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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 LEON FRIEDMAN

1. I currently hold the position of the Charles Kushner Distinguished Professor of Law at Hofstra Law School, where I have taught since 1974. I am also engaged in the private practice of law. I graduated from the Harvard Law School in 1960 with honors and began my legal practice with Kaye, Scholer, Fierman Hays and Handler in the trademark and copyright department. Among our clients were Dell Publishing, Noel Coward and London Records. Thereafter (in 1967) I became general counsel for Chelsea House Publishers and was responsible for all their legal work, including the negotiation of book contracts. Thereafter I worked on a

special project for the Association of the bar of the City of New York. (1970- 1973). I then became staff counsel at the ACLU. In 1974 I began teaching at Hofstra Law School, teaching copyright, entertainment law, constitutional law and criminal procedure.

2. I have worked in the field of book publishing in the United States for 34 years since 1967. In addition to my work for Chelsea House Publishers who is still my client, I have acted as counsel to Farrar, Straus & Giroux, Inc. since 1978. In that capacity I do all of their legal work, including some negotiation of author contracts, modification of their standard publishing contracts and other litigation involving contracts. I also represent other publishers, such as Arcade Publishing and Station Hill Press. I have also represented various literary agents and advised them on book publishing contracts, including electronic rights. I have also represented many authors and helped negotiate book publishing contracts for them including Hunter Thompson (“Fear and Loathing in Las Vegas”), Julee Rosso (author of “The Silver Plate” cook books), Edwin G. Burrows (Pulitzer Prize winning historian of “Gotham”) Jean Harris (“Stranger in Two Worlds”), Hayden Herr-era (“Frida”), David Hilliard (“The Black Panthers”), Paul Erdman (“The Last Days of America”), Paul Brodeur (“Currents of Death”), Edward Klein, Rosalind Kraus, Iris Owens, Myron Farber, Melanie Thernstrom and many others. I have also represented Isaac Beshevis Singer, Susan Sontag, John McPhee and the Estate of Edith Wharton. I have also acted as counsel to PEN American Center, a writers group fighting censorship and I was counsel of record to the Authors Guild which recently filed a brief in *Tasini v, New York Times* in the United States Supreme Court (Docket No. 00-201).

3. During the last 34 years, I have negotiated over 200 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. In addition, I am the author of “Book Publishing Contracts,” a section of a ten volume treatise on *Entertainment Industry Contracts* published by Matthew Bender, which contains models of various book publishing contracts and commentary on the provisions. In preparing that volume, I examined literally hundreds of book publishing contracts so that I could comment on each clause in a typical book publishing contract. Matthew Bender publishes semiannual updates of that series so I must keep up on changes in book publishing contracts.

5. I have been shown the following documents and asked to comment on them:

- a. a contract dated April 10, 1961 between Random House and William Styron and an amendment dated June 3, 1965 concerning “The Confessions of Nat Turner”;
- b. a contract apparently dated 1977 between Random House and William Styron and an amendment dated November 13, 1990 concerning “Sophie’s Choice” and three other works;
- c. a contract dated March 7, 1967 between Delacorte Press and Kurt Vonnegut for three untitled novels;
- d. a contract dated November 20, 1970 between Delacorte Press and Kurt Vonnegut concerning four titles, the first of which is “The Sirens of Titan”;
- e. a contract dated February 4, 1982 between Delacorte Press and Robert Parker concerning four books, the first of which is “The Godwulf Manuscript”;

6. I have also read the following:

f. an' affidavit by Edward A. Miller dated February 23,200 1

g. an affidavit of Ashbel Green dated February 26, 2001

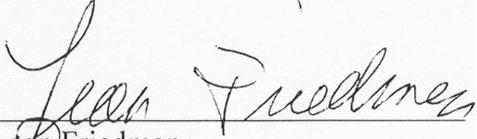
7. Mssrs. Miller and Green assert that the phrase “publish and sell the work in book form” is intended by trade usage in the book publishing industry to convey from the author to the publisher the “electronic rights” to the author’s work. Based upon my experience and my knowledge of the book publishing industry, the words “print, publish and sell the work in book form” and “in book form” have never meant this, and do not mean this today. Indeed, other provisions of the contracts at issue (such as the royalty provisions) show that electronic rights were not within the contemplation of the parties and were not granted by the authors.

8. There is no other language in the contracts at issue that could possibly be construed as conveying electronic rights as that term is currently being used.

9. Based upon my knowledge of the industry and of book publishing contracts, it was only in the later 1980’s or early 1990’s that book publishers included contract language that covered such rights.

10. In my opinion, the contracts referred to cannot be interpreted as granting electronic rights to the publishers.

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 7th day of April, 200 1.


Leon Friedman