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Attorneys for Plaintiff  
Random House, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RANDOM HOUSE, INC., . .

Plaintiff, . .

**v.**

01 Civ.

ROSETTA BOOKS LLC  
and ARTHUR M. IUEBANOFF, in his individual  
capacity and as principal of ROSETTA BOOKS LLC,

**AFFIDAVIT OF  
ADAM SMITH**

Defendants. . .

-----X

STATE OF NEW YORK     )  
                                  :ss.:  
COUNTY OF NEW YORK    )

ADAM SMITH, being duly sworn, deposes and says:

1.       I am currently employed by Random House, Inc. (“Random House”) as its Director of New Media. I submit this affidavit in support of Random House’s Motion for a Preliminary Injunction.

2.       I have been employed by Random House since September of 2000. Before joining Random House, I was employed Bertelsmann Inc. (of which Random

House is a subsidiary), as of October of 1999, in their Junior Executive Program. As part of that program, in addition to other publishing related assignments, I worked with the Random House Corporate Development Group to develop strategies and operations for the company's eBook and print on demand publishing initiatives. My responsibilities in my current position at Random House include devising, implementing and managing eBook strategies with respect to technology, distribution channels and internal operations and processes.

3. In this affidavit I describe: what an electronic book ("eBook") in its current state of development is; the different devices used to read an eBook; how an eBook is purchased; and where eBook technology appears to be headed.

**What is an eBook?**

4. An eBook such as those being offered by RosettaBooks is an electronic file that contains the text of an entire book formatted in a manner that allows the eBook to be read in a linear fashion on electronic platforms such as a computer, a personal digital assistant ("PDA") like a Palm Pilot, or a dedicated handheld eBook reader (collectively referred to as "eBook reading devices"). Put simply, an eBook is a book presented in an electronic format. An eBook contains the same text as its paper counterpart and is displayed for the reader in the same linear fashion, *i.e.*, the reader reads lines of text no differently than as if the work were being read in paper format. The only real difference in the reading experience between eBooks and their paper counterparts is that eBooks display content on a screen, rather than on paper.'

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<sup>1</sup> Random House's current boilerplate contracts differentiate between electronic rights (eBooks) and "electronic versions," which are multimedia products containing added

### **How can eBooks be read?**

5. As indicated, consumers can read eBooks on their computers, PDAs and on dedicated handheld eBook readers.

6. eBooks can be read on computers through Internet browsing software (e.g., Internet Explorer), word-processing applications (e.g., Microsoft Word, WordPerfect) or through specialized eBook reading software that can be downloaded from the Internet for free. The two predominant specialized eBook reading software applications being used on computers today are Microsoft Reader and Adobe Acrobat eBook Reader.

7. eBooks viewed on Microsoft Reader have the look of their paper counterparts, as the page layout used by this software resembles that of a paper book. (Compare Complaint Exhibit B with Complaint Exhibit C.) Using Microsoft Reader, pages are turned by readers at the touch of a button, and readers can highlight, bookmark and annotate text on their eBooks (as with a hardcover or paperback). (A brief description from Microsoft Reader's web site is attached hereto as Exhibit A.)

8. The Adobe Acrobat eBook Reader allows a reader to choose between a single or two-page display, retains the same layout as its paper counterpart, and allows readers to highlight, annotate, and bookmark text. (A brief description from Adobe's web site is attached hereto as Exhibit B.)

9. eBooks can also be read on PDAs like a Palm Pilot through eBook reading software, which can be downloaded for free from the Internet. The predominant

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sounds, images or graphics which are more than incidental to the text. The Rosettabooks eBooks clearly fall within the former category.

eBook software application being used on PDAs is from PeanutPress. eBooks published for PeanutPress may only be purchased from PeanutPress' web site (<http://www.peanutpress.com>) or through Borders.com.

10. Handheld dedicated eBook readers, including Gemstar's two eBook models manufactured by RCA, as well as Franklin's eBookman, contain both the hardware and software necessary to read eBooks. (Brief descriptions and pictures of Gemstar's REB 1100 (formerly known as the Rocket eBook) and REB 1200 (formally known as Softbook) devices, and Franklin's eBookman device are attached hereto as Exhibits C, D and E).

11. The Gemstar REB 1100 (see picture and description attached hereto as Exhibit C) is a handheld dedicated eBook device approximately the size of a paperback book, which can store as many as twenty books at once, or with the purchase of memory upgrade, up to 70,000 pages or approximately 200 books. A reader can obtain eBook content for the REB 1100 from Gemstar by connecting the device to a telephone line. Alternatively, eBooks can be purchased on the Internet at an online bookstore (e.g., Powells.com; BarnesandNoble.com). Once books are purchased, they are stored in the reader's personal, online, virtual library. From that virtual library, the reader can choose the book she wishes to read and then download it to the REB 1100 reading device. A reader flips from page to page by touching a button, and can bookmark pages and highlight important text (as she might with a paper book) using a stylus pen.

12. The Gemstar REB 1200 (see picture and description attached hereto as Exhibit D) is a handheld dedicated eBook device which is larger than the REB 1100 – approximately the size of a hardcover book. A reader can obtain eBook content

for the REB 1200 from Gemstar by connecting the device to a telephone line or Ethernet connection. No content can be obtained for the REB 1200 through online booksellers. The reading experience with the REB 1200 is similar to that of the REB 1100.

### **How are eBooks Obtained?**

13. Consumers can obtain eBooks through the Internet through free distributors (e.g., Project Gutenberg – <http://www.gutenberg.org>), online booksellers (e.g., Amazon.com – <http://www.amazon.com>; BarnesandNoble.com – <http://www.barnesandnoble.com>), eBook publishers (e.g., PeanutPress – <http://www.peanutpress.com>), device specific retailers (e.g., Gemstar – <http://www.ebook-gemstar.com>), and Internet Libraries (e.g., Netlibraries – <http://www.netlibrary.com/overview.asp>).

14. Online booksellers, like Amazon.com and BarnesandNoble.com, sell eBooks in addition to traditional paper books. If a reader makes a general search for a title on one of these online booksellers' websites, all available paper formats as well as eBook formats will often be listed in the reader's search result.

15. Online booksellers, eBook publishers, and device-specific retailers allow a reader to select and purchase by credit card an eBook in the format he or she desires. The eBook is then downloaded directly from the online distributor's web site (or its service provider's file server) onto the purchaser's computer, virtual library (in the case of Gemstar devices) and/or eBook reading device, and can be read immediately thereafter.

16. Internet libraries, like netLibrary and ebrary, give readers the option to view and/or borrow eBooks under various payment arrangements. With some

such services, by borrowing an eBook, users have the exclusive right to that book during the check-out period; eBooks are then automatically checked back into the library's collection when the check-out period expires.

### **Future eBook Technology**

17. Companies are developing eBook readers that will closely emulate the paper book reading experience. Two companies striving for this goal are e-Ink (<http://www.eink.com>), the makers of electronic ink, and Xerox PARC (<http://www.parc.xerox.com>), the inventors of the Gyricon sheet. Electronic ink is a liquid, consisting of tiny microcapsules, each one containing white particles, suspended in a dark dye that can be overlaid on nearly any surface. A Gyricon sheet is a thin layer of transparent plastic in which millions of "bichromal" beads (e.g., black on one side, and white on the other) are dispersed. If an electronic current is run through electronic ink or applied to the surface of a Gyricon sheet, a page of words or images is created. Using these and other technological advancements, eBooks with multiple flexible pages that can be bound, have a book "spine" and the look and feel of a paper book, with the ability to change content at the touch of a button, are in development.

18. Companies like Microsoft are also working on ways to improve the eBook reading experience by improving the screen display and the rendering of fonts used to publish eBooks for its Microsoft Reader. Microsoft has already developed ClearType – a new font technology that improves screen display resolution and significantly enhances the screen-reading experience. Another developing eBook platform is the Tablet PC, a portable personal wireless computer that is roughly 8.5 x 11

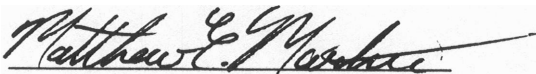
inches, and may use a pen rather than a keyboard. This device will run the Microsoft Reader Software using Clear-Type.

19. As described above, companies are striving to make reading a book in electronic format as similar as possible to the reading experience of a paper book. It is generally believed in the industry that consumer demand for eBooks will continue to rise in this emerging market as the eBook reading experience gets closer and closer to that of its paper book counterpart.



ADAM SMITH

Sworn to before me this  
26<sup>th</sup> day of February 2001

  
Notary Public

**MATTHEW E. MARTIN**  
Notary Public, State of New York  
No. 91-02MA4841781  
Qualified in New York County  
Commission Expires Aug. 28, 2002