EXHIBIT 39
Expert Report of Ben Edelman

Introduction and qualifications

1. I am an assistant professor at Harvard Business School. My research focuses on the design of electronic marketplaces including Internet advertising, search engines, privacy, and information security. I hold a Ph.D. in Economics from Harvard University, a J.D. from Harvard Law School, an A.M. in statistics from Harvard University, and an A.B. in economics from Harvard College. Further information concerning my background and qualifications is provided in my curriculum vitae, which is attached hereto as Exhibit A.

2. My experience includes more than 15 years as a computer programmer, in which time I developed software for my own use, end-user computers, local networks, and web servers; and administered servers for myself and others. My technical experience includes efforts to verify the security of other programmers’ code including uncovering shortfalls in others’ security systems. I have studied and written about questions of information security, accidental information revelation, and information distributed more broadly than online services anticipated. For example, I have personally uncovered multiple Google privacy flaws, including improper data collection by Google Toolbar as well as improper data distribution by Google JotSpot. I also found and demonstrated to a court’s satisfaction that an early online video service, iCraveTV, had failed to secure video contents in the way that it had previously represented to that court.

3. My academic publications explore a variety of aspects of online business, including multiple articles considering the difficulty of limiting access to and use of information systems. A full list of my publications is provided in my curriculum vitae, which is attached hereto as Exhibit A. Among the publications relevant to questions at issue in this matter are the following articles: In “Shortcomings and Challenges in the Restriction of Internet Retransmissions of Over-the-air Television Content to Canadian Internet Users,” a submission to Industry Canada, I evaluated the difficulty of imposing certain access restrictions when distributing video material over the Internet. In “Securing Online Advertising: Rustlers and Sheriffs in the New Wild West,” I presented the challenges of designing online advertising markets to satisfy the requirements of advertisers, online publishers, and advertising platforms while unauthorized activities such as advertising fraud are taking place. In numerous articles, I have presented all manner of online miscreants using information systems in ways their providers did not intend, did not anticipate, sought to prevent, and/or claimed to seek to prevent.

4. My teaching assignment currently consists of a HBS elective course called The Online Economy, which analyzes strategies for all manner of online businesses. The course includes concerns arising out information security.

5. I have testified as an expert witness in federal courts, and I have testified to committees of the United States House of Representative and United States Senate. I have offered expert testimony in the U.S. District Courts for Michigan and Pennsylvania and in Utah State Court. A listing of the cases in which I have testified as an expert at trial or by deposition during the past four years is attached as Exhibit B.

6. I am being compensated for my work in this matter at the rate of $450 per hour.
Scope of retention

7. I understand Google is asserting a fair use defense to the allegations that, without permission from rights-holders, it digitized millions of in-copyright books from a number of university libraries, maintains digital copies of those books on its servers, distributed digital copies of those books to the libraries, and displays on the Internet verbatim content from the books. In this report, I address and opine on risks of a security breach exposing widely online the contents of in-copyright books from (a) the scanning, storage and display of books (or book excerpts) by smaller, less sophisticated entities that, under an adverse fair use ruling, would be permitted to engage in conduct similar to Google’s Library Project, (b) Google’s distribution of digital copies of scanned books to libraries, and (c) Google’s retention and storage of multiple copies of the millions of books it digitizes in its Library Project.

8. I conclude that unrestricted and widespread conduct of the sort engaged in by Google would result in a substantially adverse impact on the potential market for books.

9. If the Google Library Project is found not to be a fair use, then the books could be digitally copied, distributed and displayed through licenses that include security protocols and a damages structure for breaches of those protocols. Conversely, if such uses are deemed permissible without requiring permission from rights-holders -- i.e., if fair use were to be found here -- then rights-holders will have little or no means to reduce the security risks identified in this report.

10. Exhibit C lists the documents I reviewed and sources I considered.

Piracy of books is already a real, not hypothetical problem

11. The electronic distribution of electronic copies of books, without authorization from publishers or rights-holders, is already occurring. For example, consider a user seeking a copy of “American Sniper,” the number one bestseller hardcover nonfiction book according to the New York Times bestseller list dated April 1, 2012. Such a user might run a Google search for “american sniper mobi” (without quotes), using the word “mobi” to indicate interest in a “.mobi” book (a popular electronic book file format). The first, second, third, fourth, fifth, sixth, eighth, ninth, and tenth-listed links all offer or purport to offer copies of the specified book. I checked these nine links; I found that all but one confirmed that the book was available and offered a download link or download instructions. Of the ten links, only one (the seventh) pointed to a site (Amazon) that charged for access to the book. Of course the book is a top-selling in-copyright commercial publication; anyone offering no-charge copies is almost certainly doing so without permission from the copyright holder.

12. Sites with pirated books fall into several categories. Some sites charge for pirated book copies, though they do not share the resulting revenues with those who created the books. Other sites distribute pirated book copies for free. Among sites offering free book copies, some offer direct web-based downloads, providing pirated book copies when a user simply clicks to request a copy. Other sites offer links to Bit torrent “.torrent” files that direct a user’s computer to other computers from which a desired file may be copied.
Similar Scanning Operations Could Allow Book Copies to Be Copied and
Redistributed

13. If Google’s conduct is found to be a fair use and others engage in similar conduct, a risk is created of book redistribution through piracy.

14. If other providers (“providers”) scan books, the resulting digital book copies could enter widespread public circulation via any of several channels. First, pirates could extract book copies through defects in the security of a provider’s systems. Once books are scanned, the resulting digital files are stored on a server or, more often, multiple servers. Defects in the access controls of any such server could allow pirates to gain access to digital book copies. Defects could arise through flaws in the operating system, database server, web server, or other software run on a provider’s servers; such flaws have been widespread in even the most popular server software. Defects could also arise through the provider’s custom software, which is likely to be less secure because custom software usually receives a lesser level of scrutiny, testing, and verification than software that is distributed and used more broadly.

15. Second, pirates could extract books via errors in the security configuration of a provider’s systems. If even one of a provider’s servers lacks a required update or other security feature, pirates could use that server to obtain the book copies.

16. Third, pirates could extract books by impersonating provider staff to access provider systems. Suppose an attacker can obtain the username and password of a person with full access to a provider’s book copies. The attacker can log in with that password to access and copy the provider’s book copies. Similar attacks are frequent: For example Amazon Zappos,1 Gawker,2 and Microsoft Hotmail3 suffered similar attacks in 2009-2011. Even the United Nations suffered a breach of the same type.4 If a single staff person at a single book provider used the same password for a hacked site and for access to book copies, then a hacker could use that password to access book copies, copy book copies to the hacker’s own systems, and redistribute book copies further from there.

17. Fourth, a rogue employee could intentionally redistribute book copies. Rogue employees gain and exploit privileged access to data despite organizations’ efforts to screen and supervise key staff. Consider the classified US State Department material distributed by Wikileaks in 2010 – information obtained via a rogue employee. A rogue employee with access to book copies could intentionally make those copies available to the public.

18. Fifth, when books are scanned by a smaller and less sophisticated provider, there is a particularly acute risk of book contents being accessed and redistributed. For one, less sophisticated organizations have a reduced capability to design, install, and maintain suitable web site, database, and related security systems as well as anti-reconstruction

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systems to secure books. Furthermore, less sophisticated organizations have a lesser ability to screen key staff to prevent data loss through rogue employees, and a lesser ability to configure security systems to exclude hackers. Thus, if other companies and organizations follow Google’s lead in scanning books, a risk exists that book contents will be accessed and redistributed.

19. As set out in the section captioned “A Single Breach Could Cause Devastating Harm to the Class,” one instance of book copying can have large effects. For example, if numerous companies and organizations scan books, attackers can focus their efforts on whichever installs the weakest security. Similarly, attackers can take advantage of even a brief period when a single book provider is insecure (for example, through failure to properly update a server). Once attackers obtain book copies, they can then redistribute the copies as desired. If many providers begin scanning and storing digital book copies, the affected books are only as secure as the least secure provider – so the diligent efforts of some providers would be undermined by lax security of others.

**Breaches in Libraries’ Systems Could Facilitate Book Piracy**

20. I understand that the Google Library Project includes providing to its library partners a full digital copy of the books the libraries allowed Google to scan. Breaches in the security systems at these libraries could facilitate book piracy.

21. I have not been informed of all the ways that libraries intend to use the book contents data they receive from Google, nor have I been informed how libraries intend to secure that data. But the information currently available indicates that libraries’ actions present a risk of book piracy.

22. If libraries provide book contents in a way where authorized library users can access the data, it is likely that some users will attempt to exceed the intended scope of authorization to access and copy book contents en masse. For example, in July 2011, a student used MIT library access to download 4.8 million articles and other documents.5

23. Structural factors also increase the difficulty of libraries properly securing book contents. University libraries typically serve myriad users including students, visitors, and others with limited long-term connection to the library – limiting a library’s ability to establish accountability. Moreover, libraries typically specialize in making information available rather than in restricting how information may be used. While some libraries offer electronic resources that are subject to restrictions on use, these restrictions are typically implemented by keeping the information on the information provider’s servers so that the information provider, not the library, can monitor usage and attempt to assure compliance. For example, when a library licenses journals and articles and other documents from the JSTOR digital archive, libraries do not receive full copies of the articles to store on library servers. Instead, libraries receive secure access to JSTOR servers, allowing library patrons to access individual documents on JSTOR without ever receiving the full corpus of all articles JSTOR holds. Access to documents held by Lexis-Nexis and Westlaw is similar. In contrast, the book contents here at issue would be stored on libraries’ servers without an outside third party to assure and enforce compliance with access restrictions.

24. The likely uses of digital book copies further exacerbate the risk of copying. A natural use of digital book copies is to analyze patterns in book text. From the perspective of a researcher seeking to perform such analysis, it is natural to begin by copying digital book copies onto a system the researcher controls, allowing the researcher to run flexible and high-speed searches of those book copies using the researcher’s preferred tools. (In contrast, if the researcher had to run analyses on a server controlled by the library, the researcher would ordinarily be able to use only those tools the library provides, and the speed of the researcher’s analysis might be constrained by server capacity and availability.) Crucially, once a researcher copies the data onto his own system, the library’s prior security efforts (whatever they might be) are largely irrelevant. A researcher might even store digital book copies on a laptop or USB drive, where loss and theft are particularly frequent. When book copies are processed into text using optical character recognition, the resulting files can be quite small – making it feasible to store tens of thousands of book copies on an ordinary laptop or USB drive.

25. A further risk of book piracy from or via university libraries comes from the culture of “pranks” enjoyed by many software and engineering students. For example, the MIT Hack Gallery presents hundreds of hacks including public displays of the Apple logo, the logo of the Boston Red Sox, and the logos of various movies.6

26. In its agreement with the University of Michigan, Google has specifically avoided responsibility for monitoring how libraries store or use book contents. The University of Michigan agreement specifically speaks to Google’s duty of care over physical books in Google’s custody (including the risk of loss, damage, pests, fire, theft, and the like).7 However, the agreement offers limited commitments as to the University of Michigan’s duty to keep secure its Digital Copy of the book contents.8 For example, Google’s agreement with University of Michigan provides the use of robots.txt as a supposed “technological measure … to restrict automated access” to the Digital Copy, but robots.txt offers no genuine security protection and instead relies on a requester’s compliance with stated restrictions on access. The other provisions of Google’s agreement with University of Michigan are vague (“reasonable efforts,” “cooperate in good faith to mutually develop methods,” etc.). These vague provisions offer significantly lower protection than Google provides for even its routine business confidences.9

Google Itself Is Not Immune to Design Flaws and Security Breaches

27. Despite Google’s considerable resources, Google products and services nonetheless suffer from design flaws and security breaches which result in information flowing in ways Google and/or users did not intend.

6 http://hacks.mit.edu/
7 Cooperative Agreement between Google Inc. and Regents of the University of Michigan, sections 2.3.1 and 2.7.
8 Cooperative Agreement between Google Inc. and Regents of the University of Michigan, sections 4.4.1-2.
9 For example, the Google NDA presented at http://valleywag.com/230407/this-nda-never-existed offers greater protection including greater restrictions on the circumstances in which information can be shared, greater restrictions on the permissible recipients of such information, and more precise requirements as to how information must be secured.
28. In general, Google faces each of the vulnerabilities detailed in “Similar Scanning Operations Could Allow Book Copies to Be Copied and Redeistributed” above. The following sections flag specific problems that could occur, as well as noting similar problems Google has already faced.

Google’s Security Systems are not Failproof

29. In other information and distribution services, Google has failed to comply with its commitments to users and the public. For example, in January 2010, I found and reported the popular Google Toolbar program—installed on “hundreds of millions” of computers—continuing to track users’ browsing (including every web page visited) even after users had specifically requested that the Toolbar be “disable[d]” and even after the Toolbar had confirmed users’ request and disappeared from screen. The user browsing at issue was users’ most sensitive online activities: reasonable users would activate the Toolbar’s “disable tracking” feature exactly when they sought to engage in private activities they did not wish Google to track. Google subsequently characterized its nonconsensual information collection as “an issue” but offered no explanation for why it collected information users had specifically indicated, and Google had agreed, should not be collected. Google has paid no compensation to affected users. Neither did Google promise to undo the error: Google never offered to let affected users identify themselves so Google could delete their data from its records.

30. In spring 2010, Google introduced Buzz, a social network for connecting to online colleagues and sharing information about who is doing what. For users of Google’s email service, Gmail, Buzz shared with the general public the names of the persons Gmail users corresponded with—information Google had previously indicated it would keep confidential. Google subsequently faced class litigation for this information breach, alleging that affected users suffered direct economic loss as a result of Google’s information revelation. For example, Buzz revealed the persons sending email to and receiving email from Andrew McLaughlin, who had previously served as a Google lobbyist, and was working in the White House as deputy Chief Technology Officer of the United States. Buzz’s information revelation indicated that Mr. McLaughlin had engaged in impermissible activities with his prior employers, in violation of White House ethics rules. After Buzz-posted information prompted a complaint and an investigation, Mr. McLaughlin was formally reprimanded for the improper communications. To the best of my knowledge, Google never offered any compensation to Mr. McLaughlin or other affected Gmail users.

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31. In addition, during February 2012, researchers discovered that Google was bypassing Safari and Internet Explorer privacy settings to collect data that those browsers would ordinarily decline to provide.\textsuperscript{14} While Google ceased further collection via these methods, Google has not offered to delete information improperly collected, nor has Google offered to compensate affected users.

32. In each of these examples, Google’s services worked in exactly the way Google’s engineers designed, in a way any Google engineer could have noticed through straightforward testing and, in many instances, in a way Google staff specifically intended. Yet Google lacked authorization for these information collection and distribution practices.

Rogue Google Employees Could Access or Redistribute Book Contents

33. In September 2010, news reports revealed that David Barksdale, a senior Google engineer, had used his privileged position at Google to spy on four teenagers for months. Because Barksdale was a Site Reliability Engineer at Google, he was able to tap into call logs for Google Voice (records of phone calls to and from the youths), read the youths’ instant message chat logs, and unblock himself from buddy lists in order to send instant messages to and from the youths. Barksdale used each of these methods to access the communications of the affected youths. While Google terminated Barksdale’s employment after these practices became known, Barksdale was able to continue his practices for months without Google’s internal controls noticing what he was doing.\textsuperscript{15} Google subsequently admitted that it had previously caught at least one other Google staff person accessing user data without authorization.\textsuperscript{16}

Hackers Could Access or Redistribute Book Contents

34. Outside hackers could access or redistribute book contents. Many hackers disagree with the public policy embodied in applicable copyright law. For example, during January 2012, hackers disabled web sites of the U.S. Department of Justice and FBI, trade associations Recording Industry Association of America and Motion Picture Association of America, and record labels Universal, BMI, and Warner Music Group, when hackers disapproved of possible revisions to copyright law then under discussion in Congress.\textsuperscript{17} Google’s digitized book contents thus could attract hackers seeking to redistribute notable information.

35. In January 2010, Google reported a “highly sophisticated and targeted attack on our corporate infrastructure originating from China that resulted in the theft of intellectual


property from Google.”

A subsequent analysis by McAfee indicated that hackers had specifically sought access to the source code for Google systems, and that hackers had even obtained the ability to alter the source code for Google systems. If Google cannot keep its own intellectual property secure from attackers, it is plausible to conclude that Google cannot keep book contents invulnerable to security breaches.

A Single Breach Could Cause Devastating Harm to the Class

36. A single breach of the systems that store book contents could allow book contents to become ubiquitous online. In particular, after that single breach occurs, users are likely to copy and/or share the material en masse, preventing any subsequent efforts to resecure book contents. For example, on August 4, 2006, AOL posted twenty million searches performed by more than 650,000 users over a three-month period. Once AOL realized that posting this information was inadvisable (because it included myriad sensitive subjects and could be easily linked to individual AOL users), AOL removed the file from its servers the same week, but the file remains easily available, including on the web and via BitTorrent. Similarly, WikiLeaks in February 2010 began publishing hundreds of thousands of pages of classified material. The information remains easily available, including via straightforward Google searches. The information simply cannot be “unpublished” once it has become publicly available on the Internet.

37. Thus, if book contents become available once — via a breach of book copies scanned by others, via a breach in libraries’ copies of books scanned by Google, or via a breach of Google’s own systems — the book contents are likely to be available easily and indefinitely.

38. However remote one may consider the risk of book contents becoming available, that risk must be considered in light of the devastating impact to the Class if book contents become available.

Conclusion

39. If Google’s practices of digitally copying, distributing and displaying books without rightsholder permission are found to be fair uses and become widespread, the market for books will be adversely impacted by the potential for security breaches. Conversely, requiring Google and others to obtain the permission of rights-holders before engaging in such practices could prompt negotiations between rights-holders and those who seek to digitally use their works, thereby fostering standards for the allocation of the costs and risks of any harm flowing from such security breaches.

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20 For example, I searched Google for “AOL search torrent” (without quotes) on March 27, 2012. Among the first ten results, I found six locations where I could download the files. http://gregsadetsky.com/aol-data/ presents nine different locations where the data remains available.
Signed April 2 2012,

Benjamin Edelman
Experience

- Fields: Industrial organization, market design, information economics.
- Teaching: Networked businesses, market design, information systems, online marketing, negotiation.

Independent consultant and expert witness (November 1999 – present)
- Conducted quantitative analyses and empirical testing for a variety of clients including the American Civil Liberties Union, AOL, Microsoft, National Association of Broadcasters, National Football League, New York Times, Universal Music Group, and Washington Post on topics including online advertising, advertising fraud, spyware, spam, pay-per-click advertising and click fraud, Internet filtering, geolocation and targeting, privacy, security, automated data collection, and user interface design.
- Qualified as an expert in Federal court on multiple occasions, and provided oral testimony under direct and cross examination.

Student Fellow / Technology Analyst, Berkman Center for Internet & Society (May 1998 – January 2004)
- Conducted empirical studies of the Internet’s domain name system, spyware/adware, content filtering by network intermediaries.
- Developed software systems for interactive real-time communication among class/meeting participants. Designed and operated system for webcast of and remote participation in numerous Berkman Center, Harvard Law School, and Cambridge community events as well as twelve ICANN public meetings.

Education


Harvard College - A.B., Economics, summa cum laude, 2002; Phi Beta Kappa.


Representative Research


Strategic Bidder Behavior in Sponsored Search Auctions (Decision Support Systems, 2007) with Michael Ostrovsky

Measuring the Perpetrators and Funders of Typosquatting (FC’10, SV LNCS) with Tyler Moore; web introduction and appendix also available


Running Out of Numbers: Scarcity of IPv4 Addresses and What To Do About It (Proceedings of AMMA, 2009)

Adverse Selection in Online “Trust” Certifications (Proceedings of ICEC 2009)

Adverse Selection in Online “Trust” Certifications and Search Results (Electronic Commerce Research and Applications, 2011)

Deterring Online Advertising Fraud Through Optimal Payment in Arrears (FC’09, SV LNCS)
Securing Online Advertising: Rustlers and Sheriffs in the New Wild West  (published in Beautiful Security, 2009)

Assessing and Improving the Safety of Internet Search Engines  (published in The Rising Power of Search Engines on the Internet, 2006)


Empirical Analysis of Internet Filtering in China  (2002)  with Jonathan Zittrain  cyber.law.harvard.edu/filtering/china
Published in IEEE Internet Computing as “Internet Filtering in China” (March-April 2003)

Long-Term Research Projects

Strategies and Outcomes in Search Engine Advertising  (2004-)


Resources for Affiliates and Affiliate Merchants  (2004-)  benedelman.org/affiliates

Documentation of Internet Filtering Worldwide  (2002-2003)  with Jonathan Zittrain  cyber.law.harvard.edu/filtering

The Top-Level Domain Evaluation Project  (2002-2003)  with Jonathan Zittrain  cyber.law.harvard.edu/tlds

Classroom and Meeting Technology Tools  (1998-2002)  cyber.law.harvard.edu/meetingtools

ICANN Public Meeting Archives, Notes, and Briefing Books  (1998-2001)  cyber.law.harvard.edu/icann

cyber.law.harvard.edu/ifwp

Additional Writings

Advertising Disclosures: Measuring Labeling Alternatives in Internet Search Engines  (2012)  with Duncan Gilchrist  Information Economics and Policy


Pricing and Efficiency in the Market for IP Addresses  (2011)  with Michael Schwarz

The Design of Online Advertising Markets  (forthcoming)  Handbook of Market Design

Earnings and Ratings at Google Answers  (forthcoming)  Economic Inquiry

Bias in Search Results?: Diagnosis and Response  (2011)  The Indian Journal of Law and Technology

Measuring Bias in “Organic” Web Search  (2011)  with Ben Lockwood  benedelman.org/searchbias


and To Groupon or Not To Groupon: New Research on Voucher Profitability  (2011)  HBR Blogs

Least-Cost Avoiders in Online Fraud and Abuse  (2010)  IEEE Security and Privacy

The Pathologies of Online Display Advertising Marketplaces  (2010)  ACM Sigecom Exchanges

Competing Ad Auctions: Multi-homing and Participation Costs  (2010)  with Itai Ashlagi and Hoan Soo Lee


How to Combat Online Ad Fraud  (2009)  Harvard Business Review

Web Site Writings

Search My Logs of Affiliate Fraud and Affiliate Fraud Information Lookup (2012) with Wesley Brandi

Hack-Based Cookie-Stuffing by Bannertacker-script (2012) benedelman.org/news/022712-1.html with Wesley Brandi

Large-Scale Cookie-Stuffing at Eshop600.co.uk (2012) benedelman.org/news/013012-1.html with Wesley Brandi

Advertising Disclosures in Online Apartment Search (2012) benedelman.org/adlabeling/apartmentsearch with Paul Kominers


Towards Improvement in Singapore’s Transportation Efficiency and Environmental Impact (2011) submission to the National Climate Change Secretariat of Singapore

Google’s Dominance – And What To Do About It and Finding and Preventing Biased Results (2011) American Constitution Society for Law and Policy – Blog Debate


Implications of Google’s Pharmacy Debacle (2011) benedelman.org/news/082611-1.html and republished at Betanews

Online Discount Vouchers – Letter-Writing Tool (2011) vouchercomplaints.org with Paul Kominers & Xiaoxiao Wu

Consumer Protection in Online Discount Voucher Sales (2011) benedelman.org/voucher-consumer-protection with Paul Kominers

Revisiting Unlawful Advertisements at Google (2011) benedelman.org/news/051811-1.html and excerpted at Huffington Post


In Accusing Microsoft, Google Doth Protest Too Much (2011) HBR Blogs


Advertisers Should Raise Their Voices Against Arrogant Google (2010) mUmBRELLA

Hard-Coding Bias in Google ‘Algorithmic’ Search Results (2010) benedelman.org/hardcoding


Facebook Leaks Usernames, User IDs, and Personal Details to Advertisers (2010) benedelman.org/news/052010-1.html

Protecting Privacy by Design (2010) McAfee AVERT Blog


Towards a Bill of Rights for Online Advertisers (2009) benedelman.org/advertisersrights
(excerpted in Advertising Week Welcome Guide, excerpted in Huffington Post)


Deception in Post-Transaction Marketing Offers (2009) benedelman.org/posttransaction (including Senate testimony)


In Support of Utah’s HB450 (2009) benedelman.org/news/030909-1.html

False and Deceptive Display Ads at Yahoo’s Right Media (2009) benedelman.org/rightmedia-deception

Privacy Lapse at Google JotSpot (2008) benedelman.org/google-jot-privacy


Delaying Payment to Deter Online Advertising Fraud (2008) benedelman.org/paymentdelay


Why I Can Never Agree with Adware and Spyware (2007) technology.guardian.co.uk/online/insideit/story/0,,1997629,00.html


False and Deceptive Pay-Per-Click Ads (2006) benedelman.org/ppc-scams
Cookies Detected by Anti-Spyware Programs: The Current Status (2006)  
www.vinnyleigham.com/specialreports/cockiedetections

The Safety of Internet Search Engines (2006) sitadvisor.com/studies/search_safety_may2006 with Hannah Rosenbaum

The Spyware - Click-Fraud Connection - and Yahoo’s Role Revisited (2006) benedelman.org/news/040406-1.html
Advertisers Funding Direct Revenue (2006) benedelman.org/spyware/images/dr-mar06

Advertisers Funding 180solutions (2006) benedelman.org/spyware/images/180-jan06


Seanning for Solutions (2005) publications.mediapost.com/index.cfm?fuseaction=Articles.san&s=37284


Ask Jeeves Toolbar Installs via Banner Ads at Kids Sites (2005) benedelman.org/spyware/installations/askjeeves-banner

Hotbar Installs via Banner Ads at Kids Sites (2005) benedelman.org/spyware/installations/kidzpage-hotbar

The 180 Turnaround That Wasn’t (2005) adbumb.com/adbumb159.html

The PacerD Installation Bundle (2005) benedelman.org/spyware/installations/pacerd

Claria’s Misleading Installation Methods - Ezone.com (2005) benedelman.org/spyware/installations/ezone-claria

Claria’s Misleading Installation Methods - Dope Wars (2005) benedelman.org/spyware/installations/dopewars-claria


3D Desktop’s Misleading Installation Methods (2005) benedelman.org/spyware/installations/3d-screensaver

Comparison of Unwanted Software Installed by P2P Programs (2005) benedelman.org/spyware/p2p

Advertisers Supporting eXact Advertising (2005) benedelman.org/spyware/exact-advertisers
  benedelman.org/news/100904-1.html
The Effect of 180solutions on Affiliate Commissions and Merchants (2004) benedelman.org/spyware/180-affiliates
WhenU Copies 26+ Articles from 20+ News Sites (2004) benedelman.org/spyware/whenu-copy
Advertisers Using WhenU (2004) benedelman.org/spyware/whenu-advertisers
A Close Reading of Utah’s Spyware Control Act (2004) benedelman.org/spyware/utah-mar04
Blocked Sites will Return, but with Limited Access (2003) South China Morning Post (op-ed)
cyber.law.harvard.edu/people/edelman/ip-sharing
Documentation of Gator Advertisements and Targeting (2003) cyber.law.harvard.edu/people/edelman/ads/gator
Empirical Analysis of Google SafeSearch (2003) cyber.law.harvard.edu/people/edelman/google-safesearch
Large-Scale Registration of Domains with Typographical Errors (2003) cyber.law.harvard.edu/people/edelman/typo-domains
Technical Responses to Unilateral Internet Authority: The Deployment of VeriSign “Site Finder” and ISP
  Response (2003) with Jonathan Zittrain cyber.law.harvard.edu/tlds/sitefinder
Domain Name Typosquatter Still Generating Millions (2003) circleid.com/article/101_0_1_0_C
Documentation of Internet Filtering in Saudi Arabia (2002) with Jonathan Zittrain
  cyber.law.harvard.edu/filtering/saudiarabia
Localized Google Search Result Exclusions (2002) with Jonathan Zittrain cyber.law.harvard.edu/filtering/filtering/google
Analysis of Domain Reregistrations Used for Distribution of Sexually-Explicit Content (2002)
  cyber.law.harvard.edu/people/edelman/renewals
Large-Scale Intentional Invalid WHOIS Data (2002) cyber.law.harvard.edu/people/edelman/invalid-whois

.NAME Registrations Not Conforming to .NAME Registration Restrictions (2002) cyber.law.harvard.edu/people/edelman/name-restrictions

Alternative Perspectives on Registrar Market Share (2002) cyber.law.harvard.edu/people/edelman/registrar-choice


Disputed Registrations in .BIZ (2002) cyber.law.harvard.edu/people/edelman/biz-sunrise

TLD Registration Enforcement: A Call for Automation (2002) circleid.com/article/66_0_1_0_C
circleid.com/article/72_0_1_0_C

Invalid WHOIS Data: Who Is Responsible? (2002) circleid.com/article/79_0_1_0_C

iCravety.biz/Entervention Retransmits CNN, Cartoon Network, PAX TV, California NBC Affiliate (2002) cyber.law.harvard.edu/people/edelman/icrave

Analysis of Registrations in Alternative Root TLDs (2001) cyber.law.harvard.edu/people/edelman/dotbiz and /people/edelman/dotweb


Software Environments for Online Deliberative Discourse (1999-2000) cyber.law.harvard.edu/projects/deliberation

Executive Summaries of Formative ICANN Documents (1999) cyber.law.harvard.edu/pressbriefings/icann/briefingbook/executivesummaries.html

ICANN and the Public Interest: Pressing Issues (1999) cyber.law.harvard.edu/icann/workshops/la/briefingbook


**Teaching Cases and Notes**

Airbnb (A) and (B) (HBS Case 912-019, -020) (and TN) (2011) with Michael Luca

Attack of the Clones: Birchbox Defends Against Copycat Competitors (HBS Case 912-010) (2011) with Peter Coles

The Online Economy: Strategy and Entrepreneurship - Course Architecture Note (HBS Note 911-069) (2011) with Peter Coles

Mobilizing Online Businesses (HBS Module Note 911-048) (2011) with Peter Coles

Online Marketing at Big Skinny (HBS Case 911-033) (and TN) (2011) with Scott Kominers

The iPhone at IVK (TN) (HBS Teaching Note 911-414) (2010)


eBay Partner Network (A), (B), and (C) (HBS Case 910-008, -009, and -012) (2009) (and TN) with Ian Larkin

Symbian, Google & Apple in the Mobile Space (A) and (B) (HBS Case 909-055, -056) (2009)
with F. Suarez & A. Srinivasan

Distribution at American Airlines (A) and (B) (HBS Case 909-035 and -036) (and TN) (2009)

Windows Vista (HBS Case 909-038) (2009)
Case 1:05-cv-08136-DC   Document 1058-7    Filed 08/03/12   Page 20 of 89

Online Restaurant Promotions  (HBS Case 909-034)  (and TN)  (2009)
Ad Classification at Right Media  (HBS Case 909-032)  (and TN)  (2009)
TheLadders  (HBS Case 908-061)  (2008)  (and TN)  with Peter Coles, Brian Hall, and Nicole Bennett
Opening Dot EU (A) and (B)  (HBS Case 908-052 and -053)  (2008)
Microsoft adCenter  (HBS Case 908-049)  (and TN)  (2008)  with Peter Coles

Programming Experience
Microsoft Visual Basic (15+ years experience), VB.NET  Mathworks MatLab  Stata
SPlus / R  Python  PHP

Awards
Emerald Citations of Excellence Award  (2011)
ECCH Award for Outstanding Contribution to the Case Method – Strategy and General Management  (2011)
Best Paper Award, Honorable Mention – The 11th International Conference on Electronic Commerce  (2009)
Harvard University Graduate Economics Fellowship  (2003-2006)
Hoopes Prize for Undergraduate Research  (2002)
Seymour and Ruth Harris Prize for Best Honors Thesis in Economics  (2002)
Phi Beta Kappa, Harvard College  (2001)
Undergraduate Honors Research Scholarship, Department of Economics, Harvard College  (2001)
Detur Prize, Harvard College  (1999)

Congressional and Expert Testimony
US Senate, Commerce Committee  (2009)  (statement for the record)
US House of Representatives, Committee on the Judiciary  (2008)  (invited / hearing cancelled)
District Court, Third Judicial District of Utah  (2004)
Academic Service

Associate Editor: Journal of Economic Perspectives (2008-2012)


Co-organizer: Sixth Workshop on Ad Auctions (2010)

Non-resident tutor / senior common room member: Cabot House (2004-2012)
EXHIBIT B
<table>
<thead>
<tr>
<th>Proceeding</th>
<th>Court</th>
<th>Reference</th>
<th>Context</th>
<th>Year</th>
<th>On behalf of</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of South Carolina v. Casale Media, Inc., et al.</td>
<td>South Carolina Court of Common Pleas, Richland County</td>
<td>08-CP-40-0729</td>
<td>Deposition</td>
<td>2008</td>
<td>Plaintiff</td>
</tr>
</tbody>
</table>
EXHIBIT C
Exhibit C to Edelman Report

1. The Fourth Amended Class Action Complaint
2. Google Objections and Responses to Plaintiffs’ First Requests for Admissions
3. Plaintiffs’ Brief in Support of Their Motion for Class Certification
4. Zack Decl. and Exhibits in support of motion for class certification
5. Google’s Brief in Opposition to Class Certification
7. Plaintiffs’ brief in opposition to Google’s motion to dismiss the Authors Guild
8. Cooperative Agreement between Google and the University of Michigan (from the University of Michigan website)
10. Defendant Google Inc.’s Supplemental Narrative Responses and Objections to Plaintiffs Second Request for Production of Documents and Things – Public Redacted Version
11. The books.google.com website
12. The materials cited in my report
EXHIBIT 40
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 05 CV 8136-DC

THE AUTHORS GUILD, et al.,

Plaintiffs,

-against-

GOOGLE, INC.,

Defendant.

June 1, 2012
9:55 a.m.

Deposition of BRUCE S. HARRIS,
taken by attorneys for Plaintiffs, pursuant to
notice, held at the offices of Milberg LLP, One
Pennsylvania Plaza, New York, New York, before
Helen Mitchell, a Shorthand Reporter and Notary
Public.
Case 1:05-cv-08136-DC   Document 1053-7   Filed 08/03/12   Page 28 of 69

2 APPEARANCES:

4 BONI & ZACK LLC
   Attorneys for Plaintiffs
   15 St. Asaphs Road
   Bala Cynwyd, Pennsylvania 19004

6 BY: JOANNE ZACK, ESQ.
   jzack@bonzack.com

9 DURIE TANGRI LLP
   Attorneys for Defendant
   217 Leidesdorff Street
   San Francisco, California 94111

11 BY: DAVID McGOWAN, ESQ.
   dmcgowan@durietangri.com

11 STIPULATIONS

4 IT IS HEREBY STIPULATED AND AGREED
   by and between counsel for the
   respective parties hereto, that the
   filing, sealing and certification of the
   within deposition shall be and the same
   are hereby waived;

9 IT IS FURTHER STIPULATED AND
   AGREED that all objections, except as to
   the form of the question, shall be
   reserved to the time of the trial.

14 IT IS FURTHER STIPULATED AND
   AGREED that the within deposition may be
   signed and sworn to before any officer
   authorized to administer an oath with
   the same force and effect as if signed
   and sworn to before the Court.

11 Harris
2 expert; is that correct?
3 A That's correct.
4 Q By Google?
5 A Yes.
6 Q And what is your expertise in?
7 A Custom and practice in the
   publishing industry.
9 Q Approximately when were you
   retained?
11 A I guess two months ago, two and a
   half months ago.
13 Q And did you write this report
   yourself?
15 A Yes, I did.
16 Q Did you have any assistance?
17 A Yes. I wrote the first draft, and
18 Dave helped me.
19 Q Dave McGowan?
20 A Um-hum.
21 Q Anyone else?
22 A No.
23 Q So you didn't use any research
   assistants --
24 A No.

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2 (Pages 2 - 5)
Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 29 of 69

1 Harris
2 Q -- or anything like that?
3 MR. Mcgowan: I'll caution you,
4 Mr. Harris, wait until Miss Zack is
5 finished with the questions so you don't
6 speak over each other for the court
7 reporter.
8 MS. ZACK: For the sake of the
9 court reporter.
10 Q Referring you to Exhibit A to your
11 declaration, which is your CV or biography, it
12 says you began your publishing career at the
13 Crown Publishing Group; is that right?
14 A Correct.
15 Q And what approximate years did you
16 work at Crown publishing?
18 Q What positions did you hold there?
19 A I was a promotion assistant,
20 salesman, marketing manager, sales manager,
21 director of publishing and publisher.
22 Q And then your next employment was
23 where?
24 A Random House.
25 Q And that was what approximate

1 Harris
2 Q Can you give some examples of
3 clients?
4 A Yes. Presently I'm working with
5 The Cooking Lab, which is a laboratory that was
6 founded by Nathan Myhrvold, M-y-h-r-v-o-l-d.
7 We're publishing a book called Modernist
8 Cuisine. And I'm working for The Anomaly Group,
9 A-n-o-m-a-l-y, and we're publishing a graphic
10 novel called Anomaly.
11 Q I'm also working for Skyhorse
12 Publishing here in New York.
13 Q When you say -- you said when you
14 were at Crown Publishing you ultimately became
15 publisher?
16 A Yes.
17 Q What does it mean to be publisher?
18 A The editorial and marketing
19 functions generally report to the publisher.
20 Q What are the marketing functions,
21 generally, in a publishing company?
22 A Promotion, publicity, subsidiary
23 rights, sales.
24 Q Now, have you ever consulted for
25 authors directly?

1 Harris
2 A Yes.
3 Q What types of things have you
4 consulted on?
5 A Mostly non-fiction books.
6 Q And consulted about what sort of
7 things?
8 A By "things" do you mean topics?
9 Q What did you give them advice
10 about?
11 A I gave them advice about whether
12 they should be published by existing firms or
13 publish on their own, marketing strategies,
14 distribution, sales and fulfillment.
15 Q Are you involved at all in any --
16 you mentioned self-publishing.
17 A Um-hum.
18 Q What do you do as a consultant for
19 self-publishers?
20 A Set up a framework where an author
21 can find distribution, sales and fulfillment
22 from independent sources.
23 Q Have you ever advised authors to
24 publish in e-book form?
25 A It's part of the publishing

3 (Pages 6 - 9)
<table>
<thead>
<tr>
<th>Harris</th>
<th>Harris</th>
<th>Harris</th>
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<tbody>
<tr>
<td>process today.</td>
<td>Q And what was it you talked to her about?</td>
<td>And what was the subject matter of that you had some connection to?</td>
</tr>
<tr>
<td>Q E-books?</td>
<td>A Custom and practice in the book business.</td>
<td>A No, but they're things that came to hand in the last few months.</td>
</tr>
<tr>
<td>A Yeah.</td>
<td>Q And what did you tell her?</td>
<td>Q Well, let's look at Exhibit D.</td>
</tr>
<tr>
<td>Q Have you ever previously -- switching topics slightly -- done any work for Google?</td>
<td>A We were talking about how conditions actually apply in publishing.</td>
<td>A Okay.</td>
</tr>
<tr>
<td>A No.</td>
<td>Q Can you be more specific?</td>
<td>Q And what is this?</td>
</tr>
<tr>
<td>Q Any e-book publishers?</td>
<td>A I'm not sure I remember exactly what we discussed.</td>
<td>A These are the back covers of two books published by Penguin.</td>
</tr>
<tr>
<td>A No.</td>
<td>Q How long was the discussion?</td>
<td>Q And did you have anything -- were you in any way involved in the publication of these books?</td>
</tr>
<tr>
<td>Q Have you been an expert -- I see in your -- I think it's Exhibit B -- that you were an expert in one other case -- or C -- another case that's listed; is that correct?</td>
<td>A I don't think so.</td>
<td>A No, they were just in my library.</td>
</tr>
<tr>
<td>A Yes.</td>
<td>Q Did anyone else participate?</td>
<td>Q So do you have any knowledge about whether anything on these back covers was there by permission or not of the publisher or author?</td>
</tr>
<tr>
<td>Q And which case was that?</td>
<td>A I don't think so.</td>
<td>A I don't have any direct knowledge of that.</td>
</tr>
<tr>
<td>A That was JK Rowling versus RTR Publishing.</td>
<td>Q And you can't remember what you discussed with her other than that it was custom and practice in the book business?</td>
<td>Looking at Exhibit E, which is &quot;Weird things customers say in bookstores,&quot; did you represent in any way the publisher or author of this book?</td>
</tr>
<tr>
<td>Q And who did you testify for?</td>
<td>A RTR Publishing.</td>
<td>A No. I had worked for this publisher previously.</td>
</tr>
<tr>
<td>A RTR Publishing.</td>
<td>Q And what was that case about?</td>
<td>Q Which publisher is that?</td>
</tr>
</tbody>
</table>
Harris

Q You worked for them as a consultant?
A Yes, I did.
Q But with this particular book you had no involvement?
A No.
Q Do you know whether these selections were made by permission of the publisher or author?
A I don't know.
Q Where did you find these?
A This is a little booklet, promotional booklet, that has been made by Overlook, which they're going to distribute next week at the book expo, give out to people -- to bookstores.

Harris

Q So this Exhibit E, if we had the original rather than a copy, would be in the form of a booklet?
A Yeah.
Q And it's a promotional booklet that Overlook, the publisher, prepared itself?
A Yes.

Harris

Q And distributes at -- where?
A At conventions, places where booksellers gather, and I assume they'll also probably let bookstores have them to give out to their customers.
Q So it's an attempt by the publisher of the book to promote the book?
A Exactly.
Q And sales of the book; correct?
A Yes.
Q So we would assume that was by permission of a rights holder; correct?
MR. McGOWAN: Objection, lacks foundation, calls for speculation.
Q If you want to argue about the sequencing of questions and objections, we can do that, but I don't --
MS. ZACK: I don't want to argue that, I just want to say that --
MR. McGOWAN: I don't see the point.
Q I'm just going to say that all objections -- all you need to do is say "object to the form." All objections are preserved other than to the form, and stating grounds for objections is a form of coaching.

Harris

Q Exhibit F, could we turn to that, please.
A Yes.
Q And this is "Death Will Extend Your Vacation" by Elizabeth Zelvin; is that correct?

Elizabeth Zelvin?

A No.
Q Where did you find this?
A My wife is a mystery writer, and we go to mystery gatherings, and this was being given out.
Q By whom?
A By the author.
Q So this, Exhibit F -- was this also in booklet form?
A Yes.
Q So if we had the original, what is Exhibit F would have been a booklet of what looks to be a chapter of the book Death Will Extend Your Vacation by Elizabeth Zelvin; is that correct?
A Yes.
Q And you received this at a gathering from the author herself?
A Yes.
1 Harris
2 Q Did you discuss this with the
3 author?
4 A No.
5 Q Did you buy the book?
6 A No.
7 Q Exhibit G is a series of pages.
8 Is this all one handout?
9 A Yes.
10 Q Where did you get this, Exhibit G?
11 A I got this from the publisher.
12 Q And who is that?
13 A Clarkson Potter, which is a part
14 of Crown, which is a part of Random House.
15 Q And was this also in booklet form
16 when you received it?
17 A Yes. It's called a blad.
18 Q What is blad?
19 A A blad is when you have
20 illustrated books, it's a selling tool for
21 publishers to show booksellers and reviewers
22 what they're going to be coming out with in a
23 highly illustrated format.
24 Q So Exhibit G is what you're
25 calling a blad, which was in booklet form and

1 Harris
2 distributed by the publisher; is that correct?
3 A That's correct.
4 Q What was it a blad for, which
5 book?
6 A Well, it's for all the books that
7 they were publishing this season. I think the
8 next-to-last page is a listing of the books. At
9 least some of the books, so they're both
10 cookbooks and style books.
11 Q This page (indicating) --
12 A That lists some of them, yes.
13 Q I can't read the text at the top.
14 Can you? Do you know what it says? It's very
15 light.
16 A I think it's an Amphoto -- Watson
17 Guptil -- it's the name of a different division
18 of Clarkson Potter, so it's Watson Guptil,
19 Potter Style and Amphoto.
20 Q And it says "Spring" -- two
21 thousand and --
22 A 2012. I think it's 2012. Yeah,
23 these are recent books.
24 Q Referring you to Exhibit H, what
25 is this?
Harris: books in the Google Partner Program?
A: No.
Q: Just haven't given them advice about the Google Partner Program?
A: Right.
Q: Have you ever talked to anyone at Google, prior to your retention as their expert, about the Google Partner Program?
A: No.
Q: When did you first learn about the Google Library Project?
A: Oh, I think I read about it in the paper when it was first occurring.
Q: Did you ever discuss that with anyone from Google?
A: No.
Q: With anyone in the publishing industry?
A: Not that I recall.
Q: Are you aware that Google copies books for its Library Project without permission?
A: Yes.
Q: Referring you to the text of your report -- well, before I do that, have you ever used Google Books?
A: For myself?
Q: Yes.
A: Yes.
Q: Have you looked at entire chapters of books in the Google -- in Google book search?
A: Occasionally I've seen, you know, longer...
Q: Seen longer?
A: Excerpts.
Q: Have you also seen shorter excerpts?
A: Yes.
Q: Referring you back to your report, on page 2 of your report, paragraph five, you talk about "Google has scanned more than 20 books," et cetera.
A: Do you see that?
Q: Was the information in this paragraph based on your review of documents provided to you by Google?
A: Yes.
Q: You don't have any independent knowledge of that?
A: No.
Q: What about paragraph six?
A: Same.
Q: When you're a publisher and you want to sell books, you're interested in getting the books visibility; is that correct?
A: Yes.
Q: Did you ever have any responsibility for permissions for the use of quotes from books that you had published by other persons or books?
MR. McGOWAN: Objection, lacks foundation.
Q: You may answer.
A: Permission fees.
Q: I'm not sure I understand the question.
Q: Are you conversant with the concept of permission fees --
A: Yes.
Q: -- for the use of books --
A: Yes.

Harris: -- or some content of books?
A: Yes.
Q: Was that part of the business of Crown Publishing under your jurisdiction at any time while you were there?
A: Yes.
Q: And did you have a permissions department?
A: Not a whole department, but there was somebody who was responsible.
Q: What did they do?
A: When people asked for permissions they would set a rate and ask for money if somebody was going to use it, or they would let them use it for free.
Q: How was it determined whether to pay for the use of the text or to do it for free?
A: They were individual cases.
Q: So you mean it was decided based on how much was asked for, and --
A: What the book was, who was asking, what the use was going to be.
Q: And was a permissions department
<table>
<thead>
<tr>
<th>Page 26</th>
<th>Harris</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>ever under your jurisdiction at Random House?</td>
</tr>
<tr>
<td>2</td>
<td>A No, because they worked for the</td>
</tr>
<tr>
<td>3</td>
<td>editors and publishers rather than the sales</td>
</tr>
<tr>
<td>4</td>
<td>department.</td>
</tr>
<tr>
<td>5</td>
<td>Q What about Workman?</td>
</tr>
<tr>
<td>6</td>
<td>A Yes.</td>
</tr>
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<td>7</td>
<td>Q It was under your jurisdiction?</td>
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<td>8</td>
<td>A Yes.</td>
</tr>
<tr>
<td>9</td>
<td>Q And was the procedure at Workman</td>
</tr>
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<td>10</td>
<td>the same as it had been at Crown Publishing?</td>
</tr>
<tr>
<td>11</td>
<td>A Yes.</td>
</tr>
<tr>
<td>12</td>
<td>Q So you had one or more persons who</td>
</tr>
<tr>
<td>13</td>
<td>worked in that area?</td>
</tr>
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<td>14</td>
<td>A Yes.</td>
</tr>
<tr>
<td>15</td>
<td>Q It was the case that fees were</td>
</tr>
<tr>
<td>16</td>
<td>sometimes charged for permission to use excerpts</td>
</tr>
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<td>17</td>
<td>of books?</td>
</tr>
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<td>18</td>
<td>MR. McGOWAN: Objection, vague.</td>
</tr>
<tr>
<td>19</td>
<td>You may answer.</td>
</tr>
<tr>
<td>20</td>
<td>Q Is that correct, as a matter of</td>
</tr>
<tr>
<td>21</td>
<td>custom and practice in the publishing industry?</td>
</tr>
<tr>
<td>22</td>
<td>A Sometimes.</td>
</tr>
<tr>
<td>23</td>
<td>Q Are you aware of any promotional</td>
</tr>
<tr>
<td>24</td>
<td>uses of the books for which you were responsible</td>
</tr>
<tr>
<td>25</td>
<td>Harris</td>
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<thead>
<tr>
<th>Page 27</th>
<th>Harris</th>
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<tbody>
<tr>
<td>1</td>
<td>at Crown that were not done by permission of</td>
</tr>
<tr>
<td>2</td>
<td>Crown?</td>
</tr>
<tr>
<td>3</td>
<td>A I'm not sure I understand what</td>
</tr>
<tr>
<td>4</td>
<td>you're asking.</td>
</tr>
<tr>
<td>5</td>
<td>Q While you were at Crown, Crown</td>
</tr>
<tr>
<td>6</td>
<td>promoted its books.</td>
</tr>
<tr>
<td>7</td>
<td>A Yeah.</td>
</tr>
<tr>
<td>8</td>
<td>Q So Crown was deciding how to</td>
</tr>
<tr>
<td>9</td>
<td>promote the books; correct?</td>
</tr>
<tr>
<td>10</td>
<td>A Yes.</td>
</tr>
<tr>
<td>11</td>
<td>Q And one of the ways they would</td>
</tr>
<tr>
<td>12</td>
<td>promote them is to create little pamphlets;</td>
</tr>
<tr>
<td>13</td>
<td>correct?</td>
</tr>
<tr>
<td>14</td>
<td>A Yes.</td>
</tr>
<tr>
<td>15</td>
<td>Q And when those pamphlets were</td>
</tr>
<tr>
<td>16</td>
<td>created, Crown would decide what portion of the</td>
</tr>
<tr>
<td>17</td>
<td>book to put into the pamphlets; correct?</td>
</tr>
<tr>
<td>18</td>
<td>A That's correct, yes.</td>
</tr>
<tr>
<td>19</td>
<td>Q And Crown had a contract with the</td>
</tr>
<tr>
<td>20</td>
<td>author that gave it the right to promote the</td>
</tr>
<tr>
<td>21</td>
<td>books; correct?</td>
</tr>
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<td>22</td>
<td>MR. McGOWAN: Objection, vague,</td>
</tr>
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<td>23</td>
<td>calls for a legal conclusion.</td>
</tr>
<tr>
<td>24</td>
<td>You may answer.</td>
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<tr>
<th>Page 28</th>
<th>Harris</th>
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<tbody>
<tr>
<td>1</td>
<td>A Yes, each contract can be a little</td>
</tr>
<tr>
<td>2</td>
<td>bit different.</td>
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<td>3</td>
<td>Q Was it your understanding that</td>
</tr>
<tr>
<td>4</td>
<td>Crown had the right vis-a-vis the author to</td>
</tr>
<tr>
<td>5</td>
<td>promote the books --</td>
</tr>
<tr>
<td>6</td>
<td>A Yes.</td>
</tr>
<tr>
<td>7</td>
<td>Q -- that Crown was publishing?</td>
</tr>
<tr>
<td>8</td>
<td>A Yes.</td>
</tr>
<tr>
<td>9</td>
<td>Q And then Crown would take</td>
</tr>
<tr>
<td>10</td>
<td>responsibility for the best way to promote the</td>
</tr>
<tr>
<td>11</td>
<td>book; correct?</td>
</tr>
<tr>
<td>12</td>
<td>A Yes.</td>
</tr>
<tr>
<td>13</td>
<td>Q And if Crown decided it didn't</td>
</tr>
<tr>
<td>14</td>
<td>want to release a chapter of the book for -- it</td>
</tr>
<tr>
<td>15</td>
<td>would not do so; right?</td>
</tr>
<tr>
<td>16</td>
<td>A Correct.</td>
</tr>
<tr>
<td>17</td>
<td>Q You didn't create pamphlets with</td>
</tr>
<tr>
<td>18</td>
<td>chapters for all your books, did you?</td>
</tr>
<tr>
<td>19</td>
<td>A No.</td>
</tr>
<tr>
<td>20</td>
<td>Q And how were those decisions made?</td>
</tr>
<tr>
<td>21</td>
<td>A They were made by the marketing</td>
</tr>
<tr>
<td>22</td>
<td>people and the editorial people.</td>
</tr>
<tr>
<td>23</td>
<td>Q And what criteria did they take</td>
</tr>
<tr>
<td>24</td>
<td>into account?</td>
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<table>
<thead>
<tr>
<th>Page 29</th>
<th>Harris</th>
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<tbody>
<tr>
<td>1</td>
<td>A Effectiveness; what would be</td>
</tr>
<tr>
<td>2</td>
<td>effective, what they thought would be effective</td>
</tr>
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<td>3</td>
<td>in the sale of the book.</td>
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<td>4</td>
<td>Q And did they do that based on</td>
</tr>
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<td>5</td>
<td>their knowledge of the book itself?</td>
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<tr>
<td>6</td>
<td>A Yes.</td>
</tr>
<tr>
<td>7</td>
<td>Q And what they thought would best</td>
</tr>
<tr>
<td>8</td>
<td>promote the sales of the book?</td>
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<tr>
<td>9</td>
<td>A Yes.</td>
</tr>
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<td>10</td>
<td>Q And did you ever sue anyone for</td>
</tr>
<tr>
<td>11</td>
<td>copyright infringement while you were at Crown?</td>
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<tr>
<td>12</td>
<td>A No.</td>
</tr>
<tr>
<td>13</td>
<td>Q Never?</td>
</tr>
<tr>
<td>14</td>
<td>A I didn't.</td>
</tr>
<tr>
<td>15</td>
<td>Q Did someone on your behalf?</td>
</tr>
<tr>
<td>16</td>
<td>A I don't think so.</td>
</tr>
<tr>
<td>17</td>
<td>Q What about at Random House?</td>
</tr>
<tr>
<td>18</td>
<td>A I'm sure there were suits, but I</td>
</tr>
<tr>
<td>19</td>
<td>had nothing to do with them.</td>
</tr>
<tr>
<td>20</td>
<td>Q What about at Workman?</td>
</tr>
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<td>21</td>
<td>A No, I don't think so.</td>
</tr>
<tr>
<td>22</td>
<td>Q You're not litigious?</td>
</tr>
<tr>
<td>23</td>
<td>A No. Thank God.</td>
</tr>
<tr>
<td>24</td>
<td>Q While you worked at Crown, did</td>
</tr>
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Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 35 of 69

1 Harris
2 anyone other than the author or publisher, in
3 your experience, ever come out with a booklet
4 that had a whole chapter of one of your books?
5 A Not that I know of.
6 Q How about a booklet that had
7 excerpts from 30 pages of one of your books?
8 A Not that I know of.
9 Q How about a booklet that had
10 excerpts from 75 percent of your books?
11 A No.
12 Q What about at Random House?
13 A No.
14 Q What about at Workman?
15 A I don't think so.
16 Q Now, in this modern world of
17 digital computers which we've all come into,
18 there are many ways to promote books that there
19 didn't used to be; isn't that correct?
20 A Yes.
21 Q Including authors have websites;
22 is that right?
23 A That's correct.
24 Q And you advise authors with
25 respect to how they can promote books on their

1 Harris
2 own websites?
3 A Yes.
4 Q And is it your understanding that
5 if an author puts up a website promoting his or
6 her book, that the result -- that that website
7 will be searched and results will show up on
8 Google?
9 MR. McGOWAN: Objection,
10 incomplete hypothetical and radically
11 compound.
12 MS. ZACK: It's a hypothetical.
13 A I don't know about the results
14 appearing on Google.
15 Q You've never checked that to see
16 whether it did or didn't?
17 A No.
18 Q Do you understand how Google
19 search engine works?
20 A I think so, roughly.
21 Q How does it work?
22 A They're looking for key phrases.
23 Q Well, is it your understanding
24 that Google's search engine indexes the World
25 Wide Web, what we call the internet, so that

1 Harris
2 when you search on -- I'm talking about the main
3 Google -- if you put a search term in, they will
4 search the web to find a match?
5 A Yes.
6 MR. McGOWAN: I'll object, vague
7 with respect to the phrase "index."
8 Q Well, let me ask you this --
9 MR. McGOWAN: Miss Zack may
10 actually want to specify what she's
11 talking about. I suspect what's going
12 on is that we're dealing in adjectives
13 that have not been specified.
14 Q Looking at Exhibit A, which is
15 your bio that we previously looked at, is that
16 on the internet?
17 A Yes.
18 Q And if I go to Google and I type
19 in "Bruce Harris" do you know if I'll get a link
20 to your bio?
21 A Eventually.
22 Q Have you ever done that?
23 A I haven't. I think there's a
24 judge in New Jersey, though.
25 Q I'm sorry.
Harris
Q And what different ways have you suggested to publishers?
A Using single topics, which can be then used in a variety of ways. So not just the entire book, but parts of it.
Q Do you think it's easier for authors to promote books nowadays with the World Wide Web, or harder?
A Both.
Q How is it easier?
A Easier because the web obviously gives you the facility to reach a wide audience at meaningful cost, but harder because there's so much more activity, which I call static.
Q Do you ever advise authors or publishers of out-of-print books as to how to promote their books?
A No.
Q Why not?
A I've never had a client with out-of-print books.
Q Is there any point in promoting an out-of-print book?
MR. McGOWAN: Objection, lacks

Harris
foundation, it's a hypothetical.
You may answer.
A I like to say a book is new to somebody who hasn't read it, so I don't know. Q In your report you mention Amazon Search Inside the Book.
A Yes.
Q And that's a feature of Amazon that is -- required permission of the author or the publisher or the rights holder of the book; is that right?
A I think so.
Q You don't know for sure?
A I don't know for sure.
MS. ZACK: Let's mark as PX 90 materials from the internet concerning Amazon.com Search Inside the Book program, five pages.
(Amazon Search Inside the Book FAQs marked Exhibit PX 90 for identification.)
Q Have you ever seen these --
A No.
Q -- FAQs concerning Amazon's Search
Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 37 of 69

1 Harris
2 Q And is it your opinion that
3 Google, with no permission from either the
4 author or publisher, can do the same thing?
5 MR. McGOWAN: Objection, vague
6 extent it calls for a legal conclusion.
7 You may answer.
8 And vague with respect to "same
9 thing."
10 You may answer.
11 Q Well, I'll make it clear.
12 You said you thought as a
13 publisher you could promote the book in any way
14 you thought fit, basically; correct?
15 A Yes.
16 Q Are you offering an opinion here
17 that Google, without any permission from a
18 rights holder of the book, can do that?
19 A Yes.
20 Q So if I, Joanne Zack, decide that
21 I love a book, let's say one of the books you
22 published previously for Crown -- what books did
23 you love --
24 A Let's say Hitchhiker's Guide to
25 the Galaxy.

1 Harris
2 Q Hitchhiker's Guide to the Galaxy,
3 I love that book. It's still in copyright,
4 isn't it?
5 A Yes.
6 Q I decide I want to promote it. So
7 I decide to put up five chapters on Boni & Zack
8 and I say, "I love this book, you will too"; is
9 that okay?
10 A I think that would be okay.
11 Q It's okay with you?
12 A Yes.
13 Q You're not litigious?
14 A No.
15 Q Are you expressing an opinion
16 whether that violates the copyright laws?
17 A No, I don't know about the
18 copyright law, I'm not an expert on it.
19 Q Have you ever seen that happen,
20 where a publisher looks the other way when
21 someone --
22 MR. McGOWAN: On the Boni & Zack
23 website.
24 Q -- publishes on a website five
25 chapters of a book in copyright?

1 (Pages 38 - 41)
Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 38 of 69

1 Harris
2 are derived from any promotional uses of books?
3 MR. McGOWAN: Objection, vague
4 with respect to "derived."
5 You may answer.
6 Q Earned.
7 MR. McGOWAN: By whom is the
8 objection?
9 MS. ZACK: Anyone.
10 A I don't know.
11 MS. ZACK: Let's take a short'
12 break.
13 (Recess taken)
14 MS. ZACK: Let's mark as PX 91
15 four pages entitled "Google Books
16 Partner Program Standard Terms and
17 Conditions," from the internet.
18 (Document entitled "Google Books
19 Partner Program Standard Terms and
20 Conditions" marked Exhibit PX 91 for
21 identification.)
22 Q Have you seen this before,
23 Mr. Harris?
24 A No.
25 Q This is a Partner Program,

1 Harris
2 basically contract, or terms and conditions,
3 that a rights holder can enter into with Google
4 to participate in the Partner Program.
5 A (Nodding)
6 Q If you look on page 2, you'll see
7 paragraph eight, "Ads Payment."
8 A Yes.
9 Q It talks about payment for ads on
10 pages with authorized content.
11 You have no knowledge about this
12 feature of the Partner Program?
13 A No.
14 Q Do you understand the Partner
15 Program to be promotional?
16 A Yes.
17 Q And do you understand that Google
18 places ads on some portions of the content that
19 is authorized by participants in the Partner
20 Program?
21 A Yes.
22 Q And do you understand that Google
23 shares a portion of the ad revenues based on
24 clicks with its Partner Program participants?
25 A I see that.

1 Harris
2 into Google Books through the Library Project
3 how much people have clicked on ads?
4 A No.
5 Q You don't know one way or the
6 other?
7 A No.
8 Q Do you know how Google earns money
9 from its business?
10 MR. McGOWAN: Objection, vague.
11 You may answer.
12 A Only what I've read in the papers
13 about advertising revenue.
14 Q So what's your understanding?
15 A People pay money to advertise
16 their services or products, and when the ad is
17 read, Google gets money from the advertiser.
18 Q Do you know what percentage of
19 books copied by Google in the Library Project
20 were out of print as opposed to in print?
21 A No, I don't.
22 Q Have you ever advised any
23 publishers or authors of out-of-print books how
24 best to put those books back into print?
25 A No.

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1 Harris
2 Q Are you familiar with services such as iUniverse, which will create e-books of out-of-print works?
3 A Yes.
4 Q Are you familiar with any other services like that?
5 A I know there are quite a few, but I don't know the names of them.
6 Q Have you ever advised any author or publisher to use any of those services?
7 A No.
8 Q Do you consider yourself an expert in e-book publishing?
9 A No.
10 Q Do you consider yourself an expert in using the internet for promotional purposes?
11 MR. McGOWAN: Objection, lacks foundation.
12 Q You may answer.
13 A I'm familiar with using the internet as a promotional vehicle.
14 Q Do you consider yourself an expert in it?
15 A It's changing so fast, I wouldn't.

1 Harris
2 Q You left Workman in 2004.
3 A Yes.
4 Q And a lot has happened since then.
5 A That's right.
6 Q With respect to the internet, anyway.
7 A Yeah.
8 Q Do you think you've kept up with all that?
9 A I've --
10 Q Do you work full-time as a consultant?
11 A No.
12 Q Approximately how much time do you work now?
13 A About four days a week.
14 Q How much of your time is devoted to working on matters involving digital rights, digital promotion or digital publication?
15 A I recommended that they use it.
16 Q Oh, you did recommend that?
17 A Yes.
18 Q With respect to how many books?
19 A I would say all of them.
20 Q Did you recommend any other

13 (Pages 46 - 49)
Harris

digital promotions other than Amazon for any of
the 25 to 30 books?
MR. McGOWAN: Objection, vague.
You may answer.
A Yes.

Q What other types of digital
promotion?
A Book trailers, contests, games.
Q Anything else?
A Nothing specific I can remember.
Q What's a book trailer?
A A book trailer is a -- like a
movie trailer, like a small feature, video
feature, about the book.
Q Like an interview with the author?
A Could be an interview with the
author, it could be pages from the book, it
could be sound and light; it could be anything.
Q So you didn't give the same advice
for each of these 25 to 30 books?
A No, no.
Q And when you gave advice about how
to promote the book, what were your
considerations?

Harris

A The target market and the amount
of money of you could spend, our budget.
Q Anything else?
A No.
Q Now, with respect -- going back to
Google Books itself, you said you had done a
search for a book title or some sort of search?
A Yeah.
Q Did you do any search within the
books, where you put -- after you found a book,
you then searched within the book?
A No.
Q When you've done your searches,
have you used the Google main search engine or
have you gone to the Google Books --
A I went to the Google Books. Both,
I guess.
Q Let's talk about Google Books.
When you went to Google Books, how
did you search? Did you put in the name of a
book, or did you put in just a general search
term?
A Both.
Q And what type of results did you

Harris

see?
A I would get -- book titles would come up.
Q And with respect to those titles,
did you ever look -- do any searches within the
books?
A Yes.
Q Did you ever see a search result
that was snippets only and it said that this was
from the Library Project?
A Yes.
Q And how many searches did you do
within a single book?
A Two or three.
Q And you stopped?
A Yeah.
Q What was the purpose of doing the
searches?
A Just to see how it worked, find
out a particular piece of information.
Q Was that in connection with your
retention?
A Lately, yes.
Q Through Google?

Harris

A Yes.
Q Had you done that before you were
retained by Google?
A No.
MS. ZACK: I don't have any other
questions.
MR. McGOWAN: I don't have any
questions.
(Time noted: 11:03 a.m.)

BRUCE S. HARRIS

Signed and subscribed to before me
this _____ day of _____________, 2012.

Notary Public

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CERTIFICATE

I, HELEN MITCHELL, a Shorthand Reporter and Notary Public, do hereby certify:

I reported the proceedings in the within-entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of June, 2012.

________________________
HELEN MITCHELL

BRUCE S. HARRIS

This ___ day of __________, 20__.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

INDEX

June 1, 2012

WITNESS EXAMINATION BY PAGE
BRUCE S. HARRIS Ms. Zack 4

EXHIBITS FOR IDENTIFICATION PAGE
Exhibit PX 89 Expert report by Mr. Harris 4
Exhibit PX 90 Amazon Search Inside the Book FAQs 36
Exhibit PX 91 Document entitled “Google Books Partner Program Standard Terms and Conditions” 43

15 (Pages 54 - 56)
Harris

A Yes.

Q Had you done that before you were retained by Google?

A No.

MS. ZACK: I don't have any other questions.

MR. McGOWAN: I don't have any questions.

(Time noted: 11:03 a.m.)

BRUCE S. HARRIS

Signed and subscribed to before me this ___ day of __________, 2012.

______________________________
Notary Public
IN THE UNITED STATES DISTRICT COURT 
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., )
Associational Plaintiff, BETTY )
MILES, JOSEPH GOULDEN, and JIM )
BOUTON, on behalf of themselves )
and all other similarly situated,)  )

Plaintiffs, )

- against - )

GOOGLE INC., )

Defendant. )

Civil Action No. )
05 CV 8136 (DC)

One Penn Plaza
New York, New York

June 6, 2012
10:31 a.m.

Deposition of ALBERT N. GRECO, held at the
offices of MILBERG LLP, before LINDA DEV ECKA, a
Notary Public of the State of New York.

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<table>
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<tr>
<td>1  A P P E A R A N C E S:</td>
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<td>3  B O N I &amp; Z A C K, L L C</td>
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<tr>
<td>5  Attorneys for Plaintiffs</td>
</tr>
<tr>
<td>6  15 St. Asaphs Road</td>
</tr>
<tr>
<td>7  Bala Cynwyd, Pennsylvania 19004</td>
</tr>
<tr>
<td>10 D U R I E T A N G R I L L P</td>
</tr>
<tr>
<td>12 Attorneys for Defendant</td>
</tr>
<tr>
<td>13 217 Leidesdorff Street</td>
</tr>
<tr>
<td>14 San Francisco, California 94111</td>
</tr>
<tr>
<td>15 B Y: D A V I D M c G O W A N , E S Q .</td>
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<tr>
<td>1  IT IS HEREBY STIPULATED AND AGREED, by</td>
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<tr>
<td>3  and among counsel for the respective</td>
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<td>4  parties hereto, that the filing, sealing and</td>
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<td>5  certification of the within deposition shall be</td>
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<td>6  and the same are hereby waived;</td>
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<td>7  IT IS FURTHER STIPULATED AND AGREED</td>
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<td>8  that all objections, except as to the form of</td>
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<td>9  the question, shall be reserved to the time</td>
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<td>10 of the trial;</td>
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<td>11 IT IS FURTHER STIPULATED AND AGREED</td>
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<td>12 that the within deposition may be signed</td>
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<td>13 before any Notary Public with the same</td>
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<td>14 force and effect as if signed and sworn to</td>
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<td>15 before the Court.</td>
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<tr>
<td>1  M S . Z A C K : M a r k this, please.</td>
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<tr>
<td>3  (Plaintiff's Exhibit 92, document titled</td>
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<tr>
<td>4  &quot;E x p e r t Report of Professor Albert N. Greco May</td>
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<tr>
<td>5  3, 2012&quot;, marked for identification, as of this</td>
</tr>
<tr>
<td>6  date.)</td>
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<td>7 A L B E R T N . G R E C O , called as a</td>
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<td>8  witness, having been duly sworn by a Notary</td>
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<td>9  Public, was examined and testified as follows:</td>
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<td>10 EXAMINATION BY</td>
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<tr>
<td>11 M S . Z A C K :</td>
</tr>
<tr>
<td>12 Q. Good morning, Professor Greco.</td>
</tr>
<tr>
<td>13 Could you just state your full name for</td>
</tr>
<tr>
<td>14 the record, please.</td>
</tr>
<tr>
<td>15 A. Sure. Albert N. Greco, G-r-e-c-o.</td>
</tr>
<tr>
<td>16 Q. What is your current position?</td>
</tr>
<tr>
<td>17 A. I am a professor of marketing, Fordham</td>
</tr>
</tbody>
</table>
| 18 University, New York City, in the Schools of Business Administration.
| 20 Q. You have been retained in this matter by                       |
| 21 Google as an expert?                                              |
| 22 A. Yes.                                                           |
| 23 Q. When were you retained?                                        |
| 24 A. Sometime in March of 2012. Perhaps the                        |
| 25 middle of the month. Somewhere in that time period.               |

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<th>Page 5</th>
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<tbody>
<tr>
<td>1  Greco</td>
</tr>
<tr>
<td>2 Q. What is your area of expertise?</td>
</tr>
<tr>
<td>3 A. I have done research on customs and</td>
</tr>
<tr>
<td>4 practices in the book industry, also the scholarly</td>
</tr>
<tr>
<td>5 journal business which is obviously not of any</td>
</tr>
<tr>
<td>6 interest today.</td>
</tr>
<tr>
<td>7 Q. When you say you have done research on the</td>
</tr>
<tr>
<td>8 customs and practices in the book industry, what</td>
</tr>
<tr>
<td>9 research are you speaking of?</td>
</tr>
<tr>
<td>10 A. I am the author or editor of 12 scholarly</td>
</tr>
<tr>
<td>11 books, most of which dealt with some aspect of the</td>
</tr>
<tr>
<td>12 book publishing industry, including a book called</td>
</tr>
<tr>
<td>13 &quot;The Book Publishing Industry,&quot; another one called</td>
</tr>
<tr>
<td>14 &quot;The Culture and Commerce of Publishing in the 21st</td>
</tr>
<tr>
<td>15 Century.&quot; A series of journal articles in a variety</td>
</tr>
<tr>
<td>16 of journals here and in Europe on various aspects of</td>
</tr>
<tr>
<td>17 the book publishing industry. Presentations at</td>
</tr>
<tr>
<td>18 conferences.</td>
</tr>
<tr>
<td>19 Q. Are there particular aspects of the book</td>
</tr>
<tr>
<td>20 publishing industry that you focus on in your</td>
</tr>
<tr>
<td>21 research?</td>
</tr>
<tr>
<td>22 A. A great deal of the research is spent on</td>
</tr>
<tr>
<td>23 sales, marketing, distribution. I look at the other</td>
</tr>
<tr>
<td>24 areas of the industry, too.</td>
</tr>
<tr>
<td>25 Q. Do you have any expertise in legal matters</td>
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Greco

2 concerning the book publishing industry?
3 A. I am not an attorney. I have written
4 about contracts in various publications.
5 Q. Do you consider yourself an expert on fair
6 use?
7 A. I am familiar with fair use.
8 Q. But not an expert?
9 A. I have never written extensively on fair
10 use.
11 Q. You have been an expert before, I take it?
12 A. Yes.
13 MR. McGOWAN: Let me just caution you to
14 wait until Ms. Zack is finished speaking because
15 it's important that you not speak over each
16 other.
17 THE WITNESS: Okay.
18 Q. We have marked as PX 92 your expert
19 report. You have that, right?
20 A. Yes, I do.
21 Q. If you look at what was marked as Exhibit
22 B to your expert report which comes very near the
23 end.
24 A. Exhibit B, yes.
25 Q. There is a list of, I think, four cases

Greco

2 that you served as an expert in, is that correct?
3 A. Yes.
4 Q. In the last five years or four years or is
5 this all the ones you have --
6 A. This is a complete list covering the
7 period from 2008 to the present.
8 Q. It's a complete list from 2008 to the
9 present?
10 A. Yes.
11 Q. Prior to 2008, did you serve as an expert
12 in any litigation matters?
13 A. The first matter actually started, I
14 believe, in 2007. It was settled in 2008.
15 Q. Is that on this list?
16 A. Yes, it is.
17 Q. Which one is that?
18 A. Number 1.
19 Q. Which side did you serve as an expert for
20 in that case number 1, Pottker versus Feld?
21 A. Feld.
22 Q. What type of case was that?
23 MR. McGOWAN: Objection, vague. You may
24 answer.
25 A. It involved a variety of issues. I was

Greco

2 retained to discuss book marketing, book selling and
3 book distribution in the United States.
4 Q. You served as an expert for Feld, you
5 said?
6 A. Yes, Feld.
7 Q. Is that a person or a publisher?
8 A. Mr. Feld is a business executive.
9 Q. Do you recall the claims against him?
10 A. In terms of the book publishing industry,
11 there were allegations that Pottker, who was and I
12 still believe is an author, there were allegations
13 that Mr. Feld tried to hurt her career as an author.
14 Q. What was the nature of your expert
15 opinion?
16 A. Well, there was a confidentiality
17 agreement. I was asked to look into book sales,
18 marketing and book distribution during the period of
19 time in which the allegations centered on.
20 Q. Did this case have anything to do with
21 eBooks?
22 A. No.
23 Q. Or digital marketing of books?
24 A. I don't believe so.
25 Q. Is there anything else you can tell me

3 (Pages 6 - 9)
Case 1:05-cv-08136-DC Document 1053-7 Filed 08/03/12 Page 47 of 69

Q. What line of business were they in?
A. They are a book publisher publishing a variety of different kinds of books, often in inspirational, self-help psychology areas and other areas.

Q. What was the nature of the claim in that litigation?
A. Two authors had a long-term contract with Health Communications. The contract reached a termination point and the two authors left. As I was told, Health Communications had the legal authority to print and distribute backlist titles that were originally printed under the then terms and conditions of a contract.

When the two authors left -- and they were the two primary editors of this book series called "Chicken Soup For the Soul." When they left and went to a new publisher, and they had every right to do that, the allegation was that material that had originally appeared in books published by Health Communications, Inc. was being used in new books published by a new publisher, and there was a request for an injunction to stop the sale of these new books that allegedly used material from

1 Greco
2 previously-published books.
3 Q. What was the nature of your opinion as an expert?
4 A. I was asked to deal with the sales and marketing and distribution issues, customs, traditions, during the period in which the matter centered on.
5 Q. Did that case have anything to do with eBooks?
6 A. I don't believe it had anything to do with eBooks.
7 Q. Did it have anything to do with digital marketing of books?
8 A. Only in the sense that books by that point were available online, but that was not a major issue. It was very much a secondary issue in the matter.
9 Q. And it says "Matter will go to trial." Did it ever go to trial?
10 A. I don't know. I have a feeling the parties may have settled or perhaps the one party just dropped the suit.
11 MR. McGOWAN: I caution you not to guess.
12 If you know or --

THE WITNESS: I really don't know for sure.

Q. In any event, you are not aware of a trial? You are not aware of any trial?
A. No, I'm not.

Q. And you didn't testify at a trial?
A. There was a hearing before a judge.

Q. You did testify at the injunction hearing?
A. Yes.

Q. That was in Connecticut?
A. Yes.

Q. Was an injunction granted?
A. No.

Q. Was there a confidentiality agreement in that case?
A. Yes.

Q. Do you recall more specifically what you testified about sales and marketing in that case?
MR. McGOWAN: Objection, asked and answered. You may answer.

MS. ZACK: I said "more specifically."

Q. You don't have to repeat what you already said.
A. I was asked a series of questions

regarding customs, practices, traditions in the selling of books, the marketing of books, the distribution of books, and a whole series of questions on those three topics.

Q. You don't remember what questions there were, what you answered?
A. Not really, in all candor.

Q. Referring you to case number 3 on your list, the National Federation of the Blind versus the Arizona Board of Regents, who retained you as an expert?
A. National Federation of the Blind.

Q. What was the nature of the claims at issue in that case?
A. The National Federation of the Blind had represented individuals that had vision impairment problems. Arizona State University had an honors program, which is very typical, and they were using an electronic handheld device, an eReader called the Kindle, and the National Federation of the Blind felt that individuals that had a vision problem could not use that device. It really centered on higher education college textbooks.

Q. When you say "centered on," what do you

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4 (Pages 10 - 13)
Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 48 of 69

1 Greco
2 mean?
3 A. They asked me to discuss trends in higher
4 education textbook publishing, sales, marketing,
5 distribution.
6 Q. What did you say about those areas?
7 A. They asked specifically about the use of
8 textbooks in colleges in the United States and in
9 terms of the use of eReaders and the potential growth
10 of eReaders in that market.
11 Q. Anything else that you talked about?
12 A. That was really the extent of it.
13 Q. Did that case go to trial?
14 A. No. The parties settled.
15 Q. You said you testified in an injunction in
16 case number 2, Health Communications, Inc.
17 Did you ever testify at a deposition in
18 the Pottker case?
19 A. I gave depositions in the Pottker case.
20 Q. And in the National Federation of the
21 Blind case?
22 A. Yes.
23 Q. The fourth case is Illinois Computer
24 Research versus Harpo Productions.
25 Who retained you there?

1 Greco
2 A. Harpo Productions, Inc.
3 Q. What is their line of business?
4 A. It is a primarily but not its
5 primarily a television its a company with
6 television operations and a magazine. They may have
7 other they have been involved in the motion
8 picture industry also. They may have other
9 businesses that I am not aware of.
10 Q. What was the claim in that case or claims?
11 A. It was a patent -- the allegations were
12 that it was a patent infringement case involving
13 books and book excerpts.
14 Q. Patent infringement of book excerpts?
15 A. Yes.
16 Q. Was there a copyright claim, too?
17 A. I don't believe there was any copyright
18 claim in this matter.
19 Q. What type of matters did you offer an
20 expert opinion on for Harpo Productions?
21 A. Book sales, book marketing, book
22 distribution of printed books and excerpts in the
23 United States back to approximately the middle of the
24 19th century and some work on those issues in the
25 United Kingdom back to the 19th century.

1 Greco
2 Q. You talked about historical or custom and
3 practices as to book distributions of printed books?
4 A. Of printed books and excerpts.
5 Q. So what was your opinion?
6 A. That there was a long tradition in the
7 United States and a long tradition in the U.K. but
8 specifically a long tradition in the United States
9 about sales, marketing and distribution of printed
10 books and the use of excerpts in the United States.
11 Q. Excerpts for what purpose?
12 A. Book excerpts.
13 Q. Used for what purpose of book excerpts?
14 A. Several different uses. One was
15 marketing, and one centered on the fact that certain
16 authors released books as excerpts over a period of
17 time. In a sense in serials, magazines.
18 Q. You are saying it was a custom and
19 practice for authors to release portions of their
20 books as excerpts in magazines over time as serials?
21 A. Some authors did that going back to the
22 mid 19th century in the United States.
23 Q. What did you say about marketing?
24 A. Specifically, you know, why excerpts were
25 released. In some cases it was to market the entire

5 (Pages 14 - 17)

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1 Greco
2 Research LLC was that they had a patent on the use of
3 excerpts online.
4 Q. They had a patent on the use of excerpts
5 from certain books?
6 A. I believe the allegation was for all
7 content, not just books, but this matter that I was
8 involved in centered only on books.
9 Q. Illinois Computer Research was alleging it
10 had a patent on the use of excerpts online from all
11 books?
12 A. I don't believe they said all books. They
13 were dealing specifically with Harpo Productions,
14 Inc.
15 Q. So they said they had a patent on the use
16 of excerpts from books that Harpo Productions, Inc.
17 had an interest in?
18 MR. McGOWAN: I am going to object.
19 Q. Is that your understanding?
20 MR. McGOWAN: I am going to object to the
21 extent it calls for claim construction. It is a
22 pending case. I think his testimony establishes
23 the relevance. You may answer.
24 Q. You can say you don't know if you don't
25 know.

1 Greco
2 A. I don't know the full extent of their
3 claim. I only was asked to discuss the Harpo
4 Productions matter.
5 Q. Did you give a deposition in that case?
6 A. Yes.
7 Q. Are you under a confidentiality agreement
8 there?
9 A. Yes.
10 Q. Do you know the disposition of that case?
11 A. It was settled.
12 Q. Have you ever served as an expert for
13 Google in any matter?
14 A. No.
15 Q. Have you ever been retained previously by
16 Google in any capacity?
17 A. No.
18 Q. Have you ever served as an expert for
19 Durie Tangri in any matter?
20 A. No.
21 Q. For Keker Van Nest?
22 A. No.
23 Q. Is it the case that you served as an
24 expert in only these four cases and that's it?
25 A. Only those four cases.
1 Greco
2 MR. McGOWAN: Objection, vague.
3 Q. You can answer yes or no.
4 A. No.
5 Q. Have you ever written any articles about Google Books?
6 A. No. I may have mentioned it, but I don't believe so.
7 Q. Have you written any articles about Amazon Search Inside the Book?
8 A. No, but I may have mentioned it.
9 Q. Have you written articles about digital marketing?
10 A. Articles, probably if it was -- not an article on digital marketing as such. It's possible it's been mentioned in a book or articles that I have done but I have never done an exclusive study on this matter.
11 Q. And you never studied Google Books from a research point of view?
12 MR. McGOWAN: Objection, vague. You may answer.
13 A. I don't believe I have written anything specifically about Google Books except in passing.
14 Q. What about anything about Google in general, have you written any articles about Google general business?
15 A. No article specifically on Google.
16 Q. Articles about search engines?
17 A. No article specifically about search engines.
18 Q. Have you studied or written articles about digital copying?
19 A. No article specifically on that topic.
20 Q. Generally?
21 A. In general terms I have mentioned it in various publications because it's significant.
22 Q. Have you written any articles about libraries engaging in digital copying of any type?
23 A. Nothing specifically on that topic.
24 Q. How about libraries setting up or engaging in their own search engines?
25 MR. McGOWAN: Objection, vague. You may answer.
26 A. I have looked at libraries in very general terms. So, not really.
27 Q. Have you ever studied Google's market power?
28 MR. McGOWAN: Objection. Lacks foundation, vague. You may answer.
29 A. I have never done anything specifically on Google.
30 Q. You talk in your report about mergers and acquisitions, et cetera, in the publishing industry, is that correct?
31 A. Yes.
32 Q. Is that something you studied?
33 A. Yes.
34 Q. What is the purpose of those studies?
36 A. Scholars are interested in what has happened in various industries and sectors. I happened to study this sector in this industry. There have been a series of mergers and acquisitions in this industry in the United States going back into the 19th century. I thought it was an interesting topic. Not a lot of scholars have addressed the issue. I did a series of studies on it.
37 Q. Did you compare the rate of mergers and acquisitions in the publishing industry to the rate of mergers and acquisitions in other industries?
38 A. If I did, only in passing.
39 Q. Referring you back to the first page of the body of your report which is PX 92.
40 A. Yes.
41 Q. Paragraph 2 says "I have been asked to describe the following:" and then subparagraph A says "Characteristics and practices in the book industry, such as mergers, acquisitions, and reversions, that affect one's ability to locate rights holders for books."
42 You were asked by Google to talk about that in your report?
43 A. Yes.
44 Q. Had you previously written about that subject in particular, the effect of mergers, acquisitions and reversions on the ability to locate rights holders for books?
45 A. Not in terms of the last part of the sentence "to locate rights holders for books."
46 Q. You have published no articles about how the mergers, acquisitions and reversions have historically affected one's ability to locate rights holders for books?
47 A. If I did, it was in passing.
48 Q. Do you recall doing that?
1 Greco
2 A. I have worked on 12 books, 20 articles, 10
3 professional books. It's certainly possible
4 somewhere I referred to that, off the top of my head.
5 I would have to go back and look, in all candor. I
6 may have.
7 Q. You don't cite any articles of that
8 nature?
9 A. No.
10 Q. Have you ever engaged in a study whose
11 object was an attempt to locate rights holders for
12 books?
13 A. I have never done such a study on that
14 topic.
15 Q. Have you asked others to do it for you?
16 A. No.
17 Q. Have you researched studies, if any, by
18 others on that topic?
19 A. I believe there have been some articles on
20 those issues in a variety of publications that I
21 almost certainly read and may have even cited
22 somewhere along the line.
23 Q. But you didn't cite them in your report?
24 A. No.
25 Q. Have you ever attempted to locate a rights

1 Greco
2 holder for a book?
3 A. Yes.
4 Q. In what context?
5 A. A colleague named John Tebbel wrote what I
6 believe was the definitive four-volume history of the
7 book publishing industry in the United States. The
8 book was published by a company that, if I remember
9 correctly, put the books out of print, out of stock,
10 and the company no longer did books.
11 I was in discussions with a university
12 press director about possibly bringing those four
13 books back into print. The author died, and I could
14 not find out who held the rights, whether his estate
15 or the initial publisher, and we dropped the matter.
16 Q. When you say you couldn't find out, what
17 did you do to attempt to find out?
18 A. I believe I tried to reach out to people
19 in Bowker, the original publisher, but they no longer
20 were doing books. They had sold certain operations
21 to another company and, unfortunately, John Tebbel
22 passed on, and we just dropped the matter.
23 Q. Any other times other than that time?
24 A. Yes. I was talking to a series editor --
25 a book series editor who was trying to bring older

1 Greco
2 books back in print, and I gave him some suggestions
3 for titles, and the matter seemed to die.
4 Q. Other than passing on the suggestion, did
5 you do anything there to attempt to locate anyone?
6 A. Not really.
7 Q. Anything else; any other times that you
8 attempted to locate a rights holder for a book?
9 A. Not that I can remember.
10 Q. 2 B says "The benefits to authors of
11 making it easy for potential readers to find their
12 books."
13 That was something that Google asked you
14 to opine about?
15 A. Yes.
16 Q. Have you previously written on that
17 subject?
18 A. I have written about new title output, the
19 number of backless books, books in print, and about
20 what is often called in the marketing literature
21 "clutter in the marketplace."
22 Q. In connection with any of those writings,
23 did you write about the benefits to authors of making
24 it easy for potential readers to find their books?
25 A. I wrote about the problem authors face in

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Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 52 of 69

1 Greco
2 A. I have probably written about blogs and
3 other digital sites that discuss books, analyze
4 books, talk about books or authors. Those have grown
5 in popularity in the last few years.
6 Q. 2 C says "Industry custom and practice
7 pertaining to the sales and marketing of books, and
8 in particular to the practice of allowing potential
9 buyers to search within books."
10 A. Yes.
11 Q. Google asked you to opine about that?
12 A. I have written a lot about the sales and
13 marketing of books. This is the first time I have
14 put ink on paper dealing with "allowing potential
15 buyers to search within books."
16 Q. The second portion of 2 C which says "and
17 in particular to the practice of allowing potential
18 buyers to search within books," you haven't written
19 about that before?
20 A. If so, only in passing.
21 Q. Have you discussed that particular
22 practice with publishers?
23 A. I have discussed it with individuals in
24 the book publishing industry in the United States.
25 Q. Have you discussed it with authors?

9 (Pages 30 - 33)

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1 Greco
2 I couldn't say for sure whether they were the very
3 first one.
4 Q. Who else do you understand to be engaged
5 in this practice other than Amazon.com?
6 MR. McGOWAN: Objection, vague. You may
7 answer.
8 A. Barnes&Noble.com, companies that are
9 involved in selling new or backless books online, and
10 that list would be, I would assume, dozens of various
11 companies.
12 Q. Can you give me an example of one such
13 company?
14 A. In addition to Amazon.com or
15 Barnes&Noble.com?
16 Q. Yes.
17 A. Google. I assume Apple. I am sure there
18 are many, many others.
19 Q. Have you, yourself, searched inside a book
20 at Amazon?
21 A. Yes.
22 Q. What have you done with respect to Barnes
23 & Noble?
24 MR. McGOWAN: Objection, vague. You may
25 answer.

1 Greco
2 Q. With respect to this practice of allowing
3 potential buyers to search within books.
4 A. I have used the Barnes&Noble.com website
5 and other websites doing various research projects.
6 Q. Do you know whether or not the books that
7 you can search through at Amazon.com are there by
8 permission of the author or publisher?
9 MR. McGOWAN: Objection, vague. You may
10 answer.
11 A. I would have to assume yes.
12 Q. Why do you say that?
13 A. Amazon.com is a well-known company, and I
14 couldn't list all the various books or book
15 publishers, but let's assume it's HarperCollins, any
16 of those major publishers, any of the major
17 university presses, I would assume that they will
18 have a contract stipulating what can and cannot be
19 posted on Amazon.com, Barnes&Noble.com, et cetera.
20 Q. What about Google?
21 MR. McGOWAN: Objection, vague.
22 Q. Do you assume that --
23 A. I would have to assume. I have not read
24 any contracts between a publisher and/or an online
25 site. I would assume there has to be a contract
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<td>1 Greco</td>
<td>1 Greco</td>
<td>1 Greco</td>
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<td>2 stipulating terms and conditions.</td>
<td>2 MR. McGOWAN: Objection. Vague, lacks</td>
<td>3 foundation. You may answer.</td>
</tr>
<tr>
<td>3 MR. McGOWAN: I will caution the witness</td>
<td>4 A. I do not remember what the percentage was</td>
<td>5 of the 20 million that were or were not in public</td>
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<td>4 not to assume as opposed to testifying as to</td>
<td>6 domain.</td>
<td>7 domain.</td>
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<td>5 knowledge.</td>
<td>7 Q. 3 B says &quot;Custom and practice in the book</td>
<td>8 industry recognize that it is both difficult for</td>
</tr>
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<td>6 THE WITNESS: Okay.</td>
<td>9 authors to have their works discovered by potential</td>
<td>10 authors to have their works discovered by potential</td>
</tr>
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<td>7 Q. Did you have that assumption when you</td>
<td>10 readers and important for authors to make it easy for</td>
<td>11 readers and important for authors to make it easy for</td>
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<td>8 wrote your report?</td>
<td>11 readers to find their works.&quot; Then it says &quot;Search</td>
<td>12 readers to find their works.&quot; Then it says &quot;Search</td>
</tr>
<tr>
<td>9 A. Yes.</td>
<td>13 tools such as Google Books, which make it easier for</td>
<td>14 tools such as Google Books, which make it easier for</td>
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<tr>
<td>10 Q. Just to be clear, when you wrote your</td>
<td>15 authors to be found, benefit rather than harm</td>
<td>16 authors.&quot;</td>
</tr>
<tr>
<td>11 report which is PX 92, you assumed that all of the</td>
<td>15 A. Correct.</td>
<td>16 Q. Is it your opinion that any marketing tool</td>
</tr>
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<td>12 excerpts that show up in Google Books are shown by</td>
<td>17 that makes it easier for authors to be found benefits</td>
<td>18 that makes it easier for authors to be found benefits</td>
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<tr>
<td>13 permission of the publisher or author?</td>
<td>18 rather than harms authors?</td>
<td>19 rather than harms authors?</td>
</tr>
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<td>14 A. I assume that's correct.</td>
<td>19 MR. McGOWAN: Objection, vague. You may</td>
<td>20 answer.</td>
</tr>
<tr>
<td>15 Q. Referring you to paragraph 3 which says</td>
<td>21 MR. McGOWAN: Objection, vague. You may</td>
<td>22 MR. McGOWAN: Objection, vague. You may</td>
</tr>
<tr>
<td>16 &quot;In brief, my opinion on these topics is as follows:</td>
<td>22 A. In light of the new title output in the</td>
<td>23 A. In light of the new title output in the</td>
</tr>
<tr>
<td>17 Given the many factors that make it difficult to</td>
<td>22 last eight to ten years, it is amazingly difficult</td>
<td>23 last eight to ten years, it is amazingly difficult</td>
</tr>
<tr>
<td>18 trace rights holders, it would be infeasible to clear</td>
<td>23 for any author aside from what you would call a star</td>
<td>24 for any author aside from what you would call a star</td>
</tr>
<tr>
<td>19 rights for any comprehensive attempt to digitize</td>
<td>24 author to have his or her books marketed effectively.</td>
<td>25 author to have his or her books marketed effectively.</td>
</tr>
<tr>
<td>20 books, such as the 20 million plus books in Google</td>
<td>25 Q. Is it your opinion that any tool that</td>
<td>25 Q. Is it your opinion that any tool that</td>
</tr>
<tr>
<td>23 Q. When you say &quot;infeasible,&quot; what do you</td>
<td>26 mean?</td>
<td>26 mean?</td>
</tr>
<tr>
<td>24 mean?</td>
<td>27 A. When you look at new title output and when</td>
<td>27 A. When you look at new title output and when</td>
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<th>28 Greco</th>
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<th>28 Greco</th>
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<td>2 you look at backless books in print, you are dealing</td>
<td>2 helps authors market their books is a good thing?</td>
<td>3 MR. McGOWAN: Objection, vague. Asked and</td>
</tr>
<tr>
<td>3 with a very, very large number of titles. Some of</td>
<td>4 answered. You may answer.</td>
<td>4 answered. You may answer.</td>
</tr>
<tr>
<td>4 those titles would be relatively easy to find who is</td>
<td>5 A. I believe anything that helps market a</td>
<td>5 A. I believe anything that helps market a</td>
</tr>
<tr>
<td>5 the rights holder.</td>
<td>6 book helps theoretically sell the book, and that</td>
<td>6 book helps theoretically sell the book, and that</td>
</tr>
<tr>
<td>6 Looking at this industry, it would be</td>
<td>7 ultimately helps the author.</td>
<td>7 ultimately helps the author.</td>
</tr>
<tr>
<td>7 difficult to find certain rights holders.</td>
<td>8 Q. Do you believe that marketing without</td>
<td>8 Q. Do you believe that marketing without</td>
</tr>
<tr>
<td>8 Q. Do you draw any further conclusions from</td>
<td>9 permission of a publisher and author is a good thing?</td>
<td>9 permission of a publisher and author is a good thing?</td>
</tr>
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<td>9 that?</td>
<td>10 MR. McGOWAN: Objection, vague. You may</td>
<td>10 MR. McGOWAN: Objection, vague. You may</td>
</tr>
<tr>
<td>10 A. 20 million plus books probably had well</td>
<td>11 answer.</td>
<td>11 answer.</td>
</tr>
<tr>
<td>11 more than 20 million authors because many books have</td>
<td>12 A. That requires a legal conclusion. I am</td>
<td>12 A. That requires a legal conclusion. I am</td>
</tr>
<tr>
<td>12 coauthors.</td>
<td>13 not an attorney.</td>
<td>13 not an attorney.</td>
</tr>
<tr>
<td>13 Q. You said you read Dan Clancy's deposition,</td>
<td>14 MR. McGOWAN: We have been going about an</td>
<td>14 MR. McGOWAN: We have been going about an</td>
</tr>
<tr>
<td>14 right?</td>
<td>15 hour. When you get a chance to change</td>
<td>15 hour. When you get a chance to change</td>
</tr>
<tr>
<td>15 A. Yes.</td>
<td>16 direction, I would like to take a break.</td>
<td>16 direction, I would like to take a break.</td>
</tr>
<tr>
<td>16 Q. In his deposition he explained that these</td>
<td>17 MS. ZACK: I just want to get through this</td>
<td>17 MS. ZACK: I just want to get through this</td>
</tr>
<tr>
<td>17 20 million books include public domain books?</td>
<td>18 one paragraph.</td>
<td>18 one paragraph.</td>
</tr>
<tr>
<td>18 A. That's my understanding.</td>
<td>19 Q. 3 C, it says &quot;Authors are paid for sales,</td>
<td>19 Q. 3 C, it says &quot;Authors are paid for sales,</td>
</tr>
<tr>
<td>19 Q. Is it your understanding that it's not</td>
<td>20 not searches. Both as matter of industry custom and</td>
<td>20 not searches. Both as matter of industry custom and</td>
</tr>
<tr>
<td>20 necessary to clear rights for public domain books?</td>
<td>21 practice, and in my own personal experience, authors</td>
<td>21 practice, and in my own personal experience, authors</td>
</tr>
<tr>
<td>21 A. As I understand it, if a book is in public</td>
<td>22 do not receive royalties in return for allowing their</td>
<td>22 do not receive royalties in return for allowing their</td>
</tr>
<tr>
<td>22 domain, anyone can publish it.</td>
<td>23 works to be searched.&quot;</td>
<td>23 works to be searched.&quot;</td>
</tr>
<tr>
<td>23 Q. A substantial portion of the 20 million</td>
<td>24 What do you mean by that?</td>
<td>24 What do you mean by that?</td>
</tr>
<tr>
<td>24 books are in the public domain and don't require</td>
<td>25 A. The first sentence in 3 C, an author is</td>
<td>25 A. The first sentence in 3 C, an author is</td>
</tr>
<tr>
<td>25 rights clearance, right?</td>
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Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 54 of 69

1  Greco
2  paid when -- an author would receive some sort of a
3  royalty payment when a book is sold. I have seen
4  nothing in the literature or I have heard nothing
5  from individuals that I have talked to that authors
6  are paid anything for a search.
7  As for the second sentence, including my
8  own personal experiences, authors do not receive a
9  royalty in return for allowing their works to be
10  searched. They receive a royalty based on the terms
11  and conditions of whatever the contract stipulates
12  for sales, not searches.
13  The third part of the third sentence,
14  search benefits authors in the sense that if you are
15  looking for a book on the French Revolution, you
16  would have to do a search in order to perhaps find
17  that book. So if the search leads to someone finding
18  the book and possibly buying the book, then that can
19  lead to, depending on the terms and conditions of the
20  contract, a royalty payment.
21  I have no reason to believe that authors
22  are paid for "the development of things that help
23  them sell books."
24  Q. When you say you have no reason to
25  believe, that means because you have never seen it

1  Greco
2  happen?
3  A. As far as I know, the industry custom and
4  practice is that if an author gets involved in
5  marketing his or her book, a publisher -- it depends
6  on the nature of the publisher and the author and the
7  book. If you are talking about a big trade book, a
8  big trade publisher, the general practice is that an
9  author who might do a five or ten-city hype tour, go
10  out and perhaps read from your book, perhaps sign
11  books, the custom and practice in the industry is
12  that the publisher pays for all costs related to
13  taking that individual from New York to Chicago, et
14  cetera, et cetera, but the author is not paid for his
15  or her time. They would cover airfare, room and
16  board, cab fare, et cetera, et cetera.
17  So that is my understanding of the
18  industry practice in terms of big trade books and big
19  trade publishers. If you are talking about small
20  publishers and especially university presses, I think
21  it's fair to say that university presses are happy if
22  an author goes out on a tour, but they rarely pay for
23  those costs.
24  MS. ZACK: Okay. Do you want to take a
25  break?

1  Greco
2  MR. McGOWAN: Yes.
3  (Recess.)
4  Q. Turning to page 2, Professor Greco, of
5  your report.
6  A. Yes.
7  Q. Paragraph 4, did you write that yourself?
8  A. Yes, based on --
9  Q. That is based on the materials --
10  A. From Clancy.
11  Q. -- provided by Google; primarily
12  Mr. Clancy's declaration?
13  A. Yes, I read through the declaration.
14  That's where the stats came from.
15  Q. In paragraph 5 you mention that your book
16  called "The Book Publishing Industry" is in the
17  Google partner program, is that right?
18  A. Yes.
19  Q. Who is the publisher of that book?
20  A. The publisher is Erl Baum, but Erl Baum
21  was sold to Informer Plc, a British company, which in
22  the United States is known as Taylor, Francis &
23  Routledge. At this minute, the official publisher is
24  Taylor, Francis & Routledge, even though an older
25  name appears on the spine.

11 (Pages 38 - 41)
<table>
<thead>
<tr>
<th>Page 42</th>
<th>Page 43</th>
<th>Page 44</th>
<th>Page 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. MR. McGOWAN: Objection to the extent that</td>
<td>2. Q. Are any of those other books included in</td>
<td>2. Q. Are any of those other books included in</td>
<td>2. Q. Are any of those other books included in</td>
</tr>
<tr>
<td>4. legal conclusion. You may answer.</td>
<td>A. I believe &quot;The Culture and Commerce of</td>
<td>A. I believe &quot;The Culture and Commerce of</td>
<td>A. I believe &quot;The Culture and Commerce of</td>
</tr>
<tr>
<td>6. Q. Is the copyright to that book in your</td>
<td>don't know about the others.</td>
<td>don't know about the others.</td>
<td>don't know about the others.</td>
</tr>
<tr>
<td>9. Q. Whose name is it in?</td>
<td>9. Q. Do you know how &quot;The Culture and Commerce</td>
<td>9. Q. Do you know how &quot;The Culture and Commerce</td>
<td>9. Q. Do you know how &quot;The Culture and Commerce</td>
</tr>
<tr>
<td>12. States.</td>
<td>12. A. I believe it's part of the publisher</td>
<td>12. A. I believe it's part of the publisher</td>
<td>12. A. I believe it's part of the publisher</td>
</tr>
<tr>
<td>13. Q. So it's in the publisher's name?</td>
<td>program but I have never discussed it with anyone at</td>
<td>program but I have never discussed it with anyone at</td>
<td>program but I have never discussed it with anyone at</td>
</tr>
<tr>
<td>15. Q. You said you are not quite sure how much</td>
<td>15. Q. For that particular book, in whose name is</td>
<td>15. Q. For that particular book, in whose name is</td>
<td>15. Q. For that particular book, in whose name is</td>
</tr>
<tr>
<td>16. of your book is displayed in the partner program; you</td>
<td>the copyright?</td>
<td>the copyright?</td>
<td>the copyright?</td>
</tr>
<tr>
<td>18. A. It's perhaps a chapter or very close to a</td>
<td>18. Q. Let me show you what was previously marked</td>
<td>18. Q. Let me show you what was previously marked</td>
<td>18. Q. Let me show you what was previously marked</td>
</tr>
<tr>
<td>20. Q. Are you aware that in the partner program</td>
<td>Terms and Conditions.&quot;</td>
<td>Terms and Conditions.&quot;</td>
<td>Terms and Conditions.&quot;</td>
</tr>
<tr>
<td>22. MR. McGOWAN: Objection. Lacks</td>
<td>22. A. No.</td>
<td>22. A. No.</td>
<td>22. A. No.</td>
</tr>
<tr>
<td>23. foundation, compound. You may answer.</td>
<td>23. Q. Referring you to the second page where it</td>
<td>23. Q. Referring you to the second page where it</td>
<td>23. Q. Referring you to the second page where it</td>
</tr>
<tr>
<td>24. A. I have a very vague understanding of that.</td>
<td>says &quot;Ad Payment.&quot;</td>
<td>says &quot;Ad Payment.&quot;</td>
<td>says &quot;Ad Payment.&quot;</td>
</tr>
</tbody>
</table>

1. Greco
2. you understand at all what the relationship is there?
3. A. No. I understand there is some sort of a
4. sharing, but I have no idea about it and have never
5. received any royalty from it, at least to the best of
6. my knowledge.
7. Q. Over the last few years, have you received
8. royalty payments for your book?
10. Q. When you say "for that book," you have
11. other books that you receive royalty payments for?
12. A. Yes.
13. Q. How many others?
14. A. Could I look at the list?
15. MS. ZACK: Sure.
16. (Witness reviewed document.)
17. A. I receive a royalty payment from the book
18. publishing industry for a book called "The Culture
19. and Commerce of Book Publishing in the 21st Century";
20. for a book called "Access For All: Closing the Book
21. Gap For Children in Early Education"; for a book
22. called "The Media and Entertainment Industries"; and
23. three books were translated into Chinese where I
24. received a payment, and that took place, and I
25. believe that's all.

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Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 56 of 69

1 Greco
2 library scanning project that Google was engaged in?
3 A. I have read articles over the years in
4 Publishers Weekly about the program.
5 Q. Anything else?
6 A. It's possible it's been covered in the New
7 York Times or the Wall Street Journal. I couldn't
8 say definitively at this point. I think it's fair to
9 say I remember reading in Publishers Weekly, possibly
10 in any of the book industry daily blogs.
11 Q. Any other source of information about
12 that?
13 A. I can't remember any other source.
14 Q. There was a deposition in this case taken
15 of Paul Courant of the University of Michigan.
16 Did you read that?
17 A. Which number is that, please?
18 Q. It's not on your list.
19 A. These are the only documents.
20 Q. So you didn't read that, Mr. Courant's
21 deposition?
22 A. No, these are the only documents that I
23 read through.
24 Q. Referring to page 3 of your report,
25 paragraph 7.

1 Greco
2 A. I see it.
3 Q. The second line, there's a sentence that
4 starts "The Commerce Department, for example, tracks
5 slightly more than 3,000 publishing firms."
6 Are you referring to the United States
7 Department of Commerce?
8 A. Yes. It's cited in footnote 10.
9 Q. When you say "3,000 publishing firms," are
10 those U.S. publishing firms?
11 A. As far as I know, these are publishing
12 firms in the United States. They could possibly be
13 owned by foreign entities. These are publishing
14 firms operating in the United States.
15 Q. In that sentence where you say "tracks,
16 what do you mean by "tracks)?
17 A. There's a federal law that in years ending
18 in '2 and '7, publishers have to submit confidential
19 information to the U.S. Department of Commerce. The
20 Department of Commerce collects, aggregates and
21 releases aggregated data about the book industry in
22 the United States. They have indicated that
23 approximately 3,000 firms participate in those
24 surveys that are done every five years.
25 Q. The next sentence of paragraph 7 of your

1 Greco
2 report says "That 45,000 publishers participate in
3 Google's Partner program indicates that the Commerce
4 Department data reveal just the tip of the iceberg."
5 Are you aware that those 45,000 publishers
6 include publishers not in the U.S.?
7 A. I have never seen a master list of the
8 45,000 publishers. To be tracked by the Department
9 of Commerce, as I understand it, a company has to
10 have a federal ID number, at least one paid employee,
11 and its primary business has to be in publishing.
12 Q. Right. Now I am asking you whether you
13 are aware that the 45,000 publishers that participate
14 in the Google's partner program include foreign
15 publishers?
16 A. I have no knowledge about who is in that
17 45,000 database.
18 Q. Are you aware that the 20 million books in
19 Dan Clancy's declaration includes books published
20 outside the United States?
21 A. That's my recollection. I would have to
22 reread Clancy to verify that.
23 Q. I am handing you PX 1. PX 1 that I have
24 handed to you, Professor Greco, is the Declaration of
25 Daniel Clancy in Support of Google Inc.'s Opposition

1 Greco
2 to Plaintiffs' Motion For Class Certification.
3 A. Yes, I see it.
4 Q. Referring to paragraph 4 which says
5 "Google has scanned more than 20 million books as
6 part of Google Books"; do you see that?
7 A. Yes, I do.
8 Q. Then it says "Users of Google Books can
9 see search results that include snippets of text in
10 English for more than 4 million of these books."
11 Do you see that?
12 A. I see that.
13 Q. Are you offering any opinions in this case
14 about whether or not it's infeasible to locate the
15 rights holders of 4 million books that are subject to
16 U.S. copyright?
17 A. I believe a search of that size would be
18 in many ways difficult.
19 Q. For the same reasons you previously
20 testified?
21 A. Yes, because you may or may not be dealing
22 with 4 million authors, you may be dealing with more
23 than 4 million authors; coauthors.
24 Q. Referring you to the next page of your
Page 50

1  Greco
2  Q.  Let's start with the last sentence.
3  What sales and marketing efforts were made
4  for your books?
5  A.  It depended on the publisher. I have done
6  a number of books with university presses. So if I
7  go out and give a lecture at an institution, another
8  institution aside from Fordham, I might mention that
9  material was taken from book X or article Y,
10  depending on what was relevant.
11  If I do an interview with a reporter, I
12  might mention that I am the author of article X or
13  book Y, depending on what the article and the
14  reporter is interested in.
15  When you deal with university presses they
16  have for the most part limited resources. And in
17  some cases exceptionally limited resources. So an
18  author in that case would be expected to try to
19  publicize the book as best as he or she can. Often
20  at academic conferences or whatever the event would
21  be.
22  If you deal with what is called a
23  commercial scholarly publisher, for example Taylor &
24  Francis, Erlbaum, they have never paid for any of
25  those marketing efforts on my part. Even though they

Page 51

1  Greco
2  Press that were reverted to you, have you placed
3  those books into Google Books?
4  A. No.
5  Q. Or into the partner program?
6  A. No.
7  Q. Has anyone from Google ever asked you to
8  do that?
9  A. I'm not aware of any correspondence.
10  Q. Would you like for those books to be in
11  Google Books?
12  A. It wouldn't hurt. But they were done a
13  few years ago. I would probably want to update them.
14  Q. Paragraph 11 of your report that starts at
15  the bottom of page 4.
16  A. I see it.
17  Q. You say "As part of my scholarly study of
18  the book publishing industry, I have discussed sales
19  and marketing practices with over 50 academic
20  publishers and with large commercial publishers such
21  as Random House, Penguin, HarnerCollins, Simon &
22  Schuster, Hachette, and Macmillan. I am of course
23  familiar with the sales and marketing efforts for my
24  books."
25  A. That's what is stated in item 11.

Page 52

1  Greco
Q. Have you discussed Google's library
project with any of those people?
A. Only when it came up with my sons because it was public information in Publishers Weekly. I don't believe I discussed Google with what you would call a major executive at any of the big six. I may have discussed it with some of the academic university press publishers but just in passing.

Q. Are you aware that Simon & Schuster was a plaintiff or is a plaintiff in the case against Google for their scanning of books without permission or for use in Google Books?

MR. McGOWAN: Objection, lacks foundation.

Q. Do you have any information about the nature of the claims made by the publishers against Google?

A. No.

Q. Or any understanding of what claims were made?

A. No. I haven't read anything lately. So it was at some point in the past.

Q. Would it surprise you if I told you that the publishers claimed that Google was violating the Copyright Act by scanning books in libraries without permission?

MR. McGOWAN: Objection. Lacks foundation, relevance with respect to surprise.

A. If you are telling me that information, I would have to assume you are telling me the truth. I can't verify any of the issues that you are raising. I just don't have that information. I never really followed the case close enough to be able to respond yes or no to your statement.

Q. Based on your understanding of the publishing industry, you wouldn't be at all surprised for publishers to sue Google for copying their books
1. Greco
2. without permission, would you?
3. MR. McGOWAN: Same objection. It calls
4. for speculation. You may answer.
5. A. If I went back an read the earlier
6. articles, I would be in a position to answer that
7. question definitively. At this point I just don't
8. have the information.
9. Q. Directing you to paragraph 14 of your
10. report.
11. A. Yes, I see it.
12. Q. The first sentence says "To get the
13. attention of consumers in this environment,
14. publishers often use some of a book's content to
15. promote the book and they do not pay royalties for
16. such uses."
17. A. I see that.
18. Q. That's been a fact for many years, hasn't
19. it?
20. A. It's a fact that goes back decades.
21. Q. That publishers don't pay royalties to
22. authors for promotion?
23. A. That's my understanding.
24. Q. Can you tell me any promotional uses of
25. books in the publishing industry that you are

1. Greco
2. familiar with that are done without the permission of
3. the rights holders?
4. MR. McGOWAN: Objection, vague. You may
5. answer.
6. A. Without the permission of the rights
7. holder?
8. Q. Yes.
9. A. Most of the research I have done has
10. centered on sales and marketing by publishers.
11. Q. Who were rights holders?
12. A. Not every author conveys the copyright to
13. the publisher. Some authors hold the copyright.
14. Q. Did you have an understanding that the
15. publishers had an agreement with the authors in the
16. cases where they were promoting the book?
17. A. It's my understanding that you convey the
18. copyright to the publisher, the publisher handles all
19. sales and marketing operations. So if the publisher
20. then decided to send out a galley print and/or
21. digital galley or post things in a company magazine
22. or website, they just do it. Except for the star
23. authors, the publisher really controls that
24. exclusively.
25. Q. Let's talk about your book. "The
Case 1:05-cv-08136-DC   Document 1053-7  Filed 08/03/12  Page 60 of 69

1  Greco
2  transcripts, so I really couldn't say.
3  Q.  Do you consider Google a commercial
4  operation?
5  MR. McGOWAN: Objection, vague. It calls
6  for a legal conclusion. You may answer.
7  A.  I believe it's a business incorporated in
8  the United States.
9  Q. Are you familiar with the Copyright
10  Clearance Center?
11  A.  I have read about the Copyright Clearance
12  Center.
13  Q. What do you know about it?
14  A.  I believe it's an organization. I believe
15  it's based in New England, and that they clear
16  copyrights for various publications.
17  Q. Are you aware of any licensing offered by
18  them on behalf of authors and publishers?
19  A.  I have never looked into that matter.
20  Q. So you don't know whether or not the CCC
21  offers collective licenses?
22  MR. McGOWAN: Objection, vague, to the
23  extent it calls for a legal conclusion, but you
24  may answer.
25  A.  I never looked into it, so I really

1  Greco
2  couldn't say yes or no.
3  Q.  Are you familiar with ASCAP or BMI?
4  A. Yes, I am familiar with those two
5  entities.
6  Q. Has any of your research been in the music
7  industry?
8  A.  I once coauthored a chapter on the radio
9  industry a number of years ago, so it's likely I may
10  have referred to them.
11  Q. Are you aware of any licenses offered by
12  the ASCAP or BMI?
13  MR. McGOWAN: Objection, vague. You may
14  answer.
15  A.  Only in very general terms.
16  Q. What general terms are you aware of?
17  A.  Well, ASCAP and BMI represent, as I
18  understand it, individuals that write music and
19  lyrics and music publishers, and that they work with
20  an organization called Harry Fox to collect fees
21  whenever a song is played or in the case of
22  synchronization fees when a song is used in a motion
23  picture, television, commercial, et cetera. That's
24  my understanding of those organizations.
25  Q. Have you ever done any research on the

17 (Pages 62 - 65)

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1. Greco
2. but that would be the only case, and I have never
3. received a payment based on an article in an
4. anthology.
5. Q. So you have seen these general articles
6. that you have mentioned in an online subscription, is
7. that what you are telling me?
8. A. I have seen them in online services.
9. Q. But you are not aware of how they got
10. there?
11. A. I listed many different publishing --
12. journal publishing operations, so I'm not aware of
13. those terms and conditions. But I have seen them on
14. Project Muse and elsewhere.
15. Q. Project Muse, and where else can you tell
16. me?
17. A. It's possible that it's been on Proquest.
18. It's possible it's on the Springer website. They
19. bought Publishing Research Quarterly and Book
20. Research Quarterly from Irving Horowitz. There could
21. be others.
22. Q. Referring you to your c.v. on page 25 of
23. PX 92.
24. A. Yes, I see page 25.
25. Q. There is a heading "Papers Delivered
26. Page 66

1. Greco
2. Department of Labor, industry statistical data from
3. other reliable sources regarding the sale of books in
4. various retail channels. The sale of eReaders,
5. various types, et cetera.
6. Q. Is it your understanding that Google Books
7. includes both partner program books and library
8. project books?
9. A. I have looked at it as two separate
10. operations. The partnership program of 45,000 or so
11. publishers, and the library. I have never commingled
12. the two, although at times I may commingle them in a
13. presentation but they are really two very separate --
14. as far as I know, two separate operations.
15. Q. They are both Google Books, though, right?
16. A. Right, but they have different parameters.
17. Q. But in your report when you refer to
18. "Google Books," you are referring to both, right?
19. MR. MCGOWAN: Objection, vague. You may
20. answer.
21. Q. You say "I understand that Google has
22. scanned more than 20 million books in connection with
23. the Google Books project."
24. A. That's correct.
25. Q. When you refer to "Google Books," you are
26. Page 68

1. Greco
2. Before Scholarly and Professional Associations."
3. Then there's a entry for September 16, 2011, at The
4. Library of Congress. It says "Books in Our Digital
5. Future."
6. Is that your presentation, "Books in Our
7. Digital Future"?
8. A. Yes.
9. Q. Is that available online?
10. A. I don't know. It's possible the Library
11. of Congress has posted it. I don't know.
12. Q. What did you say generally; what was your
13. thesis?
14. A. I dealt with the growth in print books and
15. digital books over a period of time, and gave some
16. historical overview and some outlook on what was
17. happening in the digital book sectors in all of the
18. book categories; adult, juvenile, mass market, et
19. cetera.
20. Q. And that was based on what type of
21. statistic?
22. A. Some of the statistical data came from the
24. Some of the statistical data came from other federal
25. agencies. U.S. Department of Education, the U.S.
26. Page 67

1. Greco
2. referring to both partner program and the library
3. project, correct?
4. A. In that sentence, yes.
5. Q. Is there any sentence in which that's not
6. the case?
7. A. Well, on page 2, item number 5, I refer
8. specifically to the partner program.
9. Q. Right, I understand. But I am saying when
10. you use the term "Google Books," you are referring
11. both to the partner program and the library project,
12. correct?
13. A. Yes. And I probably should have separated
14. the two in a more precise manner.
15. MS. ZACK: I don't have any more
16. questions.
17. MR. MCGOWAN: I have two because I want to
18. make sure the record is clear on what Ms. Zack
19. was just alluding to.
20. EXAMINATION BY
21. MR. MCGOWAN:
22. Q. Dr. Greco, you just said that you
23. understand the partner program and the library
24. project have different parameters, is that correct?
25. A. Yes.
26. Page 69

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18 (Pages 66 - 69)
Case 1:05-cv-08136-DC   Document 1053-7    Filed 08/03/12   Page 62 of 69

1  Greco
2  MS. ZACK: I object to the form.
3  Q. In the library program, do you understand
4  that Google copies books that are provided by
5  libraries?
6  A. Yes.
7  Q. With respect to that program, do you
8  understand that Google does not contact all, at
9  least, of the rights holders in connection with that
10  program?
11  A. That's my understanding.
12  Q. Did you understand that when you wrote
13  your report?
14  A. Yes.
15  Q. You testified as to steps that you
16  personally have taken to publicize your books.
17  In addition to steps that you have taken,
18  did your publishers do things such as distribute
19  copies to get reviews, that sort of thing?
20  A. That's my understanding.
21  Q. In paragraph 14 on page 5, you refer to
22  publishers using some of a book's content to promote
23  the book, do you see that?
24  A. Paragraph 14, yes, "to promote the book,"
25  yes, the first sentence.

1  Greco
2  Q. Is it your understanding that it is the
3  use of the book's content that is what gets the
4  attention of the consumers in this environment, which
5  is the beginning of the sentence?
6  MS. ZACK: Objection to form.
7  A. I believe it's almost always the book
8  content.
9  MR. McGOWAN: I have nothing further.
10 (CONTINUED) EXAMINATION
11 BY MS. ZACK:
12 Q. Are you aware of any books shown in Google
13 Books without permission of authors or publishers?
14 MR. McGOWAN: Objection, vague. You may
15 answer.
16 A. I believe the library portion.
17 Q. You believe what?
18 A. I believe the books that were scanned in
19 the library portion of Google Books may or may not
20 have been done with prior permission.
21 Q. Did you discuss that topic with
22 Mr. McGowan during the break?
23 A. It may have come up just in passing.
24 Q. We have only been here a short time.
25 Did you or did you not discuss that topic

1  Greco
2  with Mr. McGowan during the break?
3  MR. McGOWAN: Objection, asked and
4  answered. You may answer.
5  A. We did discuss the library portion and the
6  publisher portion. The publisher program portion.
7  MS. ZACK: I have no other questions.
8  (Time noted 12:40 p.m.)
9
10 ____________________________
11 ALBERT N. GRECO
12
13 Subscribed and sworn to before me
14 this _____ day of _____________, 2012.
15
16 ____________________________
17 NOTARY PUBLIC
18
19
20
21
22
23
24
25

1  C E R T I F I C A T E
2
3  STATE OF NEW YORK )
4 ) s.s.: COUNTY OF NEW YORK )
5
6 I, LINDA DEVECKA, a Notary Public
7 within and for the State of New York, do
8 hereby certify:
9 That ALBERT N. GRECO, the witness whose
10 deposition is hereinbefore set forth, was duly
11 sworn by me and that such deposition is a true
12 record of the testimony given by such witness.
13 I further certify that I am not related to
14 any of the parties to this action by blood or
15 marriage; and that I am in no way interested in
16 the outcome of this matter.
17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 12th day of June, 2012.
19
20 ____________________________
21 LINDA DEVECKA
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19 (Pages 70 - 73)

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**INDEX**

**WITNESS EXAMINATION BY PAGE**

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALBERT N. GRECO</td>
<td>4</td>
</tr>
<tr>
<td>MS. ZACK</td>
<td>71</td>
</tr>
<tr>
<td>MR. McGOWAN</td>
<td>69</td>
</tr>
</tbody>
</table>

**EXHIBITS**

**PLAINTIFF'S DESCRIPTION FOR ID**

- Exhibit 92, document titled "Expert" 4
- Report of Professor Albert N. Greco May 3, 2012

The reporter retained the exhibit to annex to the transcript.

**ERRATA SHEET**

VERITEXT REPORTING COMPANY
1250 BROADWAY
NEW YORK, NEW YORK 10001
800-362-2520
CASE: THE AUTHORS GUILD, INC. v GOOGLE INC.
DEPOSITION DATE: JUNE 6, 2012
DEponent: ALBERT N. GRECO

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ALBERT N. GRECO

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF ____________, 20__.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:
Greco

with Mr. McGowan during the break?

MR. McGOWAN: Objection, asked and
answered. You may answer.

A. We did discuss the library portion and the
publisher portion. The publisher program portion.

MS. ZACK: I have no other questions.

(Time noted 12:40 p.m.)

ALBERT N. GRECO

Subscribed and sworn to before me
this 10th day of July, 2012.

EVELYN R. RIZZO
NOTARY PUBLIC

EVELYN R. RIZZO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 19, 2016
**ERRATA SHEET**

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**CASE:** THE AUTHORS GUILD, INC. v GOOGLE INC.

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<tr>
<th>PAGE</th>
<th>LINE(S)</th>
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<th>REASON</th>
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</thead>
<tbody>
<tr>
<td>17</td>
<td>4</td>
<td>ARTHUR</td>
<td>SPELLING ERROR</td>
</tr>
<tr>
<td>40</td>
<td>20</td>
<td>ERLBAUM</td>
<td>ONE WORD</td>
</tr>
<tr>
<td>40</td>
<td>21</td>
<td>INFORMA</td>
<td>SPELLING ERROR</td>
</tr>
<tr>
<td>40</td>
<td>22</td>
<td>TAYLOR &amp; FRANCIS</td>
<td>DELETE COMMA; ADD &amp;</td>
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<td>24</td>
<td>TAYLOR &amp; FRANCIS</td>
<td>DELETE COMMA; ADD &amp;</td>
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<td>4</td>
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<td>ADD ITALICS</td>
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<td>7+8</td>
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<td>20</td>
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<td>24</td>
<td>ERLBAUM</td>
<td>ONE WORD</td>
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<tr>
<td>53</td>
<td>22+23</td>
<td>DAVE THOMPSON</td>
<td>ADDED LAST NAME</td>
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<td>15</td>
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_EVELYN R. RIZZO_

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 19, 2016
LD. #2090030

ALBERT N. GRECO

**SUBSCRIBED AND SWORN TO BEFORE ME**

**THIS 10th DAY OF JULY, 2012.**

_EVELYN R. RIZZO_ 6/19/2016

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<th>CHANGE</th>
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</tr>
</thead>
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<td>Italics: Pub. Weekly</td>
<td>ABO Italics</td>
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<tr>
<td>56 6</td>
<td>Italics: New York</td>
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<tr>
<td>56 7</td>
<td>Italics: Times</td>
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<tr>
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<td>Italics: Wall St. Jour.</td>
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<tr>
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<td>Italics: J. of Media News</td>
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EVELYN R. RUZZO  
NOTARY PUBLIC OF NEW JERSEY  
ID. #209000350

ALBERT N. GRECO

SUBSCRIBED AND SWORN TO BEFORE ME  

Evelyn R. Ruzzo  
(NOTARY PUBLIC)  
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