer. Each book is "bound" to the hardware on which it is initially downloaded and though a file might be duplicated on another PC, it cannot be opened or read except on the PC from which it was purchased without contacting the DRM provider to have a license reissued (such as if a PC drive crashes.) The new version of

Adobe Acrobat Reader, currently in Beta, will be configured to allow for the re-flowing of text, a significant upgrade that will allow for the changing of font sizes and the accommodation of a wide variety of display screen sizes, such as PDA.

REB 1100 (Formerly Rocket eBook) is a hardware device with preloaded software that can display files that are packaged in the REB 1100 format. Features of the 17 ounce unit include a built-in dictionary, back-lit touch sensitive screen (Monochrome 4.75" x 3"), large memory (store up to some 300 books with 128Mb memory expansion), long battery life - read for 20 to 40 hours without recharging, built-in stylus for underlining passages, adding notes, and book marking passages. Variable font size and page orientation allows the user to hold the device either horizontally or vertically. A built-in modem allows the purchase of new books direct from any phone line without a PC connection. REB 1100 files are encrypted in such a way that though a file might be duplicated any number of times, they can only be opened and read by the unique reader device from which it is initially downloaded. The unit is being sold through mass merchant retail outlets.

REB 1200 (Formerly SoftBook) - a similar unit to the REB1100 in terms of functionality, but larger and heavier (33 ounces), featuring an 8.2" diagonal full color, high resolution touch sensitive back-light display (480 x 640 pixels.) The unit can store up to 130,000 pages with the 128Mb memory expansion. The unit features a 10 Base T Ethernet (RJ-45) connection in addition to a dial up modem connection.

Peanut Press for Palm (Peanut Press was acquired March 2001 by Palm, Inc.; the name is going to be changed to Palm Reader.) Software that allows a consumer to display an eBook that has been packaged in the Proprietary Peanut Press file format on a PDA (Personal Digital Assistant) that is running the Palm operating system. Features include color or monochromatic screen (depending on the consumer's device), bookmarks, annotation, variable font and font size, screen inversion (white on black, black on white, and change color preferences on the color screen versions), display time, display battery level, search, variable screen orientation, Go To Chapter "X," and an automatic text scroll. The DRM uses the credit card number of the person purchasing the file as the key to opening the file. While copies of the file can be made, access is limited to a person who knows the credit card number of the person who purchased the file.

Peanut Press for PPC (Pocket PC) – Similar to the Peanut Press for Palm except that the reader runs under the Windows CE operating system that is installed on a family of devices known as Pocket PC's (PPC.) HP, Compaq, Casio and others currently manufacture PPC.

Reciprocal Palm Platform – Currently under development, the Reciprocal Palm Platform will be an additional platform for the display of eBooks on Palm PDA's and have a functionality suite similar to Peanut.

Night Kitchen – This is a next generation eBook platform, called TK3 Reader format, that will display in any text font type, size or style. This device will display text in a single column, double column, or parallel columns (e.g., for translations), include audio and video clips at any point with potential to program sound and video to start playing automatically when the user enters the page. It will also have a variable page change, i.e., dissolve, fade, zoom in, etc. In addition, it will include a hyperlinked table of contents, a notebook where the user can write notes and save short passages (with source and page number automatically noted), and the ability to store audio and video clips in searchable "stick-on" notes placed directly on the page and a highlighter to mark any text. TK3 allows users to bookmark any number of pages. A powerful find function searches both the TK3 book and any added notes. Searches can be limited according to category (for instance, search all bookmarked pages and margin notes, or search annotations only, etc.). The TK3 reader and authoring tools were recently released (March 2001) and I expect to see an increasing variety of content available for this platform.

8.   The preceding list of eBook formats is intended to be illustrative of the types of eBook reader hardware and software that is available today. As the industry evolves, Rosetta will continue to make its products available in any and all commercially viable platforms.

9.   It is clear that additional functionality will be added to the reader software and new hardware will be invented - both of which will enhance the eBook user's experience. I believe it is reasonable to equate the state of evolution of the eBook today – especially as it pertains to the development of hardware – to the early days of personal computing in 1984 when an Apple II or IBM 286 PC with little memory, no hard drive and a monochrome monitor was considered state of the art.

10.   I have read the affidavit of Adam Smith, and in particular his

statement that Random House's current form contracts distinguish between "electronic versions" and "electronic rights (eBooks)". In my experience, which includes extensive contact with numerous senior executives of software, technology and conversion companies, I have never before encountered such a distinction, nor does this distinction make any sense to me. The technologies I describe in this declaration are developing and converging so rapidly that any such artificial distinction, if it hasn't already, will soon evaporate. The next generation(s) of eBooks will take advantage of emerging technological developments and will routinely incorporate audio, graphics (still images and streaming video), extensive hypertext functions, and other features that Random House asserts belong to some different species called an "electronic version." Rosetta is already working on a "Next generation" prototype "eBook" edition of one of its titles in the TK3 Night Kitchen format that will include full-motion video, and extensive use of graphics, audio and hyperlinks. I would suggest that if one is searching for a place to draw a dividing line it is most easily drawn and rightly belongs between the delivery of print copy and the delivery of electronic files, not in some unilaterally devised and ill-defined distinction between "electronic versions" and "electronic rights (eBooks.)."

11.   Distribution – RosettaBooks currently distributes electronic content through a number of outlets as described below:

- www.RosettaBooks.com – RosettaBooks maintains its own web site from which it distributes in the MS Reader, Adobe Acrobat eBook Reader and Adobe Acrobat Reader file formats direct to consumers. This format list is expected to expand in the near future to include a Palm compatible platform. For these platforms, Reciprocal Inc, performs digital rights management and content serving functions. Other platforms which we plan to offer in the near future include REB1100 and REB 1200 as well as Peanut

- www.bn.com – BarnesandNoble.com currently distributes a selection of our books in MS Reader and Acrobat eBook Reader formats, and includes on its site a

special RosettaBooks Boutique that features only RosettaBooks. We plan to add REB 1100 formatted eBooks to the bn.com site in the near future.

- www.eFollett.com – One of the largest distributors of physical books in the United States recently launched an online eBook store and is stocking a selection of RosettaBooks titles, including The Prince of Tides by Pat Conroy.

- **Microsoft –** While Microsoft does not vend eBooks from it own web site, it does promote titles, eBook stores and ePublishers in order to encourage the adoption of its MS Reader software. Microsoft is currently featuring a RosettaBooks title – Brave New World by Aldous Huxley – on its MS Reader "Shop" page with a link to the title on bn.com as well as links directly to the RosettaBooks web site from the "Shop" and "Publisher" pages within the Microsoft MS Reader web site.

- **Adobe** – While Adobe does not currently retail eBooks directly, it has done so in the past and it continues to work with RosettaBooks to promote our titles as a means of accelerating the adoption of their reader software. In February 2001, Adobe featured a RosettaBooks title as one of five feature titles in a mass emailing to millions of potential eBook customers.

- **Content Reserve** – Overdrive, Inc. has established an eBook distribution business – Content Reserve – that will make eContent available to numerous eContent retail sites. RosettaBooks has currently listed a selection of its titles with Content Reserve and they will soon be available from a collection of Content Reserve enabled sites.

- **Peanut Press, Gemstar, Amazon.com, Lightning Source -** We have signed contracts with or are in the process of finalizing contracts that will see our content made available through additional retailers including Peanut Press, Gemstar, Amazon.com and Lightning Source. It is RosettaBooks' intention to make its eContent available through all commercially viable distribution channels that it deems to be appropriate for the high quality content that RosettaBooks is distributing.

I hereby acknowledge that the foregoing declaration is true and correct and made under

penalty of perjury pursuant to the laws of the United States of America.

Dated: April 5, 2001   _____

                                                            Leo David Dwyer