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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANDOM HOUSE, INC.,

Plaintiff, . .

01 Civ. 1728 (SHS)

v..

ROSETTABOOKS LLC . .
and ARTHUR M. KLEBANOFF, in his individual
capacity and as principal of; ROSETTABOOKS LLC:

Defendants.

DECLARATION OF Tara K. Harper

1. I am a published author and have been a full-time professional writer for more than fifteen years.

2. During this time, I have been a party to numerous book-publishing contracts, including book-publishing contracts with Del Rey Books, an imprint of Ballantine Books, which is part of the Random House, Inc. conglomerate. 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.

3. In October of 1995, I entered into contractual negotiations with Del Rey Books/Ballantine Publishing Inc., a division of Random House Inc.

4. Unlike any previous book contract I had ever seen, the proposed Del Rey Books publishing agreement, which is undated and is attached hereto as Exhibit A, required that I, as the author, grant Del Rey Books the right to produce "electronic rights" and "electronic versions" of my works as described in Sections 4. (a) (viii) (b) and 4 (a) (x), respectively.

5. In a letter dated January 22, 1996, James Allen, my former agent, wrote to the publisher requesting that it delete Sections 4. (a) (viii) (b) and 4 (a) (x), from the proposed agreement, in light of the fact that I was well aware of the then-existing technology which allowed for untempered online infringement as well as the fact that "electronic rights" and "electronic versions" were not rights typically granted to a publisher. A copy of that letter is attached hereto as Exhibit B.

6. In a letter dated January 23, 1996, Del Rey Books' Contracts Coordinator, Hillary Cohen, asserted that electronic books are straight reprint rights of the text of a particular work, with no room for misinterpretation or expansion of rights, despite the fact that this was a rapidly growing field. Further, she informed me that Del Rey Books' retention of electronic book rights is a standard grant of rights and is policy for Random House and its myriad of subsidiaries, although she might consider raising her royalty rate for such rates. A copy of that letter is attached hereto as Exhibit C.

7. In a letter dated January 25, 1996, Hillary Cohen, Del Rey Books' Contracts Coordinator, informed my agent that it would allow me to change Section 10(g) of the proposed agreement, such that Del Rey Books would be required to negotiate in good faith, a royalty which would be

payable to me in light of the current market conditions at the time it wished to exploit an "electronic right" or "electronic version," provided that the intent of such negotiation should be to enable the publisher to exploit these rights in a timely manner. A copy of that letter is attached hereto as Exhibit D.

8. In a letter dated January 29, 1996, attached hereto as Exhibit E, I informed my agent that regardless of these concessions, I believed that Del Rey Books was not aware of the state of online technology and the high possibility of copyright infringement if my works were to be sold in an electronic format. Thus, I wanted to retain complete control over all aspects of how the work would be marketed as an "electronic right" or as an "electronic version," including the right of approval over any hyperlinks, which could send Internet users directly to my works from wherever the link appeared on the Internet. I would not sign the proffered contract since Del Rey Books could not yet make adequate assurances that my works would be protected if distributed electronically.

9. In a letter dated April 12, 1996, I contacted the Authors Guild's Contract Services Department to inform them of the final deal with Ballantine. While I was required to sell electronic reprint rights to it, I was also given a right of approval, such that until Ballantine could demonstrate, among many factors, that it had a secure method of distribution and a traceable accounting system, I did not have to allow it to exploit "electronic rights" or produce an "electronic version." Further, I was able to negotiate these conditions only after I had already informed the publisher that I was terminating negotiations, and had already secured other offers for my writing work in other fields. The April 12, 1996, letter and the executed version of the publishing agreement are attached hereto as Exhibit F.

10. I had previously published works with Del Rey Books that had not granted electronic rights provisions, only traditional rights for book form. In a letter dated August 7, 1995, which is attached hereto as Exhibit G, Christine T. Levis, an editorial assistant at Del Rey books, acknowledged that it had placed a chapter from a book under one of those earlier contracts, entitled Cataract, on the Internet without my permission to do so. Ms. Levis claimed that posting these chapters was not a wrongful exploitation of electronic rights, and that I must notify Del Rey if I wanted the chapter removed from the Internet after it had been made available online, thus acknowledging that the publisher had already breached our publishing agreement.

11. In a letter dated August 14, 1995, from James Allen to my editor at Del Rey Books, Sherry Shapiro, which is **attached** hereto as Exhibit H, I allowed Del Rey to continue to exhibit a chapter of Cataract online, provided that any future appearances of my works on the Internet would be cleared by me in advance of any extracts appearing online.

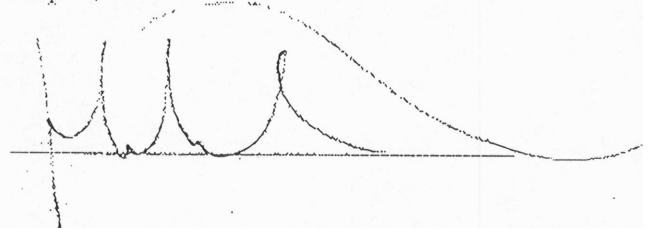
12. In an e-mail dated February 1, 1996, between Shelly Shapiro, my editor at Del Rey Books and myself, Ms. Shapiro acknowledged that while Del Rey Books does typically require the right to put a text-only version of the author's work on disk, it does not do online publishing and has no short-term plans to do any online publishing. Ms. Shapiro informed me that I should be able to retain the right of approval if Del Rey desired to do such, although Ms. Shapiro also informed me that I would have to work this out with Del Rey's contracts department.. A printed copy of this e-mail exchange is attached hereto as Exhibit I.

13. In a letter dated August 5, 1996, which is attached hereto as Exhibit J, I informed my agent, James Allen, that Del Rey had again placed a sample chapter of my work, Chapter I of Grayheart, on its website, among other Internet sites, without my permission. I informed Del Rey Books that it was in breach of contract, and that it must respect my rights thereunder. I asked Del Rey to issue a formal letter of apology as well as immediately remove of Chapter I of

Grayheart from all Internet sites. Further, I asked that a donation be made to the Authors League Fund in my name, as I did not seek personal financial compensation.

14. In a letter from Ellen Kay Harris, an employee of Del Rey Books, to James Allen, dated August 12, 1996, Ms. Harris informed him that chapters from both of my works, Cataract and Grayheart, were removed from the Internet on August 7, 1996. That letter is attached hereto as Exhibit K.

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 6th day of April, 2001.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke at the end, positioned over a horizontal line.