Davis Wright Tremaine LLP

21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Elizabeth A. McNamara
(212) 489-8230 tel
(212) 489-8340 fax

lizmcnamara@dwt.com

August 11, 2023

VIA ECF

Hon. John G. Koeltl
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: ***Hachette Book Group, Inc., et al. v. Internet Archive, et al.*, 20-cv-04160-JGK**

Dear Judge Koeltl:

We write jointly on behalf of the Plaintiffs and Defendant in response to the Court's March 24, 2023 Order, *Hachette Book Grp., Inc. v. Internet Archive*, --- F. Supp. 3d ----, 2023 WL 2623787 (S.D.N.Y. Mar. 24, 2023) (the "Order"), requiring the parties to submit a proposal for the appropriate procedure to determine the judgment to be entered in this case. The parties have worked together in a collaborative fashion and hereby submit to the Court for its "so-ordering" a proposed "Consent Judgment Subject to Appeal" containing an injunction and declaratory relief. See Exhibit A hereto. The parties have mutually agreed on all provisions of this document except on one issue described in the attached letters (see Exhibits B and C hereto), which they have agreed to submit to the Court for adjudication. The parties also have entered into a confidential "Agreement Regarding Stipulated Monetary Judgment Payment" conditioned on the Internet Archive's right of appeal, which avoids the need for further litigation regarding damages, fees, or costs.

As you will see from the attached letters, Paragraph E of the proposed "Consent Judgment Subject to Appeal" contains a mutually agreed "Permanent Injunction" conditioned on Internet Archive's right of appeal enjoining the Internet Archive Parties from distributing the "Covered Books" in, from or to the United States electronically, among other provisions. The term "Covered Book" is defined in Paragraph E.1. Although the parties agree on most aspects of the definition, there is one issue on which they seek the Court's ruling. Plaintiffs want the definition of Covered Books to include books that are commercially available in any format, whereas the Internet Archive wants the definition of Covered Books to include only books that are commercially available in any electronic text format. For the Court's convenience, we have highlighted this disputed text in Exhibit A. The Plaintiffs' position is set forth in Exhibit B hereto, and the Internet Archive's position is set forth in Exhibit C hereto.

We look forward to the Court's resolution of this one open issue and to the entry of the Consent Judgment Subject to Appeal.

Respectfully submitted,

/s/ Elizabeth A. McNamara
Elizabeth A. McNamara
Davis Wright Tremaine LLP
Counsel to Plaintiffs Hachette Book Group, Inc., HarperCollins Publishers LLC, John Wiley Sons, Inc., and Penguin Random House LLC

/s/ Joseph C. Gratz
Joseph C. Gratz
Morrison & Foerster LLP
Counsel to Defendant Internet Archive

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC., HARPERCOLLINS PUBLISHERS LLC, JOHN WILEY SONS, INC., and PENGUIN RANDOM HOUSE LLC,	:	
Plaintiffs,	:	Case No. 1:20-cv-04160-JGK
-against-	:	
INTERNET ARCHIVE and DOES 1 through 5, inclusive,	:	
Defendants.	:	

[PROPOSED] CONSENT JUDGMENT AND PERMANENT INJUNCTION SUBJECT TO RESERVATION OF RIGHT OF APPEAL

WHEREAS, on June 1, 2020, Hachette Book Group, Inc., HarperCollins Publishers LLC, John Wiley & Sons, Inc., and Penguin Random House LLC (the "Plaintiffs") commenced this action (the "Action") against Internet Archive alleging copyright infringement of literary works, namely unauthorized creation of ebooks from print copies of books and public display, distribution, and performance of the ebooks through www.archive.org and/or www.openlibrary.org; and

WHEREAS, on March 24, 2023, the Court issued an "Opinion and Order" in the Action (ECF No. 188) ("Opinion and Order") granting the Plaintiffs' motion for summary judgment and holding the Internet Archive liable for copyright infringement of the Plaintiffs' works in suit;

WHEREAS, prior to the entry hereof, the Internet Archive has worked in active concert and participation with the Open Library of Richmond, the owner of physical books scanned and made available to the public by the Internet Archive on its website under its "Books to Borrow" collection;

WHEREAS, in the interest of efficiency and judicial economy, Plaintiffs and Internet Archive (the "Parties") have agreed to a stipulated monetary judgment payment in the Action under and subject to the terms set forth in a separate confidential agreement ("Monetary Judgment Payment"), expressly conditioned upon the Internet Archive's reservation of its right to appeal the finding of liability for copyright infringement set forth in the Opinion and Order and as incorporated into any final judgment; and

WHEREAS, in the interest of efficiency and judicial economy, Plaintiffs and the Internet Archive stipulate to the declaratory relief and terms of a permanent injunction set forth below expressly conditioned upon Internet Archive's reservation of its right to appeal the finding of

liability for copyright infringement set forth in the Opinion and Order and as incorporated into any final judgment and its right to appeal the Permanent Injunction on the ground that the Internet Archive should not have been held liable for copyright infringement and as further described below.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

A. This Court has subject matter jurisdiction over this action, which arises under the Copyright Act of 1976, 17 U.S.C. §§101 et seq, pursuant to 28 U.S.C. §§ 1331 and 1338.

B. Judgment is entered for Plaintiffs and against Defendant on Plaintiffs' claims against Defendant for copyright infringement under 17 U.S.C. §501.

C. The activities of the Internet Archive in engaging in "controlled digital lending" of the 127 Works in Suit as further described in the Opinion and Order constitute copyright infringement;

D. The activities of the Internet Archive in engaging in the "National Emergency Library" in connection with the 127 Works in Suit as further described in the Opinion and Order constitute copyright infringement; and

E. The Court hereby enters the following permanent injunction (the "Permanent Injunction"):

1. "Covered Book" shall mean any in-copyright book or portion thereof, whether in existence as of the date hereof or later created, in which any Plaintiff (or any subsidiary or corporate affiliate of a Plaintiff) (a) owns or controls an exclusive right under the Copyright Act and makes the title commercially available for sale or license [in any format OR in any electronic text format]; and (b) has provided notice to the Internet Archive regarding such title by sending the Internet Archive a machine readable catalog in a standardized form identifying such commercially available titles (including any updates thereto in the Plaintiffs' discretion), or other similar form of notification, once 14 days have elapsed since the receipt of such notice. A "Covered Book" includes all in-copyright editions of such title.

2. Subject to the terms of Paragraphs 4, 5 and 6 below, the Internet Archive, its officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with such persons (collectively, the "Internet Archive Parties" and each individually an "Internet Archive Party"), are permanently enjoined and restrained from engaging in any of the following acts in, from or to the United States:

a) the distribution to the public, public display, and/or public performance, of Covered Books in, from or to the United States in

any digital or electronic form, including without limitation on the Internet Archive website (collectively "Unauthorized Distribution");

b) the reproduction of Covered Books for Unauthorized Distribution;

c) the creation of derivative works of the Covered Books for Unauthorized Distribution;

d) inducing, or knowingly and materially contributing to, any individual or entity's infringing reproduction, public distribution, public display and/or public performance of Covered Books in any digital or electronic form, as those terms are used in the law of contributory copyright infringement applied by the Second Circuit; and/or

e) profiting from another individual or entity's infringing reproduction, public distribution, public display and/or public performance of Covered Books in any digital or electronic form while declining to exercise a right to stop or limit it, as those terms are used in the law of vicarious copyright infringement applied by the Second Circuit.

3. This Permanent Injunction is effective immediately and shall not be stayed pending appeal of the Opinion and Order. Internet Archive shall provide a copy of this Permanent Injunction to each of its officers, agents, servants, employees, and attorneys. Internet Archive shall also provide a copy of this Permanent Injunction to Open Library of Richmond, libraries whose print books have been counted by Internet Archive toward its maximum lendable digital copies on Internet Archive's website, and all persons in active concert or participation with Internet Archive or its officers, agents, servants, employees, or attorneys in connection with the Covered Books.

4. The Internet Archive Parties shall not be in violation of the terms of Paragraph 2 with respect to:

a) Any uses to which exceptions and limitations set forth in 17 U.S.C. § 108, and §§ 110-122 are properly applicable (with Plaintiffs reserving all rights to contest such applicability);

b) An Internet Archive Party's use of any Covered Book for which such party obtains express written authorization for that use from a party that owns or controls the applicable rights to such Covered Book, provided such authorization is in force and valid at the time of such party's use of the Covered Book;

c) An Internet Archive Party's use of Covered Books for the purpose of accessibility for "eligible persons," as that term is defined in 17

U.S.C. § 121(d)(3), provided that such use meets the statutory conditions of 17 U.S.C §§ 121 or 121A, or is consistent with fair use, for example as set forth in *Authors Guild v. Hathitrust*, 755 F.3d 87 (2d Cir. 2014); or

d) Notwithstanding the foregoing definition of a Covered Book as including a portion thereof, an Internet Archive Party's use of Covered Books for the purpose of distribution, public display, or public performance of short portions of a Covered Book, provided that such use is consistent with fair use, for example as set forth in *Authors Guild v. Google, Inc*., 804 F.2d 202 (2d Cir. 2015) and *Andy Warhol Foundation v. Goldsmith*, 143 S. Ct. 1258 (2023).

5. By way of clarification:

a) nothing herein constitutes a grant to the Internet Archive Parties or any other person of a license, right, permission, consent, or authorization with respect to any copyrighted works, whether any Covered Books or otherwise;

b) nothing herein means that acts outside the scope of the specific prohibitions in Paragraph 2 are non-infringing or excused under any of the exceptions or limitations set forth in the United States Copyright Act or that Plaintiffs waive any claims regarding such acts; and

c) nothing herein impacts any right of Plaintiffs to seek to recover damages under 17 U.S.C. § 504, or costs, including attorneys' fees, under 17 U.S.C. § 505.

6. By way of further clarification and without modifying Paragraph 2(d) or 2(e) of this Permanent Injunction, nothing herein (i) limits any Internet Archive Party's ability to assert that it is not liable for monetary relief, or injunctive or other equitable relief, with respect to any infringement of copyright that arises from acts described in 17 U.S.C. § 512(a)-(e) ("Section 512"), or (ii) enjoins any act which qualifies for a limitation on remedies under Section 512.

7. Nothing herein limits the Internet Archive's right to appeal the finding of liability for copyright infringement as addressed in the Opinion and Order and as incorporated into any final judgment.

8. Nothing herein limits the Internet Archive's right to appeal this Permanent Injunction on the ground that Internet Archive should not have been held liable for copyright infringement. Further, nothing herein limits any Party from appealing the Court's resolution of the Parties' dispute concerning whether the definition of Covered Book in Paragraph E(1) of this Consent

Judgment pertains to books "in any format" or only "in any electronic text format."

9. Internet Archive shall provide a sworn declaration of compliance with this Court's Permanent Injunction within 30 days of its issuance.

10. During the first 60 days following the entry of this Permanent Injunction, in the event that any Plaintiff believes that any enjoined party is not in compliance with this Permanent Injunction and wishes to seek appropriate relief from the Court, such Plaintiff shall first provide notice to the Internet Archive Party of its intent to file for relief 7 days prior to such filing, except in instances in which the Covered Book was initially published within five years preceding such notice. Such notice to the Internet Archive Party does not need to identify individual Covered Books. This provision has no effect after the expiration of the 60 day period.

11. This Court shall retain exclusive and continuing jurisdiction over the parties and over the subject matter of this Action for purposes of interpreting, implementing, and enforcing the Permanent Injunction.

12. Pursuant to the Opinion and Order, the Clerk of the Court shall enter judgment for Plaintiffs. The Clerk of the Court is directed to close this case.

APPROVED AND ORDERED THIS ___ day of _____, 2023

_____
John G. Koeltl, U.S.D.J.

EXHIBIT B

Davis Wright Tremaine LLP

21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Elizabeth A. McNamara
(212) 489-8230 tel
(212) 489-8340 fax

lizmcnamara@dwt.com

August 11, 2023

VIA ECF
Hon. John G. Koeltl
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Hachette Book Group, Inc., et al. v. Internet Archive, et al.*, 20-cv-04160-JGK

Dear Judge Koeltl:

Here is our letter summarizing the Plaintiffs' position on the one issue regarding the "Consent Judgment Subject to Appeal" that the parties submit to the Court for resolution.

As indicated in the parties' joint letter, Paragraph E of the proposed "Consent Judgment Subject to Appeal" contains a mutually agreed "Permanent Injunction" enjoining the Internet Archive Parties from distributing the "Covered Books" in, from or to the United States in any digital or electronic form, among other provisions. The term "Covered Book" is defined in Paragraph E.1. Although the parties agree on most aspects of the definition, including that it will apply to all of the Publishers' commercially available books (not just the representative 127 Works in Suit), Internet Archive insists upon limiting the definition of Covered Books in the proposed injunction to books published by the Plaintiffs that are commercially available as ebooks, whereas Plaintiffs believe the definition of Covered Books should include books that are commercially available in any format. In other words, IA wants to be free to scan and distribute digital copies of any print books that the Publishers or their authors have affirmatively decided not to publish as ebooks at this time. Plaintiffs' position is in keeping with the nature of exclusive rights under the Copyright Act and ample precedent demonstrating that in making the decision to offer a work for sale in a given format, the copyright owner is not in a race to the market with downstream parties who have no copyright interests in the work and have done nothing to contribute to or finance the creative expression.

This Court has already forcefully ruled that Internet Archive has no right to digitize and distribute a third party's print book as an ebook, even if it retains a physical copy of the book. As this Court concluded, "What fair use does not allow . . . is the mass reproduction and distribution of complete copyrighted works in a way that does not transform those works and that creates directly competing substitutes for the originals." *Hachette Book Grp., Inc. v. Internet Archive*, --- F. Supp. 3d ----, 2023 WL 2623787 at *15 (S.D.N.Y. Mar. 24, 2023) (the "Order"). Whether under the fair use doctrine or the first sale doctrine, IA "does not have the right to scan [] books and lend the digital copies en masse." Order at *8. As this Court underscored, it is the

rightsholder, not IA, who holds the exclusive right to prepare and distribute derivative works, such as ebooks. *Id.* These conclusions apply equally in instances in which the print book publisher has decided to issue the work as an ebook and those limited circumstances in which it has decided not to do so. IA has no right to rob publishers of the right to make that decision.

Although the Plaintiffs publish the vast majority of their books in both print and ebook formats, the Plaintiffs periodically decide not to create ebook editions of certain print books that are poorly suited to the digital realm, including certain illustrated children's books and cookbooks – as IA has admitted. IA's Resp. to Ps' 56.1 ¶ 108. For example, at Art Spiegelman's request, Penguin Random House refrained from publishing the Pulitzer Prize-winning author's graphic novel *Maus* in ebook form for many years since the author felt the graphic novel would translate poorly to an ebook, yet IA took it upon itself to scan and digitally distribute *Maus.*

IA will undoubtedly argue that the injunction should be limited to books published in ebook form because the Works in Suit were published in both print and ebook formats – pointing to the Court's fourth factor analysis in its Order focused on the potential market harm to the Plaintiffs' library ebook market – and assert that the injunction would otherwise be overbroad. But an injunction is only overbroad "if it results in a likelihood of unwarranted contempt proceedings for acts unlike or unrelated to those originally judged unlawful." *The City of N.Y. v. Mickalis Pawn Shop, LLC,* 645 F.3d 114, 145 (2d Cir. 2011) (internal quotation marks and citation omitted). IA's position elevates form over substance. The Internet Archive's unauthorized scanning and distribution of books like *Maus* that are only available as print books is unquestionably substantively the same as Internet Archive's conduct condemned by this Court. In all instances, "[t]here is nothing transformative about IA's copying and unauthorized lending of the Works in Suit." Order at *6. Further, when IA elects to take it upon itself to create an ebook version of a book without authorization, it is still engaging in unauthorized format-shifting and distribution of entire verbatim ebooks without compensating the authors or publishers. In short, an injunction covering works published in all formats is critical and consistent with the Court's Order.

Of key significance, the law is clear that the right to decide whether or not to publish a book in electronic format belongs to its authors and publishers, not IA. *See* Order at *6. As the Second Circuit held in *Castle Rock Entm't, Inc. v. Carol Publ'g Grp., Inc.*, 150 F.3d 132, 145-46 (2d Cir. 1998), in analyzing the market harm factor, "the copyright law must respect th[e righsholder's] creative and economic choice" not to "exploit[a] market for derivative works." "It would . . . not serve the ends of the Copyright Act – i.e., to advance the arts – if artists were denied their monopoly over derivative versions of their creative works merely because they made the artistic decision not to saturate those markets with variations of their original." *Id.* at 146 (internal quotation marks and citation omitted). *See also Penguin Random House LLC v. Colting*, 270 F. Supp. 3d 736, 753 (S.D.N.Y. 2017) ("Congress did not provide a use-it-or-lose-it mechanism for copyright protection. Instead, Congress granted a package of rights to copyright holders, including the exclusive right to exploit derivative works, regardless of whether

copyright holders ever intend to exploit those rights. Indeed, the fact that any given author has decided not to exploit certain rights does not mean that others gain the right to exploit them.")

Further, in those limited instances in which the author and publisher have decided to publish a book only in a print edition, IA creates clear potential market harm to the print book market for the work because its straight, verbatim digital copy of the entire work is an obvious competing substitute for the original. Both this Court's Order (2023 WL 2623787 at *13), and the recent Supreme Court decision in *Andy Warhol Found. for the Arts v. Goldsmith* (143 S. Ct. 1258, 1276 & 1279 n.12 (2023)), recognize that the first and fourth factors of 17 U.S.C. §107 are closely linked and that where a work is not transformative and is instead a publicly distributed, direct copy of the entire work, it is likely to act as a substitute and thus undermine the purpose of the Copyright Act. As the Supreme Court pithily stated, substitution is "copyright's bête noire." 143 S. Ct. at 1274.

Finally, the Court's Order directly addressed the evidence submitted by IA's experts regarding IA's alleged lack of impact on the Publishers' print book market, holding that it fell far short of proving that point. 2023 WL 2623787 at *14. The Order also made clear that any asserted benefit to publisher sales created by IA could not tip the scales in favor of fair use when the other factors under §107 point so strongly against fair use here. Ultimately this Court concluded that there is "no case or legal principles [that] supports th[e] notion" that "lawfully acquiring a copyrighted print book entitles the recipient to make an unauthorized [digital] copy and distribute it in place of the print book so long as it does not simultaneously lend the print book"; indeed, as the Court stated, "Every authority points the other direction." *Id.* at *15. Under this rationale, the term Covered Book in Paragraph 1 of the injunction should read "…title commercially available for sale or license in any format," as proposed by Plaintiffs, so that the definition reaches all commercially available titles in which a Plaintiff holds exclusive rights, regardless of whether the author and publisher have chosen to distribute a particular book in ebook form. We appreciate the Court's time and attention to this matter.

Respectfully submitted,

/s/ Elizabeth A. McNamara

Elizabeth A. McNamara

cc: To all counsel of record (via ECF)

EXHIBIT C

MORRISON FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP

AUSTIN, BEIJING, BERLIN, BOSTON, BRUSSELS, DENVER, HONG KONG, LONDON, LOS ANGELES, MIAMI, NEW YORK, PALO ALTO, SAN DIEGO, SAN FRANCISCO, SHANGHAI, SINGAPORE, TOKYO, WASHINGTON, D.C.

August 11, 2023

Writer's Direct Contact
+1 (415) 268-6066
JGratz@mofo.com

VIA ECF

The Honorable John G. Koeltl
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 14A
New York, NY 10007-1312

Re: Hachette Book Group, Inc., et al. v. Internet Archive, Case No. 1:20-CV-04160-JGK

Your Honor:

The Internet Archive has worked cooperatively with Plaintiffs to craft an agreed form of permanent injunction, subject to the Internet Archive's right to appeal this Court's liability determination. The parties reached agreement on all of the terms of the injunction but one: the question whether the injunction should apply to all in-print books, or whether its scope should be limited to books that, like the 127 Works in Suit, are available for electronic licensing. Because an injunction should be narrowly tailored to the issues addressed in the case, and this case involved only books available for electronic licensing, injunctive relief here should likewise be limited to books available for electronic licensing.

An injunction covering all in-print books would go well "beyond the scope of the issues tried in the case," *Starter Corp. v. Converse, Inc.*, 170 F.3d 286, 299 (2d Cir. 1999). That limitation follows from black-letter principles of remedies. It is well-established, for instance, that "injunctive relief should be narrowly tailored to fit specific legal violations," *Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994), and that "the scope of the injunction must be drawn by reference to the facts of the individual case," *Sunward Elecs., Inc. v. McDonald*, 362 F.3d 17, 26 (2d Cir. 2004). An injunction is therefore "overbroad when it seeks to restrain defendants from engaging in legal conduct, or from engaging in illegal conduct that was not fairly the subject of litigation." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 245 (2d Cir. 2011).

The Second Circuit has accordingly vacated injunctions "that have gone beyond the scope of the issues tried in the case." *Starter Corp.*, 170 F.3d at 299. In *Starter*, for instance, the Second Circuit vacated an injunction in a trademark infringement suit that prohibited the defendant from using its marks "either alone or in combination with any other words or

designs" on any kind of "footwear" as overbroad. *Id*. at 300. The Court explained that the injunction was "overly broad" because "[t]he jury's findings went only to the use of the Starter Star marks when used alone" not to "the use of the marks in combination with other designs" and were specific to "athletic footwear" not all footwear. *Id*.

This case involved only works that the Publishers make available as ebooks and so the scope of any injunction should be limited accordingly. As this Court noted, "[a]ll of the Works in Suit are available as authorized ebooks that may be purchased by retail customers or licensed to libraries." Opinion & Order ("Op.") at 10. That fact was relevant to the Court's fair-use analysis. In analyzing the fourth fair-use factor, for instance, this Court emphasized that "[t]here is a thriving ebook licensing market for libraries" and concluded that Internet Archive "supplants the Publishers' place in this market" because it "brings to the marketplace a competing substitute for library ebook editions of the Works in Suit." Op. at 39 (internal quotation marks omitted). That would not be true for works that the Publishers do not make available as ebooks—none of which were litigated in this suit. And because "each [of the fair-use factors] must be considered in a 'case-by-case analysis,' with the results 'weighed together[] in light of the purposes of copyright,'" (Op. at 15) the fair-use analysis for such dissimilar works would be different.

Indeed, while the issue was not presented in this case because all of the Works in Suit were available for electronic licensing to libraries, other courts have held that the unavailability of digital library licensing of particular works weighs in favor of fair use under the fourth fair use factor as to those works. *See, e.g.*, *Cambridge Univ. Press v. Patton*, 769 F.3d 1232, 1279 (11th Cir. 2014) (affirming the holding that the fourth factor favored fair use as to particular works for which "there was no evidence in the record to show that a license for digital excerpts was available—as was the case for seventeen works published by Oxford and Cambridge"). Because the parties did not have the opportunity in this case to litigate the degree to which the unavailability of digital library licensing would affect the fair use analysis, it is inappropriate for an injunction in this case, by its breadth, to effectively prejudge the outcome of that question.

This Court should thus "narrowly tailor[]" its injunctive relief to "fit [the] specific legal violations" it found (*Waldman Pub. Corp.*, 43 F.3d at 785) by at least limiting its injunction to copyrighted works—like the Works in Suit—that are available from the Publishers in electronic form.

Respectfully submitted,

MORRISON & FOERSTER LLP

/s/ Joseph C. Gratz
Joseph C. Gratz *(Pro Hac Vice)*
Allyson R. Bennett *(Pro Hac Vice)*
Aditya V. Kamdar *(Pro Hac Vice)*
Annie A. Lee *(Pro Hac Vice)*
425 Market Street
San Francisco, CA 94105
Phone: (415) 268-7000
Email: JGratz@mofo.com
ABennett@mofo.com
AKamdar@mofo.com
AnnieLee@mofo.com

ELECTRONIC FRONTIER FOUNDATION

Corynne McSherry (*Pro Hac Vice*)
Kit Walsh (*Pro Hac Vice*)
Cara Gagliano (*Pro Hac Vice*)
815 Eddy Street
San Francisco, CA 94109
Phone: (415) 436-9333
Email: corynne@eff.org
kit@eff.org
cara@eff.org

Attorneys for Defendant

cc: All Counsel (via ECF)