I, James Shapiro, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs’ motion for summary judgment.

2. I am a Professor of English and Comparative Literature at Columbia University specializing in Shakespeare and the Early Modern period.

The Work At Issue

3. I am the sole author and copyright owner of the non-fiction work Oberammergau: The Troubling Story of the World’s Most Famous Passion Play (hereafter “Oberammergau”). A true and correct copy of the copyright registration for Oberammergau is attached hereto as Exhibit A.

4. Although I have licensed to my publishers certain exclusive rights in connection with the commercial exploitation of Oberammergau, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to Oberammergau. I never assigned to any third party the copyright to Oberammergau.
Unauthorized Uses Of My Work

5. It has come to my attention that a print copy of Oberammergau was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with HathiTrust as “Defendants”) in partnership with Google, as part of the HathiTrust and/or Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants to digitize or make any other use of Oberammergau. To date, I have received no compensation of any kind for Defendants’ digitization and various uses of Oberammergau.

Harm Resulting From Defendants’ Use Of My Work

6. As an author who depends in large part on the value of my work to earn a living, I brought this action because the Defendants’ unauthorized digitization and use of Oberammergau has harmed or threatens to harm me in a number of ways.

7. I have reviewed the Declaration of T.J. Stiles and I agree with and incorporate by reference Mr. Stiles’ descriptions of the various harm and potential harm caused by the Defendants’ actions. Oberammergau is available for sale in digital form at online retailers such as Amazon.com and others.

8. I believe that I am entitled to determine whether, when and under what circumstances Oberammergau is scanned, digitized, copied and used. Defendants’ insistence that the new, complex, technologically-enabled uses they intend to make of Oberammergau should be permitted without my consent dangerously presupposes that copyright law does not give authors any right to control how their works are used and exploited in these contexts. To the best of my knowledge, this is not the law in the United States.
9. Defendants argue that uses of *Oberammergau* that do not allow individuals to read the text, such as non-consumptive research and full-text searching, do not inhibit sales of *Oberammergau* or deprive me of licensing opportunities and therefore do not require my permission. This is not so. As the Declaration of T.J. Stiles points out, these kinds of uses represent a new market whose value is evidenced by Defendants’ use of *Oberammergau*, as well as the works owned by the other Plaintiffs and the millions of other works Defendants scanned and copied. I believe that I have the legal right to decide whether or not to permit these uses, and to seek remuneration for these uses if I do decide to allow them. Defendants could have asked my permission to digitize *Oberammergau*, or offered to purchase one or more additional copies for their library collections.

10. In addition, by failing to seek a license, Defendants eliminated the usual mechanism that authors use to exercise control over our work: licensing or other agreements that define terms of use and hold licensees accountable. Without such a contract, I am rendered powerless to dictate terms as to how *Oberammergau* may or may not be used. I also have no ability to insist that HathiTrust take security measures to protect my work. I have no power to ensure that the infringing copies of my work are truly in a “dark archive” that is not accessible for viewing or further copying. I have no assurance that Defendants’ actual use of my work is limited to the uses they claim to intend to make, and no power of enforcement if their uses exceed this scope.

[The rest of this page intentionally left blank]
I declare under penalty of perjury that the foregoing is true and correct.

Dated:       New York, New York
             June 25, 2012

                                    JAMES SHAPIRO
EXHIBIT A
DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

OBERAMMERGAU: THE TROUBLING STORY OF THE WORLD'S MOST FAMOUS PASSION PLAY

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: 

<table>
<thead>
<tr>
<th>Volume ▼</th>
<th>Number ▼</th>
<th>Issue Date ▼</th>
<th>On Pages ▼</th>
</tr>
</thead>
</table>

NAME OF AUTHOR ▼

James Shapiro

Was this contribution to the work a "work made for hire"?

| [ ] Yes | [ ] No |

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country ▼

[ ] Citizen of ▼ OR [ ] Domiciled in ▼

USA

Was this author's contribution to the work Anonymous?

| [ ] Yes | [ ] No |

NATURE OF AUTHORSHIP Brieﬂy describe nature of material created by this author in which copyright is claimed. ▼

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer and leave the space for dates of birth and death blank.

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?

| [ ] Yes | [ ] No |

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country ▼

[ ] Citizen of ▼ OR [ ] Domiciled in ▼

Was this author's contribution to the work Anonymous?

| [ ] Yes | [ ] No |

NATURE OF AUTHORSHIP Brieﬂy describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

Was this contribution to the work a "work made for hire"?

| [ ] Yes | [ ] No |

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country ▼

[ ] Citizen of ▼ OR [ ] Domiciled in ▼

Was this author's contribution to the work Anonymous?

| [ ] Yes | [ ] No |

NATURE OF AUTHORSHIP Brieﬂy describe nature of material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1999

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK 23 May 2000

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

James Shapiro, c/o Anne Edelson Literary Agency, 404 Riverside Drive, New York, NY 10025

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ▼ Complete all applicable spaces (numbers 5-9) on the reverse side of this page

See detailed instructions. Sign the form at line 8.
DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION  Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

[ ] Yes  [ ] No

If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. [ ] This is the first published edition of a work previously registered in unpublished form.
b. [ ] This is the first application submitted by this author as copyright claimant.
c. [ ] This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▲

DERIVATIVE WORK OR COMPILATION
Preexisting Material  Identify any preexisting work or works that this work is based on or incorporates. ▼

Brief quotes from poetry; all photographs and illustrations except one are preexisting.

Material Added to This Work  Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

Entire text excluding brief quotes from poetry and one photograph.

DEPOSIT ACCOUNT  If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ Account Number ▼

Pantheon Books, a division of Random House, Inc.

19429

CORRESPONDENCE  Give name and address to which correspondence about this application should be sent.

Name/Address/Apt/City/State/ZIP ▼

Rebecca Heisman, Pantheon Books

299 Park Ave., 7th Floor

New York, NY 10171

Area code and daytime telephone number ▼ (212) 572-2706

Fax number ▼ (212) 572-6066

Email ▼ rheisman@randomhouse.com

CERTIFICATION  I, the undersigned, hereby certify that I am the

[ ] author
[ ] other copyright claimant
[ ] owner of exclusive right(s)
[ ] authorized agent of Pantheon Books

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Rebecca Heisman

Date ▼ June 19, 2000

Handwritten signature (X) ▼

Certificate will be mailed in window envelope to this address:

Name ▼ Rebecca Heisman, Pantheon Books

Number/Street/Apt ▼

299 Park Ave., 7th Floor

City/State/ZIP ▼

New York, NY 10171

YOU MUST:

[ ] Complete all necessary spaces
[ ] Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE:

1. Application Form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

As of July 1, 1999, the filing fee for Form TX is $30.

*17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,000.