

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC
DATABASES COPYRIGHT LITIGATION

)
) MDL No. 1379
)
)

SETTLEMENT AGREEMENT

WHEREAS, plaintiffs in the above captioned matter, individually and on behalf of the class defined below (the "Class"), have alleged that defendants The Dialog Corporation, Dow Jones & Company, Inc., Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva, EBSCO Industries, Inc., The Gale Group Inc., Knight-Ridder, Inc., Knight Ridder Digital, Mediastream, Inc., Newsbank, inc., The New York Times Company, ProQuest Company, ProQuest Information and Learning Company, Reed Elsevier Inc., The Thomson Corporation, The Copley Press, Inc., and West Publishing Corporation d/b/a West Group have violated the copyright laws of the United States by reproducing, displaying, selling or distributing on electronic databases works owned by authors without the authors' permission; and

WHEREAS, defendants have denied all liability to plaintiffs and the Class and have not admitted any of the allegations of the complaints filed or lodged by plaintiffs, including without limitation the Consolidated Amended Class Action Complaint filed on September 26, 2001, and the complaint filed in *The Authors Guild, et al. v. The New York Times Co.*, No. 01 CV 6032 (S.D.N.Y.); and

WHEREAS, Class Counsel (defined below) have conducted a thorough investigation into the facts and issues raised in the Action (defined below); and

WHEREAS, Class Counsel, while continuing to believe that the claims asserted in the Action have substantial merit, have also weighed the benefits to be obtained under a

possible settlement of the Action against the possible outcomes, risks, and delay of continued litigation, including the likelihood of appeals from rulings on the merits in favor of any party; and

WHEREAS, the Representative Plaintiffs (defined below) and the Defense Group (defined below), in consideration of all of the circumstances and after prolonged and adversarial arms' length settlement negotiations between counsel and with the assistance of mediators Kenneth R. Feinberg and Peter Woodin of The Feinberg Group, wish to settle and finally resolve all actual and potential claims arising out of or relating to the matters that have been or may be asserted in the Action; and

WHEREAS, in addition to the consideration paid by defendants, the publishers ("Participating Publishers") listed in Exhibit A hereto have agreed to contribute to the settlement funds that this settlement has achieved on behalf of plaintiffs and the Class, to provide class notice in their publications and, if available, to provide information to identify potential class members and for class members to make claims under this settlement. Defendants and the Participating Publishers shall be referred to herein collectively as the "Defense Group"; and

WHEREAS, additional publishers ("Preliminary Supplemental Participating Publishers") may contribute to the settlement funds that this settlement has achieved on behalf of plaintiffs and the Class; and

WHEREAS, the Representative Plaintiffs and Class Counsel have concluded that a settlement with the Defense Group on the terms set forth in this agreement ("Settlement Agreement") is fair, reasonable, adequate and in the best interests of plaintiffs and the Class in light of, among other things, the risks inherent in prosecuting the Action and the benefits obtained under the Settlement Agreement; and

WHEREAS, the Defense Group, each member of which expressly denies all of the allegations made by plaintiffs or any liability whatsoever, have agreed to enter into this Settlement Agreement to conclude finally and definitively all claims brought in the Action and to reduce further expense, inconvenience, and the distraction of burdensome and protracted litigation; and

WHEREAS, (a) the parties agree that the claims of plaintiffs against defendants should be certified as a class action for purposes of the settlement of such claims, and (b) the parties therefore stipulate to a class for settlement purposes only as defined below;

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Settlement Agreement, it is agreed by and among the undersigned that the claims of plaintiffs and the Class shall be settled and compromised with the Defense Group, subject to approval of the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms and conditions:

1. Definitions. As used in this Settlement Agreement, the below terms are defined as follows:

a. "Action" means the following actions: *In re Literary Works in Electronic Databases Copyright Litigation*, MDL No. 1379 (S.D.N.Y.); *The Authors Guild, Inc., et al., v. The Dialog Corp., et al.*, Dkt. No. 00 CV 6049 (S.D.N.Y.); *Posner, et al., v. The Gale Group Inc., et al.*, Dkt. No. 00-CV-7376 (S.D.N.Y.); *Laney, et al. v. Dow Jones & Co. Inc., et al.*, Dkt. No. 00-CV-769 RRM (D. Del.); and *The Authors Guild, Inc., et al. v. The New York Times Company*, Dkt. No. 01 CV 6032 (S.D.N.Y.).

b. "Administration Costs" means the cost of (1) preparing and providing notice to the Class pursuant to the Class Notice Program (paragraph 8 below) or as otherwise ordered by the Court; (2) setting up and implementing the Claims Administration Program

(paragraph 6 below); (3) plaintiffs' portion of the mediator's fees incurred in February and March 2002, and the mediator's success fee; (4) any escrow fees paid to the Depository Bank and payments to an independent third party for services and expenses in connection with administration of the Settlement Funds, including the preparation and mailing of tax forms and tax returns; and (5) all other costs necessary for the administration of the settlement.

c. "Associational Plaintiffs" means The Authors Guild, the National Writers Union, and the American Society of Journalists and Authors.

d. "Claimant" means a class member who submits a claim for an award from the settlement proceeds with respect to a Subject Work (defined in paragraph 1.f below).

e. "Claims Administrator" means The Garden City Group, Inc., who has been retained by Plaintiffs' Lead Counsel to administer the settlement, including but not limited to the provision of notice to the Class members, processing and assisting with class members' claims, and other administration of the Plan of Allocation (see paragraph 4 below).

f. "Class" is defined as follows for settlement purposes only: All persons who, individually or jointly, own a copyright under the United States copyright laws in an English language literary work that has been reproduced, displayed, adapted, licensed, sold and/or distributed in any electronic or digital format, without the person's express authorization by a member of the Defense Group or any member's subsidiaries, affiliates, or licensees (a) at any time on or after August 15, 1997 (regardless of when the work first appeared in an electronic database) or (b) that remained in circulation after August 15, 1997, even if licensed prior thereto, including English language works qualifying for U.S. copyright protection under an international treaty (hereinafter "Subject Work"). Notwithstanding anything in the immediately preceding sentence to the contrary, a copyrighted work created prior to January 1, 1978, is a Subject Work only if it (a) has been electronically or digitally reproduced, displayed, adapted, licensed, sold

and/or distributed by a Participating Publisher without the person's express authorization, and (b) is from a publication whose pre-1978 works have not been excluded from this settlement, as indicated on Exhibit A. Included in the Class are all copyright owners of Subject Works who, after June 25, 2001, responded to The New York Times Company's Restoration Request website or print advertisements.

g. "Class Counsel" means all attorneys and law firms appearing for plaintiffs in the Action.

h. "Database Defendants" means The Dialog Corporation, Dow Jones & Co., Inc., Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva, EBSCO Industries, Inc., The Gale Group, Inc., Mediastream, Inc., Knight-Ridder, Inc., Knight Ridder Digital, Newsbank, inc., ProQuest Information and Learning Company, Reed Elsevier Inc., The Thomson Corporation, and West Publishing Corporation d/b/a West Group, and all their parents, predecessors, subsidiaries, affiliates, and divisions.

i. "Depository Bank" means Morgan Stanley Dean Witter, Conshohocken, Pennsylvania, designated by Plaintiffs' Lead Counsel to serve as custodial trustee and to administer the settlement funds pursuant to an escrow agreement with the Depository Bank.

j. "Effective Date" is the date upon which each and all of the following events shall have occurred: (i) the Court shall have certified the Class and approved this Settlement Agreement in all respects, pursuant to Fed. R. Civ. P. 23; (ii) entry shall have been made of the final judgment of dismissal with prejudice as to the defendants against plaintiffs and/or all members of the Class who have not timely excluded themselves from the Class; and (iii) the time for any appeal from the final judgment of dismissal and the Court's approval of this Settlement Agreement shall have expired, or, if appealed, the final judgment has been affirmed in its entirety by the court of last resort to which any such appeal has been taken and such

affirmance has become no longer subject to further appeal or review. Neither Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. 1651, shall be taken into consideration in calculating the above-stated time periods.

k. “Participating Publishers” means the publishers identified in Exhibit A hereto and any publishers that, within three business days of the date on which plaintiffs file their motion for preliminary settlement approval (pursuant to paragraph 7 below), agree – as have the publishers listed in Exhibit A -- to contribute to the settlement funds that this settlement has achieved on behalf of plaintiffs and otherwise to participate in the settlement.

l. "Plaintiffs' Lead Counsel" means the firms of (a) Kohn, Swift & Graf, P.C., (b) Hosie, Frost, Large & McArthur, and (c) Girard Gibbs & De Bartolomeo LLP.

m. “Preliminary Supplemental Participating Publishers” are the publishers that supply literary works to any of the defendants, other than publishers who are already identified as Participating Publishers. “Supplemental Participating Publishers” are all those Preliminary Supplemental Participating Publishers that are not de-listed pursuant to paragraph 3.d below.

n. "Released Claims” means: each and every claim of every Class member, whether arising under federal, state, or foreign law, that has been or could have been asserted in the Action against any member of the Defense Group, any Supplemental Participating Publisher, and all their past, present, and future parents, predecessors, subsidiaries, affiliates, and divisions, and all of their respective officers, directors, owners, partners, governors, employees, agents, nominees, successors, assigns, legal representatives and licensees (as if all Participating Publishers and Supplemental Participating Publishers had been named as defendants), with respect to any and all of the Subject Works, including but not limited to all claims arising out of the same facts as their claims of copyright infringement, past, present, or future, known or

unknown, and all claims with respect to the electronic or microform reproduction, distribution, display, license, sale or adaptation of Subject Works to or by the Defense Group or Supplemental Participating Publishers; except, however, that (i) only claims for past infringement are hereby released with respect to works that class members elect to have removed or not restored under paragraph 5 below, (ii) only claims concerning Subject Works are being released, (iii) this settlement provides that Subject Works that class members do not elect to have removed or not restored under paragraph 5 below may be displayed electronically only in accordance with paragraph 13.b below, (iv) no claims shall be released against any Participating Publisher for pre-1978 works the publisher has excluded from this settlement (see Exhibit A); (v) no claims shall be released with respect to works that have not, on or prior to the date of this Agreement, been reproduced, distributed, displayed or transmitted by any Defense Group member, (vi) no claims shall be released based on retaliation for participating in, objecting to or opting out of the settlement, or for exercising rights under paragraph 5.a below, (vii) none of the claims of class members who timely exclude themselves from the Class shall be released or in any other way adversely affected by the Settlement, and (viii) claims that are compensable in a class action pending in Canada on behalf of freelance authors, among other contributors, entitled *Robertson vs. The Thomson Corporation, Thomson Canada Limited, Thomson Affiliates, Information Access Company and Bell Globemedia Publishing Inc.*, (Ontario (Canada) Superior Court of Justice 96-CU-110595CP) are not being released.

o. “Released Parties” means the individuals and entities as specified herein in 1.n, subject to paragraphs 3.d, 13.b and 13.d, against whom claims are released.

p. "Representative Plaintiffs" means the following individual plaintiffs, who, subject to Court approval, are representing the Class in the settlement of the Action: Michael Castleman, E.L. Doctorow, Tom Dunkel, Andrea Dworkin, Jay Feldman, James Gleick, Ronald

Hayman, Robert Lacey, Ruth Laney, Paula McDonald, P/K Associates, Inc., Letty Cottin Pogrebin, Gerald Posner, Miriam Raftery, Ronald M. Schwartz, Mary Sherman, Donald Spoto, Robert E. Treuhaft and Jessica L. Treuhaft Trust, Constance Romilly, trustee, Robin Vaughan, Robley Wilson, Marie Winn.

q. "Settlement Payment" means a cash distribution to a Claimant from the Settlement Funds (defined below).

2. Best Efforts. All plaintiffs and all members of the Defense Group shall use their best efforts to effectuate this Settlement Agreement as soon as practicable, including cooperating as set forth below in seeking the Court's certification of the Class for settlement purposes only, the preliminary and final approval of this settlement, and the Court's approval of procedures to secure the prompt, complete and final dismissal with prejudice of the Action.

3. The Settlement Funds.

a. Subject to the provisions of this Settlement Agreement, the Defense Group shall pay a minimum of \$10 million to the Class, \$1 million of which shall be contributed in the form of published summary notice pursuant to the provisions of paragraph 8 below. Class members with valid claims will be eligible to receive Settlement Payments based on the Plan of Allocation set forth below at paragraph 4 below and the Claims Administration Memorandum (Exhibit B). If and to the extent that the sum of (i) the Claimants' Settlement Payments, (ii) Court approved attorneys' fees and costs and service awards to the Representative Plaintiffs, (iii) the \$1 million notice credit specified in this subparagraph above, (iv) payment for full publication of the Canadian Summary Notice pursuant to paragraph 8 below, and (v) the Administration Costs (not to exceed \$800,000) is less than \$10 million, then plaintiffs will distribute the remainder of the \$10 million minimum settlement amount to the Claimants, pro

rata, whose Subject Works were first published after 1977 and/or that were reproduced, distributed, displayed or transmitted by a Database Defendant.

b. No later than 10 business days after entry of the Order for Preliminary Approval of this Settlement Agreement, the Database Defendants shall deposit the amount of \$5 million into an interest bearing escrow account (the "Initial Settlement Deposit") by wire transfer to the Depository Bank. The Initial Settlement Deposit shall be held in escrow and administered by the Claims Administrator, Plaintiffs' Lead Counsel, and the Depository Bank, pursuant to an escrow agreement approved by Plaintiffs' Lead Counsel and the Defense Group. Pursuant to the terms of the escrow agreement, upon the Effective Date, any and all rights of the Defense Group members, collectively and individually, to the Initial Settlement Deposit and any interest or income earned thereon shall cease to exist. Consequently, upon the Effective Date, the terms of the escrow agreement will provide that the entire balance of the Initial Settlement Deposit remains in the sole control of Plaintiffs' Lead Counsel.

c. After all valid claims have been processed, the Claims Administrator shall issue a final report by e-mail and regular mail to Plaintiffs' Lead Counsel and each member of the Defense Group. The final report shall include the amount due for valid claims against each member of the Defense Group and each of the Preliminary Supplemental Participating Publishers. All such amounts will be due within 60 days from the date the final report is e-mailed, by wire or check to an account at the Depository Bank. No later than two weeks (14 days) after such amounts are due, the Depository Bank will notify Plaintiffs' Lead Counsel and the Defense Group of all such amounts and the Defense Group shall remit to the Depository Bank the sum of all outstanding unpaid amounts within ten days thereafter. By operation of the provisions of this paragraph (3.c), the Defense Group shall be responsible for the full and final

funding obligations to plaintiffs and the Class no later than 84 days after the date on which the Claims Administrator e-mails its final report to Plaintiffs' Lead Counsel and the Defense Group.

d. Ninety days after publication of the Claims Administrator's Final Report, the Database Defendants shall deliver to Class Counsel a list of all the Preliminary Supplemental Participating Publishers who were presented with claims but failed to pay the amounts due as determined by the Database Defendants in their sole discretion, so long as any such amounts are not less than the amounts provided for in paragraph 4 below. The non-cooperating publishers on that list will not be "Supplemental Participating Publishers" for purposes of the definition of "Supplemental Participating Publishers" above and the provisions of paragraph 13.d below, and such "de-listed" publishers will not be Released Parties under this agreement.

e. The Initial Settlement Deposit, together with any additional payments as provided for in paragraphs 3.c. and 12, and all interest accrued thereon, shall hereinafter be referred to as the "Settlement Funds." Except as otherwise provided in this Agreement, no disbursement or other use of any portion of the Settlement Funds shall be made without approval of the Court.

f. Except as provided in paragraph 4.f below, the Defense Group and Supplemental Participating Publishers shall not pay more than \$18 million (\$1 million of which shall be the \$1 million credit in paragraph 3.a above) in connection with this settlement, and plaintiffs and the Class shall look solely to the Settlement Funds for settlement and satisfaction of any Released Claims. When the Defense Group meets all of its funding obligations under paragraphs 3.a., 3.b., 3.c. and 12 of this agreement, it shall be deemed to have finally and completely discharged its entire obligation to plaintiffs and to each and every member of the Class for the payment of any sums or any other relief of any nature whatever in connection with all Released Claims, including but not limited to attorneys fees and costs.

g. The Settlement Funds are intended as, and shall be, a separate escrow fund of moneys and shall qualify as a "qualified settlement fund" within the meaning of Treasury Regulation Section 1.468B-1. Plaintiffs' Lead Counsel or their designee shall be the "administrator" of the Settlement Funds within the meaning of Treasury Regulation Section 1.468B-2(k)(3). Plaintiffs' Lead Counsel or their designee shall apply, or shall cause application to be made, to the Internal Revenue Service for an employer identification number on behalf of the Settlement Funds and shall further cause to be prepared on behalf of the Settlement Funds any and all required tax returns. Plaintiffs' Lead Counsel or their designee shall file such tax returns with all appropriate tax authorities and shall cause any taxes shown due on such returns and payable by the Settlement Funds to be paid to the Internal Revenue Service or other tax authority on behalf of the Settlement Funds from the funds on deposit in the Settlement Funds. Plaintiffs' Lead Counsel or their designee shall do or cause to be done any and all other acts as may be reasonably required to cause the Settlement Funds to qualify and remain qualified as a "qualified settlement fund" as described above.

h. Until such time after the Effective Date as the Settlement Funds are distributed to class members consistent with the terms of this Agreement and as otherwise ordered by the Court, the Settlement Funds shall be invested and reinvested by Plaintiffs' Lead Counsel in United States Treasury Bills, Notes or other obligations of the United States or its instrumentalities of no more than six (6) months duration, except that such portions of the Settlement Funds as may reasonably be needed to pay current Administrative Costs, including expenses associated with providing notice of the settlement to the Class, payment of taxes arising with respect to income earned by the Settlement Funds (including without limitation the reasonable expenses of a tax attorney or consultant and mailing and distribution costs and expenses related to filing tax returns), may be held in the form of cash or money market

instruments. All interest and gains earned on the Settlement Funds or any portion thereof shall become and remain a part thereof. No party shall be responsible for any losses, principal or otherwise, of the Settlement Funds.

i. Before the Court issues a final order approving this Settlement Agreement, disbursements may be made for reasonable expenses actually incurred in providing notice of the settlement to the Class, including the costs of printing, mailing, or publishing notice, or retaining the Claims Administrator to carry out all responsibilities relating to providing such notice and administration from the Initial Settlement Deposit in a total amount not to exceed \$500,000 without further order of the Court, and the amounts for incurred Administrative Costs (including accrued-but-not-yet-paid expenses) shall not be refundable to the Defense Group in the event the Settlement Agreement is disapproved, voided, or otherwise fails to become final. No other payments, disbursement, or transfers of any kind from the Settlement Funds, including Class Counsel's attorneys' fees and costs of litigation, shall be made prior to the Effective Date without leave of Court for good cause shown. The Defense Group shall have no responsibility for the administration, operation, investment or distribution of the Settlement Funds. Plaintiffs shall make reasonable efforts to minimize expenditures from the Settlement Funds.

j. The Defense Group shall not have any responsibility to make any filings relating to the Settlement Funds, and the Defense Group shall have no responsibility to pay taxes, including interest and penalties due thereon, on income earned by the Settlement Funds. In the event the settlement is not approved by the Court or is otherwise terminated, all Settlement Funds (less any Administrative Costs incurred) shall be promptly returned to the Defense Group, provided that in such event the Defense Group shall be responsible for payment of all taxes on income earned on the Settlement Funds after the date of such return.

4. Plan of Allocation. Plaintiffs will seek Court approval of a Plan of Allocation of the settlement proceeds to eligible class members. The Plan of Allocation will provide for distribution from the Settlement Funds, after the payment of (i) court approved attorneys' fees and reimbursement of costs, (ii) court approved service awards to the Representative Plaintiffs, and (iii) Administrative Costs. A Settlement Payment shall be made to every Claimant who submits a timely, valid proof of claim, subject to the limitations set forth below. The Settlement Payments shall be made pursuant to the following schedule (“Scheduled Payments”):

a. Category A Subject Works. For each Subject Work the Claimant properly registered as an individual work with the United States Copyright Office in time to be eligible for statutory damages under 17 U.S.C. § 412 (2), the Claimant will receive:

\$1,500 for the first fifteen Subject Works written for any one publisher;
\$1,200 for the second fifteen Subject Works written for that publisher; and
\$875 for all Subject Works written for that publisher after the first thirty Subject Works.

b. Category B Subject Works. For each Subject Work that the Claimant properly registered before December 31, 2002, but not in time to be eligible for statutory damages under 17 U.S.C. § 412 (2), the Claimant will receive, per Subject Work, the greater of \$150 or 12.5% of the original sale price of the Subject Work.

c. Category C Subject Works. For all other Subject Works, the Claimant will receive, per Subject Work:

The greater of \$5 or 10% of the original price of the Subject Work (except for works sold for amounts over \$249, as described below);
\$25 for Subject Works originally sold for \$250 to \$999;
\$40 for Subject Works originally sold for \$1,000 to \$1,999;
\$50 for Subject Works originally sold for \$2,000 to \$2,999;
\$60 for Subject Works originally sold for \$3,000 or more.

d. Reduced Payments. For Subject Works created before January 1, 1995, payments in Categories B and C above shall be reduced, to an amount no lower than \$5 per Subject Work, based on the years in which the Subject Work was created as follows:

Subject Works created in 1995 or later: no reduction;
Subject Works created in 1985-1994: a 5% reduction for each year beginning in 1994 and continuing through 1985, i.e., payments for Subject Works created in 1994 will be reduced to 95%; payments for Subject Works created in 1993 will be reduced to 90%, and so on until 1985; Subject Works created before 1985 will receive a 50% reduction.

e. Each Settlement Payment is further subject to paragraph 5 below.

f. In the event the total amount of Scheduled Payments as calculated under this paragraph 4, together with all fees and costs included in the Settlement Funds, exceeds \$18 million, then the following will occur: (1) if the claims for the Subject Works that were first published after 1977 and/or that were reproduced, distributed, displayed or transmitted by a Database Defendant, together with all fees and costs, total \$18 million or less, then all claims for all Subject Works will be paid in full pursuant to this paragraph 4; but (2) if the claims for the Subject Works that were first published after 1977 and that were reproduced, distributed, displayed or transmitted by a Database Defendant (“Post 1977 Claims”), together with all fees and costs, exceed \$18 million, then (i) beginning with Category C claims, and then, only if necessary, the Category B and Category A claims will be reduced pro rata by the remaining amount that the total Post 1977 Claims exceeds \$18 million as compared to the total amount of Post 1977 Claims for that category; and (ii) the remaining claims (i.e., claims for Subject Works first published prior to 1978 and/or that were not reproduced, distributed, displayed or transmitted by a Database Defendant (“Pre 1978 Claims”)) will, beginning with Category C claims, and then, only if necessary, Category B and Category A claims, each be reduced pro rata by the same percentage as the corresponding Post 1977 category claims were reduced, if at all.

This provision is intended to ensure that any pro rata reduction to the Claimants of Post 1977 Subject Works will be unaffected by the claims for Pre-1978 Subject Works.

g. Any copyrighted work and each version, revision, or variant thereof prepared without material additional editing, revision, or composition by the Claimant shall be considered a single Subject Work for which the Claimant (or Claimants who claim joint ownership) has only one claim, regardless of whether the work was published in more than one newspaper or periodical; provided, however, that a revision or variant prepared by the Claimant for which the Claimant received an additional payment shall be considered an additional work, entitling the Claimant to submit an additional claim.

h. The Defense Group and Supplemental Participating Publishers will not, with respect to claims for Category A and Category B Subject Works, for purposes of this Agreement only, enforce retroactive licenses (as defined below) against any Subject Works that were registered prior to the dates these licenses were acquired. For purposes of this Agreement, a retroactive license is a license to a Subject Work acquired without monetary consideration after the date of publication other than a license obtained as part of the agreement to acquire the Subject Work in question (“Retroactive License”). Further, the Defense Group and Supplemental Participating Publishers will not, with respect to claims for Category C Subject Works, enforce Retroactive Licenses the form of which any publisher first used on or after April 14, 2003. In addition, The New York Times Company will not, with respect to claims for Category A, Category B and Category C works, enforce any licenses, waivers, releases or any other concessions obtained from class members through their participation in The New York Times Restoration Request web site.

i. For purposes of calculating the original price paid for works that were not paid for in U.S. dollars, the currency that was originally paid will be converted to its U.S. dollar

equivalent in order to determine the amount to be paid to claimants for Category B and Category C works. The conversion calculation shall be based on the Federal Reserve Bank's exchange rate on the date the Settlement Agreement is executed, published on its website at

<http://www.federalreserve.gov/releases/h10/Hist/>.

j. Notwithstanding anything in paragraphs 4 and 5, no Settlement Payment check to any claimant shall be for less than \$5.00.

5. Continuing Use of Subject Works.

a. Any Claimant (other than Claimants of Category C Subject Works that are the subject of Retroactive Licenses) may, upon filing a claim within the 120-day claim period set forth below in paragraph 6.a. (but not thereafter), advise that he or she wants the Defense Group and Supplemental Participating Publishers to remove from publicly accessible non-image-based electronic databases (or, if the work has been previously removed, not to restore) Subject Works whose copyright he or she owns. Any Claimant who exercises this right shall receive as his or her Settlement Payment for such Subject Work 65% of the amount that he or she would otherwise have been entitled to receive pursuant to paragraph 4. The Defense Group and/or Supplemental Participating Publishers will thereupon remove (or not restore) the specified Subject Works from their respective non-image-based databases. In the case of image-based electronic databases, for purposes of this settlement only, the obligation to remove shall be satisfied by disabling the functionality that allows the individual article record to be returned apart from the full context of the original print publication.

b. To the extent that any Claimant does not exercise the right provided for in paragraph 5.a above, any member of the Defense Group and any Supplemental Participating Publisher may, should it choose to do so and without further liability or obligation, restore to accessibility those Subject Works (and only those Subject Works) previously taken down, or

continue the electronic distribution and use of those Subject Works presently available. The continued use and/or restoration provided for in this paragraph is not a transfer of ownership to the Subject Work, and nothing in this settlement shall operate to transfer any ownership interests in any Subject Works that are the subject of this agreement to any member of the Defense Group, Supplemental Participating Publisher or any other person or entity. Subject to paragraph 13.b. below, the continued use and/or restoration provided for in this paragraph permits the Defense Group and Supplemental Participating Publishers to continue to use the Subject Works for editorial or commercial purposes on a non-exclusive basis. It is considered by plaintiffs to constitute a non-exclusive license for future database use, and is valued by plaintiffs as 35% of the full amount per Subject Work under the Plan of Allocation; and it is considered by the Defense Group to be a compromise and restatement of preexisting non-exclusive rights obtained through oral or implied-in-fact agreements and provision for the expenditures occasioned by takedown or incomplete restoration.

c. In the case of all Subject Works that a claimant asks to be removed (or not restored) within the period specified in 5.a above, each member of the Defense Group and each Supplemental Participating Publisher will, respectively, be responsible for the prompt removal of such Subject Works from all of its own public databases, web sites, or transmission feeds on which those works appear, after the provision to it of such requests. If any such work is not removed within thirty days of the provision of such notices after the close of the claims period, the Claims Administrator will repeat the request to the non-compliant party (such repeated request being the exclusive remedy for failure to comply with the initial request to remove or not restore the Subject Work). If the work is not thereupon removed within 30 days of such second written notice, the Claimant or his or her representative may, in addition to all other available remedies, seek an Order of the Court requiring its immediate removal. If the Claimant or his or

her representative makes such a motion for the reasons set forth in this paragraph against any Defense Group member or Supplemental Participating Publisher, and if the motion is granted, then the Defense Group member or Supplemental Participating Publisher hereby agrees to pay the claimant's reasonable attorneys fees and costs incurred in the prosecution of the motion.

d. The procedures set forth in this Section 5 apply only with respect to Subject Works and only for purposes of this Settlement. Nothing in this Settlement Agreement is intended to reflect any position on any question whatever that may arise in future litigation, including without limitation litigation concerning (a) works other than Subject Works, or (b) litigation by persons who exclude themselves from the Class. No party to the litigation or to this Settlement Agreement, including without limitation plaintiffs and class members, defendants, Participating Publishers, and Supplemental Participating Publishers, may use the fact of this Settlement or any provision or language contained in this Agreement in connection with the prosecution or defense of any future copyright infringement or other claim, except for a claim relating to the interpretation, enforcement, or application of this Agreement or claims relating to Subject Works..

6. Claims Administration Program.

a. A Proof of Claim substantially in the form attached to the Claims Administration Memorandum (Exhibit B hereto), will be made available to the Class. Class members will be required to submit their Proofs of Claim within 120 days of the first date of the Class Notice Program. Only class members who submit a valid, timely Proof of Claim are eligible to receive a Settlement Payment. The Proof of Claim requires claimants, to the best of their ability, to provide the information specified in the Claims Administration Memorandum, and all works claimed should be listed on a single Proof of Claim. The Defense Group will have the burden of proving the inaccuracy of any claims. Class members will be able to complete and

submit the Proof of Claim by mail or online. Claims will be assessed for validity in accordance with the procedures and standards set forth in the Claims Administration Memorandum.

b. Within 30 days after the date of this Settlement Agreement, each Participating Publisher shall provide to Plaintiffs' Lead Counsel or their designee, either jointly or separately, in electronic form if available, (1) the names and last known addresses of all class members identifiable after a reasonable search for such information, and (2) a declaration (the scope of the which will be agreed to by the parties) setting forth the efforts it made to search for such information.

c. No person will have any claim against Class Counsel, the Claims Administrator or other agent designated by Plaintiffs' Lead Counsel, or any member of the Defense Group or any Supplemental Participating Publisher and each of their respective past, present, and future parents, predecessors, subsidiaries, affiliates, and divisions, and all of their respective officers, directors, owners, partners, governors, employees, agents, nominees, successors, assigns, legal representatives, and licensees, for actions taken in good faith or Settlement Payments or other disbursements from the Settlement Funds made substantially in accordance with this Settlement Agreement or the settlement, the Plan of Allocation, or further orders of the Court. This agreement is not intended to, nor shall it in any way be construed or interpreted to, create or support any cause of action or any claim for damages or injunctive relief against Plaintiff, Class Counsel, the Claims Administrator or other agent designated by Plaintiffs' Lead Counsel, any member of the Defense Group or their counsel, or any third party.

7. Preliminary Settlement Approval. No later than 40 days after the execution of this Settlement Agreement, unless otherwise extended by written agreement of the parties hereto, plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement

Agreement, together with a Proposed Order For Preliminary Settlement Approval, substantially in a form attached to this Settlement Agreement as Exhibit C:

- a. Preliminarily approving this Settlement Agreement;
- b. Certifying the Class for settlement purposes only;
- c. Requiring appropriate notice to be given to the Class within 30 days of the entry of the Order for Preliminary Settlement Approval in a form and manner found by the Court to be sufficient to satisfy the requirements of Fed. R. Civ. P. 23 and federal constitutional due process, which notice shall be in a form acceptable to the parties;
- d. Scheduling dates for class members to request exclusion from the Class, or object to the Settlement Agreement, and for a hearing on final approval of the Settlement Agreement;
- e. Reserving jurisdiction as to each party to the settlement over the effectuation of the Settlement Agreement for all purposes, including enforcement of the terms hereof and resolving any disputes that may arise (except as provided for in the Claims Administration Memorandum); and
- f. Providing that, pending a hearing on final approval of the settlement, all discovery and other proceedings in the Action are stayed except as pertains to the settlement of the Action.

Plaintiffs shall request that a hearing (in person or telephonic) on its motion for preliminary approval of this Settlement Agreement be held within 15 days after the date the motion is filed.

8. Class Notice Program. In connection with the motion filed pursuant to paragraph 7 above, Plaintiffs' Lead Counsel will submit to the Court, on notice to and approval by counsel for the defendants, such approval not to be unreasonably withheld, a proposed Notice of Class

Action Settlement (“Notice”) and a Summary Notice of Class Action Settlement (“Summary Notice”). The proposed Summary Notice will be substantially in the form attached to this Settlement Agreement as Exhibit D. In addition, Plaintiffs' Lead Counsel will submit to the Court, on notice to and approval by counsel for the defendants, such approval not to be unreasonably withheld, a proposed summary notice tailored for authors of Subject Works in Canadian publications (“Canadian Summary Notice”). Plaintiffs' Lead Counsel will recommend to the Court that the class notice program consist of the following: (a) sending the Notice by email or first class mail, postage prepaid, to those class members who have been identified by reasonable means from the records of the Associational Plaintiffs and of the Participating Publishers, pursuant to paragraph 6.b above, at the last known address identified in those records; (b) publishing the Summary Notice and Canadian Summary Notice in the publications listed on the schedule attached hereto as Exhibit E, or reasonable substitute, if necessary, that will provide the same level of coverage to the intended audience. A budget of \$1 million for publishing the Summary Notice, and the Canadian Summary Notice in Time (Canada Edition), shall be credited against the \$10 million minimum settlement amount, although the retail cost of the proposed publication notice program is substantially in excess of \$1 million. To the extent payment will be required for publication of the Canadian Summary Notice in the other Canadian publications listed in Exhibit E, such payment shall be made as follows: (i) if the Defense Group’s total financial obligation under this Agreement does not exceed \$10 million (including any cost for publication of the Canadian Summary Notice), then such payment shall be made from the \$10 million minimum settlement payment; or (ii) if the Defense Group’s total financial obligation under this Agreement does exceed \$10 million, then the Defense Group and plaintiffs’ counsel (out of the Court approved fee award) shall split any such payment that exceeds the Defense Group’s \$10 million minimum settlement payment; and (c) by displaying – until the end

of the 120 day claims period for Database Defendants and until the opt-out deadline for Participating Publishers – on the home page of the websites of each Defense Group member, an announcement stating, in substance, "ATTENTION AUTHORS AND JOURNALISTS. CLICK HERE FOR IMPORTANT INFORMATION ABOUT THE SETTLEMENT OF THE IN RE LITERARY WORKS IN ELECTRONIC DATABASES COPYRIGHT LITIGATION," which announcement will provide a hyperlink to www.copyrightclassaction.com, a web site dedicated to the settlement of this Action and on which the Notice, this Settlement Agreement, and other relevant information (the language of which shall be agreed to by the parties) will be displayed. All other costs of providing notice shall be paid solely out of the Settlement Funds. The Notice, among other things, shall:

- a. Describe the nature of the litigation, who comprises the Class and the terms of the settlement;
- b. Explain that a hearing will be held to determine the reasonableness, adequacy and fairness of this Settlement Agreement, including whether the Court should approve it, and identify the date, time and location of the hearing and explain that the date and time may change without further notice;
- c. Provide that any class member who objects to the approval of this Settlement Agreement or to the final judgment to be entered in this litigation, may appear at the hearing and show cause why the proposed settlement should not be approved as fair, reasonable, and adequate and why a final judgment should not be entered;
- d. Require that the objection of any such class member must be made in writing and that such objection, together with any supporting papers, must be filed with the Court within such time prior to the hearing as the Court may direct;

e. Advise class members wishing to exclude themselves from the Class as to the date and manner by which to do so; and

f. Apprise class members that a list of “de-listed” Preliminary Supplemental Participating Publishers will be posted on the web sites of the Associational Plaintiffs so that the Class can be advised of which publishers are not Released Parties.

9. The Associational Plaintiffs and their present officers and immediate past presidents will support, and publicly express their support for this settlement. Neither they nor the Representative Plaintiffs will undertake actions intended to encourage class members to opt out of the Class, exercise the removal right provided in paragraph 5(a) above, or otherwise undermine the Settlement Agreement. However, nothing herein shall prohibit any Associational Plaintiffs’ representative from rendering advice on any matter pertaining to this settlement or the Action in response to unsolicited individual inquiries.

10. Right to Rescind Agreement. The Defense Group will have the right but not the obligation to withdraw from this Settlement Agreement if, as of the deadline fixed by the Court for members of the Class to exclude themselves pursuant to Fed. R. Civ. P. 23, the total number of class members who opt out of the Class exceeds the number set forth in a separate Supplemental Agreement Regarding Opt-Outs between the parties. Any decision by the Defense Group to withdraw from this Settlement Agreement pursuant to this paragraph will be in accordance with the procedures set forth in the Supplemental Agreement Regarding Opt-Outs. The Supplemental Agreement Regarding Opt-Outs is a confidential document among the parties to this Settlement Agreement, and will not be filed with the Court unless and until a dispute among the parties arises concerning its interpretation or application.

11. Final Fairness Hearing. If the Court preliminarily approves this Settlement Agreement and the Defense Group does not withdraw from this Settlement Agreement pursuant

to its terms, plaintiffs shall, at least one week prior to the hearing for final approval of this Settlement Agreement set by the Court, or some other time as the Court may order, submit to the Court a motion for entry of an order of dismissal and final judgment substantially in the form attached to this Settlement Agreement as Exhibit F, which in substance shall:

a. Approve finally this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to the Class members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and direct its consummation according to its terms;

b. Direct that each of the lawsuits in the Action be dismissed with prejudice and without costs;

c. Forever discharge and release all of the Released Parties from all of the Released Claims and enjoin class members from further filing, commencing, prosecuting, intervening in, or pursuing any Released Claim;

d. Provide that the Released Parties shall have no other obligations to plaintiffs or the Class other than in the ordinary course of business;

e. Determine that the Settlement Agreement and any proceedings taken pursuant thereto are not, and should not in any event be: (i) offered or received as evidence of a presumption, concession, or admission by any Released Party of any fact or matter; or (ii) offered or received as evidence of a presumption, concession or admission of any liability, fault, wrongdoing or other dereliction of duty, or (except with written consent of the Released Party) in any way referred to for any reason in the Action, or in any other civil, criminal, bankruptcy, or administrative action or proceeding; provided, however, that reference may be made to this Settlement Agreement in such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement for all purposes, including enforcement of the terms hereof and resolving any disputes that may arise;

f. Reserve jurisdiction as to each party over the effectuation of the Settlement Agreement.

g. Determine under Fed. R. Civ. P. 23 that there is no just reason for delay and direct that the judgment of dismissal with prejudice as to defendants shall be final; and

h. Contain any other provisions mandated by this Settlement Agreement.

12. Attorneys' Fees and Costs. Plaintiffs' Lead Counsel, on behalf of all Class Counsel, will apply to the Court for payment from the Settlement Funds of attorneys' fees, their reasonable costs, and the amount, if any, of Administration Costs that exceeds \$800,000, in the total amount of \$4.4 million, and for a special award to the Representative Plaintiffs in the amount of \$2,000 each. Further, Plaintiffs' Lead Counsel will apply to the Court for a one-time supplemental payment of attorneys' fees in the amount of the difference, if any, between the total amount of Administration Costs expended and \$800,000. Plaintiffs' Lead Counsel will request that any attorneys' fees and expenses awarded be paid to Plaintiffs' Lead Counsel, and any special award be paid to the Representative Plaintiffs, on the Effective Date and, with respect to the supplemental fee award, as soon as a final determination is made with respect to the total amount of Administration Costs. Plaintiffs' Lead Counsel shall thereafter allocate any attorneys' fees among Class Counsel in a manner in which Plaintiffs' Lead Counsel in good faith believe reflects the contribution of such counsel to the prosecution and settlement of the Action. No member of the Defense Group and no one on behalf of any member of the Defense Group shall object to or take any steps whatever to undermine any application by Plaintiffs' Lead Counsel for reasonable attorneys' fees and costs in the amount of \$4.4 million, or for a special award in the amount of \$2,000 to each of the Representative Plaintiffs.

13. Releases.

a. Without further action by anyone, and subject to paragraph 11, as of the Effective Date, any and all Class members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, assigns, any person claiming by or through any Class members and any person representing any or all Class members, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and the Order of Dismissal and Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged all Released Claims against each and every one of the Released Parties.

b. Notwithstanding anything in paragraph 1.n. above, the releases shall be construed to provide, and this Settlement Agreement provides, that a Subject Work which class members do not elect to have removed or not restored under paragraph 5 above may, under the authority provided by this Settlement and the releases and Orders provided in connection therewith, be electronically reproduced, distributed, displayed, licensed, sold, or adapted by (but only by) each Defense Group Member or Supplemental Participating Publisher that allegedly infringed the Subject Work. These rights shall be irrevocable, worldwide, and continuing, and may be fully transferred to and acquired by those successors and assigns that have purchased or otherwise acquired ownership or control (i) of any Defense Group Member or Supplemental Participating Publisher (or of any substantial segment of the business thereof), or (ii) of all or substantially all of the assets of any such person, or with respect to any publication or publications.

c. Each and every Class member, through plaintiffs as representatives of the Class, covenants and agrees that, as of the Effective Date, he or she shall be forever barred from instituting, maintaining, prosecuting, or assigning any and all Released Claims against, or collecting on any and all Released Claims, from any of the Released Parties (including without

limitation by participating in, or recovering as a result of, any class or representative action, whether under federal, state, or other law, in which any Released Claims have been or may be brought).

d. No claims hereunder shall be released against Preliminary Supplemental Participating Publishers who are “de-listed” under paragraph 3.d above. The Notice shall apprise class members that a list of “de-listed” publishers will be posted on the web sites of the Associational Plaintiffs so that the Class will be advised of which publishers are not Released Parties.

e. The Defense Group and Supplemental Participating Publishers, for good and valuable consideration, and upon the Effective Date without further action, shall release and discharge plaintiffs and every member of the Class who has not timely excluded himself or herself, and each of their respective successors, assigns or legal representatives, and Class Counsel, from any and all claims, demands, causes of action, or obligations of any kind based upon the commencement and prosecution of this Action, including costs, expenses and attorneys' fees.

f. With respect to any and all Released Claims, and upon the Effective Date without further action, for good and valuable consideration, plaintiffs and all class members shall be deemed to have, and by operation of the Order of Dismissal and Final Judgment contemplated by this Settlement Agreement shall have, fully, finally, and forever expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, equivalent or identical to section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each member of the Class may hereafter discover facts other than or different from those that he, she, or it knows or believes to be true with respect to the Released Claims, but each member of the Class hereby expressly waives and fully, finally, and forever settles and releases, upon the Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that is a Released Claim, without regard to the subsequent discovery or existence of such different or additional facts.

14. Miscellaneous Provisions.

a. This Settlement Agreement, if not terminated pursuant to any provision hereof, shall become final on the Effective Date.

b. Upon final approval of this Settlement Agreement, plaintiffs and/or members of the Class who have not timely excluded themselves from the Class shall be deemed to have stipulated that the Action shall be dismissed with prejudice.

c. After the Effective Date, the Final Settlement Funds, less any disbursements for taxes, Court-approved costs and expenses of notice and administration, and any Court awarded attorneys' fees and reimbursement of expenses, shall be distributed to members of the Class in accordance with the Plan of Allocation as approved by the Court. Except as otherwise provided herein, disbursements for the costs and expenses of distribution and administration of the Settlement Fund shall be made solely from the Settlement Funds with approval of the Court.

d. Subject to the Defense Group's approval, which approval shall not be unreasonably withheld, Plaintiffs' Lead Counsel are authorized to retain the Claims Administrator, whose fees and expenses will be paid from the Settlement Funds in accordance

with this Settlement Agreement, to carry out the responsibilities relating to providing notice to the Class, administering the Settlement Funds and administering the settlement.

e. In the event (i) the Court denies the motion for preliminary or final approval of, or otherwise refuses to approve, this Settlement Agreement or any material part of it, (ii) the final judgment contemplated by paragraph 11 hereof is not entered, (iii) the final judgment contemplated by paragraph 11 shall have been vacated, reversed or modified upon appeal, (iv) the Settlement Agreement is rescinded, withdrawn, or otherwise terminated in accordance with its terms, or (v) this Settlement Agreement does not become final for any reason, this Settlement Agreement shall be null and void (except for the provisions in ¶ 14.f, which will remain in full force and effect) and of no force and effect (unless all parties agree to proceed with the settlement as modified by the Court, in which event the parties shall proceed with the Settlement Agreement as modified), and this Settlement Agreement and all negotiations and proceedings connected with it shall be without prejudice to the rights of any party hereto, shall not be deemed or construed to be an admission by any party of any fact or matter, and shall not be used in any way in these actions or in any other action or proceedings).

f. In the event this Settlement Agreement is terminated or rescinded, or does not become final for any reason, within 5 business days of notice by the Defense Group of such event the Settlement Funds, including interest, shall be disbursed to the Defense Group by wire transfer into an account designated by the Defense Group, less the portion attributable to them of any Court-approved costs, including Administrative Costs incurred for administering the Settlement Funds, and for giving notice and administering the settlement as provided for in this Settlement Agreement, including a reasonable reserve for accrued but not yet paid Administrative Costs. For purposes of the disbursement made pursuant to this paragraph, no deduction shall be made for Class Counsel's fees or for any costs other than those costs already

incurred for providing class notice and administering the settlement, as provided for in this Settlement Agreement. Class Counsel shall not be responsible for any losses, principal or otherwise, of the Settlement Funds.

g. In addition to the effect of any final judgment entered in these actions, upon approval by the Court, this Settlement Agreement, including but not limited to the Releases provided herein, (i) shall inure to the benefit of and be binding upon the Defense Group and each member of the Defense Group's past, present, and future parents, predecessors, subsidiaries, affiliates, and divisions, and all of their respective officers, directors, owners, partners, governors, employees, agents, nominees, successors, assigns and legal representatives, and (ii) shall also inure to the benefit of and be binding upon plaintiffs and each and every member of the Class who does not timely exclude himself or herself.

h. All notices, demands, and requests as specified herein shall be in writing and shall be sent by facsimile (if practicable) and overnight courier to Plaintiffs' Lead Counsel and each of the undersigned counsel for the Defense Group. In no event shall the time period for taking any action under this Settlement Agreement be extended by reason of Fed. R. Civ. P. 6(e).

i. Within 30 days after the Effective Date, Class Counsel will destroy all copies of all documents produced to plaintiffs by any member of the Defense Group. Class Counsel will notify the Defense Group in writing that such destruction has occurred.

j. The parties may execute this Settlement Agreement in counterparts, and the execution of the counterparts shall have the same effect as if all parties have signed the same instrument. Any executed counterpart of this Settlement Agreement may be transmitted by facsimile, and such counterpart shall be treated as an original. The fully executed Settlement Agreement that is filed with the Court, however, will contain all original signature pages. All of the Exhibits to the Settlement Agreement are material and integral parts hereof.

k. Other than as expressly set forth in this Settlement Agreement, no party to the Settlement Agreement has relied on any representation of another party in entering into the Settlement Agreement.

l. No provision of this Settlement Agreement may be modified except by a writing signed by all parties hereto.

m. Subject to the Claims Administration Memorandum (Exhibit B hereto), the parties agree that this Court shall retain jurisdiction over the interpretation and implementation of this Settlement Agreement.

n. This Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, maintained, or attempted in breach of this Settlement Agreement.

o. This Settlement Agreement, the Notice of Class Action Settlement, the Canadian Summary Notice and the Supplemental Agreement Regarding Opt-Outs contain an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties; set forth the entire agreement among the Parties with respect to its subject matter; and are not subject to any condition not provided for herein, except that Exhibit A may be modified up until three days prior to the date on which plaintiffs file their Motion for Preliminary Settlement Approval, for the sole purpose of adding publishers to the list of Participating Publishers. In all other respects, this Agreement and the Supplemental Agreement Regarding Opt-Outs may not be changed, altered or amended other than by a written agreement signed by the party sought to be charged with such change, alteration, or amendment. The Parties shall not, in any proceeding or otherwise, use or refer to any parol evidence with regard

to the interpretation or meaning of this Agreement and the Supplemental Agreement Regarding Opt-Outs.

p. The parties agree that no party is a “prevailing party” in the Action.

q. This Agreement is not intended to, and does not, create any rights or benefits for any party that is de-listed by the Database Defendants pursuant to paragraph 3.d of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives on the ____ day of _____, 2005.

Michael J. Boni
Kohn, Swift & Graf, P.C.
One South Broad Street
Suite 2100
Philadelphia, PA 19107

Diane S. Rice
Hosie, Frost, Large & McArthur
One Market Street
Spear Street Tower, 22nd Floor
San Francisco, CA 94105

A. J. De Bartolomeo
Girard Gibbs & De Bartolomeo LLP
601 California St., Suite 1400
San Francisco, CA 94108

Lead Counsel for Plaintiffs and the Class

Reed Elsevier Inc.

By:

Title:

Thomson Corporation

By:

Title:

Gale Group, Inc.

By:

Title:

Dialog Corporation

By:

Title:

West Publishing Corporation d/b/a/ West Group

By:

Title:

Dow Jones & Company, Inc.

By:

Title:

Dow Jones Reuters Business Interactive, LLC,
d/b/a/ Factiva

By:

Title:

EBSCO Industries, Inc.
By:
Title:

Knight Ridder Inc.
By:
Title:

Knight Ridder Digital
By:
Title:

Proquest Company
By:
Title:

Union-Tribune Publishing Company
By:
Title:

NewsBank, inc.
By:
Title:

MediaStream Inc.
By:
Title:

The New York Times Company
By:
Title:

The Copley Press, Inc.
By:
Title:

Summary of Exhibits

Exhibit A	Participating Publishers
Exhibit B	Claims Administration Memorandum
Exhibit C	Proposed Order for Preliminary Settlement Approval
Exhibit D	Summary Notice of Class Action Settlement
Exhibit E	Publications Carrying Summary Notice
Exhibit F	Proposed Order of Dismissal and Final Judgment

EXHIBIT A

EXHIBIT A

PARTICIPATING PUBLISHERS

(The parties expressly agree that this list may be augmented at any time up until three days prior to the date on which plaintiffs file their Motion For Preliminary Settlement Approval.)

American Lawyer Media Inc.
Atlantic Media Inc.
Capital City Press
Capital Newspapers
Cox Enterprises, Inc.
Daily News, L.P.
Dow Jones & Company, Inc.
Forbes Inc.
Freedom Communications, Inc.
Gannett Co., Inc.
Gruner & Jahr USA Publishing
Hachette Filipacchi Media U.S., Inc.
Johnson Newspaper Corp.
Knight Ridder, Inc.
Landmark Communications, Inc.
Media General, Inc.
Media News
News America Incorporated
Newspaper Association of America
NewTimes Media LLC
North Jersey Media Group Inc.
Primedia Inc.
The Capital Times
The Copley Press, Inc.
The Dallas Morning News
The Hearst Corporation
The McClatchy Company
The McGraw-Hill Companies, Inc.
The New York Times Company
The Press-Enterprise
The Thomson Corporation
The Washington Post Company
Time Inc.
Tribune Publishing Company
Wisconsin State Journal
Ziff Davis Media LLC

EXHIBIT B

EXHIBIT B - CLAIMS ADMINISTRATION MEMORANDUM

This claims administration process pertains to Subject Works authored in U.S. publications. Subject Works authored abroad may require some different or further information and/or process, to be mutually agreed by the parties. Terms used herein shall have the same meaning as in the Settlement Agreement.

1. The Claim Forms

a. Claim forms will be made available for submission by Claimants in either electronic form or paper form.

b. Plaintiffs will design the online and paper claim forms in a manner designed to make the claims making process as simple and convenient for the Claimant as practicable. The design of the claim forms shall be subject to the Defense Group's approval, and such approval is not to be unreasonably withheld.

2. Submission by Claimant

a. Each Claimant must submit a single claim form for all of his or her claimed Subject Works. Claimants should provide the following information to the extent reasonably possible:

i. Name and social security number of Claimant

ii. For each Subject Work claimed,

(1) Title of Subject Work used on first publication (as accurately as possible) or specific subject matter of the Subject Work sufficient to permit identification of specific articles;

(2) Name and publication date of newspaper or magazine publishing the Subject Work;

(3) If registration is claimed, registration number and date, together with a copy of either the registration certificate, or the registration application, or a printout from the Library of Congress web site showing registration number, date of registration or registration application, and publication date. (Some of this registration information is available at <http://www.copyright.gov/records/cohm.html>);

(4) Amount paid (if any) to the Claimant, by the publication, for the Subject Work (and attaching supporting material if conveniently available);

(5) For Subject Works authored in the United States,¹ with respect to each Subject Work claimed, a statement that the Claimant was not an employee or working under a “work for hire” agreement, but rather was working on a freelance basis;

(6) If the Claimant ever was an employee of that publisher, the approximate dates;

(7) Statement either that the Claimant has never had a written agreement granting electronic rights to that publisher with respect to any claimed Subject Works or, if he or she has ever signed such an electronic rights agreement with that publisher, providing a copy of such agreement (or stating the date of such agreement);

(8) Statement that no claim is being submitted for other versions, revisions, or variants of the Subject Work prepared without the Claimant’s editorial assistance or for which the Claimant did not receive additional payment; and

(9) If known, databases on which Subject Work has appeared.

iii. A certification that, to the best of the Claimant’s knowledge, information and belief, any and all information provided by the Claimant in connection with the claim is accurate.

b. The inability by Claimants to document their claims after a reasonable search for the documentation or to identify on which databases their Subject Works appeared shall not necessarily render such Claimants ineligible to receive his or her full Settlement Payment under the Plan of Allocation; claim allowance depends on sections 3-5 below.

3. Initial Claim Computation and Evaluation by Claims Administrator

a. The Claims Administrator will compute an initial per claim damage award per Subject Work, based on information provided. In making those computations:

i. Statutory damage eligibility requires registration certificate, printout or application reflecting timely registration or application for registration per 17 U.S.C. § 412(2);

ii. Eligibility for "registered" categories requires registration certificate or

¹ For Subject Works first published in the United States, it will be the burden of the Participating Publisher or Supplemental Participating Publisher to show that they had the necessary rights to reproduce Subject Works in electronic databases. For Subject Works first published abroad, it will be the burden of the claimant to show that the publisher of the collective work lacked sufficient rights to license the work to the defendant electronic database(s) for distribution thereby.

printout reflecting registration before December 31, 2002, and, for Category A Subject Works, a certificate or application dated either before publication or first infringement, or not more than three months after publication (Claims Administrator can search online and use the Library of Congress database to establish registration);

iii. Eligibility for and calculation of awards for Subject Works requires Claims Administrator to ascertain that each Subject Work:

- (1) Has been distributed or displayed by a Defense Group member;²
- (2) Is not self-evidently excluded from the class definition and settlement agreement (*i.e.*, software); and
- (3) Was published either after January 1, 1995; between January 1, 1985 and December 31, 1994; prior to January 1, 1985; or prior to 1978, in order to determine any reduction in payments due to the time period in which the Subject Work was created.

iv. A claim submitted by a Claimant will be eligible to be processed and assessed by the Claims Administrator if it identifies (i) a specific identifiable publication, (ii) a particular date or dates (although precision is not required), and (iii) title or subject matter sufficient to permit identification of particular Subject Works to which the Claimant is referring. By way of example:

-Four articles by Jack Smith in Newsweek in 1985 on soccer, Uruguay, Clifford Irving, and the Amazon” suffices to comprise four claims that can be processed and assessed;

-Articles in Sports Illustrated from 1982-1989, or Articles in various publications during the 1980s” fail to provide sufficient information to be processed, and will be disallowed.

v. The Claims Administrator will e-mail to Plaintiffs’ Lead Counsel and the Defense Group a Weekly Report that will contain, among other things, the claims presented to the extent they appear valid, the computation of initial claim awards, and disallowed or disputed claims (*see infra* paragraph 4.a.).

² The Claims Administrator will have access to lists (including electronic, searchable lists when available) of publications that have been online and the pertinent dates. Having ascertained that the relevant issue of the publication was online, the Subject Work would be presumed to have been online, subject to the demonstration by the publisher (see step iv.) that the Subject Work (or category of Subject Works of which the Subject Work is a part) never was part of the text distributed online, or was not published by it at all (*i.e.*, did not exist).

4. Review by Publishers or Databases

a. Each Participating Publisher and Supplemental Preliminary Participating Publisher will have 30 days – or, if the publisher has received more than 150 claims, 45 days – to object to the inclusion of any or all Subject Works listed in a given claim, by certifying that any material fact submitted by the Claimant is false (*e.g.*, the claimed Subject Work was never published, is not a Subject Work under the Settlement Agreement, was written for \$20, not \$250; the Claimant was an employee; the Subject Work is subject to an applicable written grant of electronic rights, or that the work is otherwise ineligible).

b. Objections should be supported by demonstrative evidence that the claim is invalid, if such evidence is in the publisher’s possession, custody or control at the time of the objection, but it is recognized that such evidence may not exist or be obtained with reasonable effort, and other evidence (*e.g.*, declarations by employees or officers of the publication) may suffice. Evidence may pertain to the publisher’s general policies and practices, and does not need to specifically gainsay facts contained in the claim.

By way of example:

– A publisher can support an objection to a claim with a copy of a written grant of electronic rights from the Claimant covering the Subject Work in question. Such documentation would lead to rejection of the claim, unless the Claimant can successfully cast doubt on the authenticity of the grant.

– A publisher can support an objection to a claim with a certification or other evidence that a check of its records reflected no such Subject Work had been published by that publication, or that that Claimant did not author the work. Such documentation would lead to rejection of the claim, unless the Claimant can successfully cast doubt on the certification and/or evidence.

– A publisher can support an objection to a Subject Work it believes was never carried on a defendant database with demonstrative evidence or, if it does not exist or cannot be located with reasonable effort, a certification, that it routinely followed a policy of submitting to a database only works by staff writers or articles for which it had in hand written grants of electronic rights, and that freelance works without written rights were routinely excluded from uploading to the database. Such documentation would lead to rejection of the claim, unless the Subject Work was in fact on a defendant database or the Claimant can otherwise successfully cast doubt on the certification and/or evidence.

c. The Claims Administrator shall notify the Database Defendants of all claims which appear not to have been reviewed by Participating or Supplemental Participating Publishers. Once the Database Defendants are notified by the Claims Administrator that no objection was obtained from a publisher with respect to claims presented to that publisher, the defendant database will have up to 45 days – or, if a database has more than 1000 claims to review, up to 60 days – to object to any such claims. Such objections should be supported by demonstrative evidence to the extent reasonably available, or, if not, certifications, establishing that such articles were not distributed, displayed, or transmitted by such database, or that the work is otherwise ineligible.

vi. Claims not objected to in a timely manner, or not found invalid on their face by the Claims Administrator, will be paid pursuant to paragraph 7 below.

vii. Contested claims will be put aside for resolution (see 5 below).

5. Dispute Resolution

a. Plaintiffs' Lead Counsel and the Defense Group will be notified by the Claims Administrator of disallowed or disputed claims.

b. The parties will attempt informally to resolve all disputed claims on a rolling basis.

c. Claimants submitting a disallowed claim will receive a letter explaining the reason(s) for the disallowance, and will be afforded an opportunity to cure any deficiencies so as to render the claim valid.

d. If the parties are unable to resolve all disputed claims, the remaining disputed claims will be resolved by binding arbitration. The arbitration panel shall consist of Kenneth Feinberg, one designee of plaintiffs and one designee of the Defense Group. The arbitrations will be set at the earliest possible date after the end of the claims period, and shall be conducted sequentially on one day (or consecutive days) at an agreed to location in New York City. The Claimant may participate by telephone.

6. Final Report.

The Claims Administrator will prepare a final report, for distribution pursuant to ¶ 3.c. of the Settlement Agreement. The Final Report will list, for each Claimant, the Subject Works deemed valid, the original publication of each Subject Work, the amount per Subject Work under the Plan of Allocation, and the total Settlement Payment.

7. Payment of Claims

a. Upon receipt of all outstanding amounts due pursuant to the terms of the

Settlement Agreement according to the procedures set forth in 3(c) of that agreement, the Claims Administrator shall prepare a single check for each claimant for the total amount due that Claimant as described in the Final Report.

b. The Claims Administrator shall mail each check by first class mail to the address provided by the Claimant in the claim form. In the event that checks are returned as undeliverable or are not cashed or deposited after 90 days (“Unclaimed Funds”), after one good faith effort to resend the check via publicly available information on the Internet, and subject to Court approval, the Claims Administrator shall disburse any Unclaimed Funds pursuant to a *cy pres* motion made by plaintiffs. The parties will agree to the proposed recipient of the award.

In re Literary Works in Electronic Databases Copyright Litigation

CLAIM FORM

INSTRUCTIONS FOR CLAIM FORM AND WORKSHEET

Please provide the information requested in Section A below, fill out a separate Worksheet for each of your Subject Works, in accordance with the instructions at Section B below, sign the certification in Section C, and mail your completed Claim Form to the address listed in Section D. Prior to completing the Claim Form and Worksheets, you should gather as much of the following information and documentation as you can with respect to each of your Subject Works: Title, date and publisher of first publication, amount the original publisher paid you for the Subject Work, and, if applicable, U.S. Copyright Office registration certificates, applications or other documentation of copyright registration.

The inability to document your claims is not a bar to your participation in this Settlement, and you are encouraged to complete and submit the Claim Form and Worksheets with whatever information you are able to provide.

A. GENERAL INFORMATION

1. Name: _____
2. Social Security No.: _____
3. Street Address: _____
City: _____
State: _____
Zip code: _____
4. E-mail Address: _____
5. Were you ever an employee of the original publisher of any of your Subject Works?
Yes No

If you checked “Yes,” please state the name of each publisher that employed you, and the dates of your employment with that publisher (if you do not know the exact dates of employment, give your best approximation of the dates): _____

6. Did you ever sign a written agreement granting electronic rights to the original publisher of any or all of your Subject Works?

Yes No

If you checked “Yes,” please attach a copy of any such agreements to this Claim Form.

B. INSTRUCTIONS FOR COMPLETING THE WORKSHEETS

You must complete a separate Worksheet for each of your Subject Works.

Number your Worksheets in the box next to “Subject Work Number,” and attach all of your Worksheets to this Claim Form.

Other versions, revisions, or variants of a Subject Work for which you received additional payment, or that were prepared with material additional editing, revision or composition by you, are considered separate Subject Works. In those cases, you should fill out separate Claim Worksheets for each such version, revision or variant.

“Letters to the Editor” and articles in scientific and research-oriented medical journals are not considered Subject Works, and you should not complete Worksheets for them.

On the Worksheet, provide the information requested in accordance with the following instructions. If you need more Worksheets, please make photocopies of the attached Worksheet.

1. Title or subject matter of the Subject Work

As accurately as possible, state the title of the Subject Work. If you cannot supply the title, describe the subject matter of the Subject Work as completely as possible to permit identification of the Subject Work.

2. Name and date of publication

State the name of the publication that first published the Subject Work, and the date of original publication. If you cannot supply the exact date, give your best approximation of the date.

3. U.S. copyright registration

Indicate whether you registered your Subject Work with the U.S. Copyright Office, and, if so, supply any of the following documentation:

(a) registration certificate, or (b) the registration application, or (c) a printout from the Library of Congress Web site showing the registration number, date of registration or registration application. (This information may be available at <http://www.copyright.gov/records/cohm.html>.)

If you require assistance, please go online at www.copyrightclassaction.com, or call 1-800-xxx-xxxx.

4. Amount paid to you for Subject Work

Please state the amount you were paid by the original publisher for the Subject Work, and, if available, attach to the Worksheet a copy of any documentation that you were paid that amount.

5. Removal of Subject Work

You have the option of requiring the removal of some or all of your Subject Works from the electronic databases (except ProQuest, which is an image-based, “microform” format). **Please note that for every Subject Work you request be removed, you will receive only 65% of the amount otherwise payable under the settlement for the claim based on that Subject Work.**

If you want all of your Subject Works removed, please check this box:

If you want some but not all of your Subject Works removed, you will have an opportunity in the Worksheets to identify which specific Subject Works you want removed.

C. CERTIFICATION

I certify under penalty of perjury that the information I have provided on this Claim Form and the accompanying Worksheet(s) is accurate to the best of my knowledge, information, and belief.

Date: _____

Signature

D. MAIL THE CLAIM FORM, ALL WORKSHEETS AND SUPPORTING DOCUMENTATION (IF ANY), POSTMARKED NO LATER THAN [DATE], TO:

Claims Administrator
Electronic Databases Copyright Litigation
P.O. Box _____
[City, State ZIP]

In re Literary Works in Electronic Databases Copyright Litigation

CLAIM WORKSHEET

For: _____
[Write your name here]

Social Security Number: _____

Subject Work Number

1. Title or subject matter of the Subject Work: _____

2. Name of the original print publication and publication date (if you do not know the exact date, give your best approximation of the date): _____

3. Did you register the Subject Work with the United States Copyright Office?
Yes No

If you checked "Yes," please attach supporting documentation to this Worksheet.

4. Amount the original publisher paid you for the Subject Work: _____

If available, please attach to this Worksheet a copy of any documentation that you were paid that amount.

5. Check here if you want this Subject Work removed from the electronic databases:

(Applicable only if you did not check the box in Section B.5. of the Claim Form.)

If you check the box, you will receive only 65% of the amount otherwise payable under the settlement for the claim based on this Subject Work.

- END OF WORKSHEET -

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC)
DATABASES COPYRIGHT LITIGATION)
_____)

MDL No. 1379

**[PROPOSED] ORDER FOR
PRELIMINARY SETTLEMENT
APPROVAL**

This matter is before the Court pursuant to the motion of the plaintiffs in the above-captioned class action (the “Action”) for preliminary approval of the settlement plaintiffs reached with defendants The Dialog Corporation, Dow Jones & Company, Inc., Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva, EBSCO Industries, Inc., The Gale Group Inc., Knight Ridder, Inc., Knight Ridder Digital, Mediastream, Inc., NewsBank, inc., The New York Times Company, ProQuest Company, ProQuest Information and Learning Company, Reed Elsevier Inc., The Thomson Corporation, The Copley Press, Inc., and West Publishing Corporation d/b/a West Group, and with the non-party “Participating Publishers,” which are listed at Exhibit A to the parties’ Settlement Agreement dated March 21, 2005. (Defendants and the Participating Publishers shall be referred to herein as the “Defense Group.”) Plaintiffs have moved for an order approving the settlement of the Action in accordance with the Settlement Agreement between plaintiffs and the Defense Group. Having read and considered the Settlement Agreement, and based upon familiarity with the files and proceedings in this matter, the Court finds that:

1. Plaintiffs filed the Action alleging, on behalf of themselves and a putative class of others similarly situated, that defendants violated the federal copyright laws;
2. Defendants have vigorously contested the allegations;
3. The parties have entered into a Settlement Agreement that has been filed with the Clerk of the United States District Court for the Southern District of New York;
4. The Court has reviewed the Settlement Agreement and determined it to be within the range of possible approval; and
5. The Court has reviewed the forms of notice attached to the Settlement Agreement and Declaration of A. J. De Bartolomeo in Support of Plaintiffs' Motion for Preliminary Settlement Approval, as modified by the amended notices handed to the Court at the hearing on March 31, 2005, and the Court has determined that the notices adequately advise class members of the terms of the settlement and further proceedings.

Accordingly, it is hereby **ORDERED** as follows:

6. The motion is GRANTED. The Settlement Agreement is hereby preliminarily approved.
7. The case shall proceed as a class action with plaintiffs Michael Castleman, E.L. Doctorow, Tom Dunkel, Andrea Dworkin, Jay Feldman, James Gleick, Ronald Hayman, Robert Lacey, Ruth Laney, Paula McDonald, P/K Associates, Inc., Letty Cottin Pogrebin, Gerald Posner, Miriam Raftery, Ronald M. Schwartz, Mary Sherman, Donald Spoto, Robert E. Treuhft and Jessica L. Treuhft Trust, Constance Romilly, trustee, Robin Vaughan, Robley Wilson, Marie Winn designated as Class Representatives, and with the following Class provisionally

certified for settlement purposes only (the “Class”):

All persons who, individually or jointly, own a copyright under the United States copyright laws in an English language literary work that has been reproduced, displayed, adapted, licensed, sold and/or distributed in any electronic or digital format, without the person’s express authorization by a member of the Defense Group or any member’s subsidiaries, affiliates, or licensees (a) at any time on or after August 15, 1997 (regardless of when the work first appeared in an electronic database) or (b) that remained in circulation after August 15, 1997, even if licensed prior thereto, including English language works qualifying for U.S. copyright protection under an international treaty (hereinafter “Subject Work”). Notwithstanding anything in the immediately preceding sentence to the contrary, a copyrighted work created prior to January 1, 1978, is a Subject Work only if it (a) has been electronically or digitally reproduced, displayed, adapted, licensed, sold and/or distributed by a Participating Publisher without the person’s express authorization, and (b) is from a publication whose pre-1978 works have not been excluded from this settlement, as indicated on Exhibit A to the Settlement Agreement. Included in the Class are all copyright owners of Subject Works who, after June 25, 2001, responded to The New York Times Company’s Restoration Request website or print advertisements.

8. A final settlement/fairness hearing shall be held on _____, 2005, at __: __ (the “Hearing”) before the undersigned in Courtroom 618, United States District Court for the Southern District of New York, United States Courthouse, 40 Centre Street, New York, NY 10007. The purpose of the Hearing shall be to determine: (a) whether the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and adequate; and (b) whether the proposed Settlement Agreement should be approved by the Court and judgment entered thereon. At the Hearing, or such adjourned date as the Court deems appropriate, Plaintiffs’ Lead Counsel and any interested person shall be heard on the fairness, reasonableness, and adequacy of the terms of the Settlement Agreement and on Class Counsel’s application for an award of attorneys’

fees and reimbursement of expenses as set forth in the Settlement Agreement. The Court preliminarily approves the proposed Settlement Agreement, including the procedures for establishing and administering the settlement funds and procedures for notice, exclusion, and objection as described therein, as fair, reasonable, and in the best interests of the Class.

9. The Court reserves the right to adjourn the Hearing or any adjournment without further notice other than an oral announcement at or prior to the Hearing or any adjournment thereof. The Court also reserves the right to approve the proposed Settlement Agreement at or after the Hearing with or without modification as consented to by the parties to the Settlement Agreement and without further notice to members of the Class. The Court shall retain jurisdiction to consider all applications arising out of or connected with the proposed Settlement Agreement.

10. The Court approves as to form, content, and method the Notice of Class Action Settlement, the Summary Notice of Class Action Settlement (the “Summary Notice”), and the Canadian Summary Notice, substantially in the forms attached to the Declaration of A. J. De Bartolomeo in Support of Plaintiffs’ Motion For Preliminary Settlement Approval as Exhibits “A,” “B” and “C.”

11. Within sixty days of the date of this Order, Lead Counsel shall cause to be forwarded by e-mail or United States mail, postage prepaid, at the last known mailing address, to each identifiable class member as defined above, the Notice of Class Action Settlement (the “Notice”).

12. Also within sixty days of the date of this Order, the parties shall cause to be

published, in the time and manner set forth in the Settlement Agreement, the Summary Notice and Canadian Summary Notice, and to otherwise comply with the notice program as set forth in the Settlement Agreement.

13. At least five business days prior to the Hearing, Lead Counsel shall certify compliance with the provisions of paragraphs 11 and 12 of this Order by declaration describing the aforementioned mailings and publications, and shall file with the Court Plaintiffs' Motion for Final Settlement Approval and supporting papers, and Motion for Approval of Plaintiffs' Attorneys' Fees and Reimbursement of Expenses and supporting papers.

14. The form and method of Notice, Summary Notice and Canadian Summary Notice specified herein is hereby approved and determined to be the best notice practicable under the circumstances, and the Court finds that the Notice, Summary Notice and Canadian Summary Notice comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure and with applicable standards of due process.

15. Members of the Class defined above will be excluded from the Class only if they comply with the procedures for exclusion as set forth in the Notice and Settlement Agreement, which procedures are hereby approved as fair and reasonable. Unless they have excluded themselves, members of the Class shall be bound by all determinations and judgments in this case relating to the proposed settlement, whether favorable or unfavorable, including without limitation the dismissal of the Action with prejudice and the release of the Defense Group from liability to members of the Class. Persons who will timely exclude themselves from the Class in accordance with the prescribed procedures will not be bound by any orders or judgments entered

in this Action related to the proposed settlement, and shall not receive any benefits provided for in the proposed Settlement Agreement in the event it is approved by the Court.

16. Persons who fall within the Class definition and do not exclude themselves may enter an appearance on their own behalf or through counsel of their own choice at their own expense. If they do not enter an appearance, they will be represented by Plaintiffs' Lead Counsel.

17. Any member of the Class who does not exclude himself or herself but objects to: (i) the proposed Settlement Agreement; (ii) the class action determination; (iii) dismissal of the Action or the judgment and releases to be entered with respect thereto; (iv) the Proof of Claim; and/or (v) Class Counsel's application for attorneys' fees and reimbursement of costs and expenses in the Action; or who otherwise wishes to be heard, may appear in person or through his or her own attorney at the hearing and present evidence or argument that may be proper and relevant; provided, however, that no person other than counsel for plaintiffs and the Defense Group in the Action shall be heard and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), unless, not later than _____, 2005, such person has (1) filed a precise written statement of his or her objections and any related or supporting papers or briefs, (2) stated his or her intention to appear and be heard at the Hearing, and (3) delivered, by United States Mail, copies of such papers to the Court and counsel for the parties with a postmark no later than _____, 2005, at the addresses shown below:

The District Court

Mr. J. Michael McMahon,
Clerk of the Court
United States District Court
Southern District Of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Plaintiffs' Lead Counsel

Michael J. Boni, Esquire
Kohn Swift & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107-3389

Diane S. Rice
Hosie, Frost, Large & McArthur
Spear Street Tower, 22nd Floor
One Market Street
San Francisco, CA 94105

A.J. De Bartolomeo
Girard Gibbs & De Bartolomeo, LLP
601 California St., Suite 1400
San Francisco, CA 94108

Any attorney hired by a class member to represent that class member or for the purpose of making objections on behalf of that class member is hired at that class member's expense.

Any attorney hired by a class member must file and serve a Notice of Appearance on or before _____, 2005, at the addresses shown above. Any objection not timely made and in the manner provided herein shall be deemed waived and forever barred.

18. Any class member who retains an attorney to make objections to the proposed settlement on behalf of the class member or otherwise to represent the Class member in this litigation does so at the class member's own expense. Any such attorney must file a notice of

appearance in this litigation with the Clerk of this Court and serve copies of the notice on the attorneys listed in paragraph 17 above, no later than _____, 2005.

19. Pending final determination of whether the proposed Settlement Agreement should be approved, plaintiffs and all members of the Class, either individually, directly, representatively, derivatively, or in any other capacity, are barred and enjoined from commencing or prosecuting any action or proceeding asserting any claims whatsoever on behalf of themselves or the Class against the Defense Group members or Supplemental Participating Publishers, or any of them, that were brought or could have been brought in the Consolidated Amended Class Action Complaint or the complaint filed in *The Authors Guild, et al. v. The New York Times Company*, and that relate to or arise out of the claims as described in those complaints.

20. If the proposed settlement is not approved by the Court or shall not become effective for any reason whatever, the proposed Settlement Agreement (including any modification thereof made with the consent of the parties as provided therein), any class certification herein and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force and effect.

21. Neither the proposed settlement nor the provisions contained in the Settlement Agreement, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of plaintiffs, defendants, other members of the Defense Group, Supplemental Participating Publishers, any

member of the Class, or any other person of any liability or wrongdoing by any of them, and shall not be offered or received in evidence in any action or proceeding (or be used in any way) as an admission or concession of any liability or wrongdoing of any nature, and shall not be construed as an admission or concession that any plaintiffs, any member of the Class or any other person has been injured or suffered any damage.

22. The parties shall have the option to withdraw from the proposed Settlement Agreement for the reasons set forth therein.

23. The Court reserves jurisdiction over the subject matter and as to each party to the Settlement Agreement with respect to the interpretation, effectuation, and implementation of the Settlement Agreement for all purposes, including enforcement of any of the terms thereof at the instance of any party and resolution of any disputes that may arise.

DATED this _____ day of _____, 2005.

Honorable George M. Daniels,
United States District Judge

EXHIBIT D

Legal Notice
U.S. District Court, Southern District of New York

To: *Freelance authors of English language literary works*

Summary notice of class action settlement. Please read this notice.
It may affect your legal rights.

What is this proposed settlement about?

A settlement has been reached in a class action lawsuit alleging that commercial electronic databases and newspapers and magazines infringed the copyrights of freelance authors. The lawsuit alleges that newspapers and magazines, after publishing the works with the authors' permission, then sold them to the electronic databases without the authors' permission.

The settlement applies to English language literary works that were reproduced on a commercial electronic database without the author's permission. **You may be eligible to participate in the settlement even if your works were not registered with the U.S. Copyright Office, and even if they were originally published outside the U.S.** Excluded are works for hire and works for which the author granted electronic rights to the original publisher.

There is other important detail on which works are included and excluded. That detail, as well as other important information regarding this settlement and your options with respect to this settlement, is contained in the full Settlement Notice, available at www.copyrightclassaction.com.

What do I need to do?

To remain a class member, you do not need to do anything. If the settlement is approved, you will be bound by its terms, and you will need to submit a claim form to be eligible for a settlement award. Claims forms are available at www.copyrightclassaction.com.

To exclude yourself from the settlement you must file a written request for exclusion postmarked by **(45 days after mailed notice)** and mailed to: Claims Administrator, *Electronic Databases Copyright Litigation*, 105 Maxess Road, Melville NY 11747; or by going online at www.copyrightclassaction.com. To object to the settlement, you must follow the instructions for appearing in Court and filing and serving the objection on or before **(45 days after mailed notice)** as set forth in the Settlement Notice.

Final Fairness Hearing.

A hearing on the proposed settlement will be held **(date, 2005)** before the Honorable George B. Daniels, U.S. District Court, 500 Pearl St., New York NY 10007, to determine whether the

settlement should be approved. Class members or their counsel may appear in Court.

Where can I get more information?

Copies of the entire settlement agreement, full Settlement Notice, and Claim Form are available at www.copyrightclassaction.com.

Please do not contact the Court.

Dated: January x, 2005

By Order of the Court
Honorable George M. Daniels

EXHIBIT E

(in separate pdf file)

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC)
DATABASES COPYRIGHT LITIGATION)
_____)

MDL No. 1379

**[PROPOSED] ORDER FOR
FINAL APPROVAL OF
SETTLEMENT AND FINAL
JUDGMENT**

This matter is before the Court pursuant to the motion of plaintiffs in the above-captioned class action (the “Action”) for final approval of settlement with defendants The Dialog Corporation, Dow Jones & Company, Inc., Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva, EBSCO Industries, Inc., The Gale Group Inc., Knight Ridder, Inc., Knight Ridder Digital, Mediastream, Inc., NewsBank, The New York Times Company, ProQuest Company, ProQuest Information and Learning Company, Reed Elsevier Inc., The Thomson Corporation, The Copley Press, Inc., and West Publishing Corporation d/b/a West Group (collectively, “defendants”), and with non-parties _____ (“Participating Publishers”). (Defendants and the Participating Publishers shall be referred to collectively herein as the “Defense Group.”)

Plaintiffs have moved for an Order approving the settlement of the Action in accordance with a Settlement Agreement dated December, __, 2005 between plaintiffs and the Defense Group (the “Settlement Agreement”). Having read and considered the Settlement Agreement of

the parties and having held a hearing on the fairness of the proposed settlement, at which objectors to the settlement could appear, and based upon familiarity with the files and proceedings in this manner, the Court finds that:

1. The Court preliminarily approved the Settlement Agreement by Order of _____, 2005 (the “Preliminary Approval Order”).
2. Notice of the proposed settlement has been timely disseminated in accordance with the terms of the Preliminary Approval Order, which approved the proposed settlement and authorized such notice. Such notice is the best practicable notice to be provided and satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.
3. The issues as to liability and remedies in the Action are issues as to which there are substantial grounds for difference of opinion, and the proposed settlement of the Action constitutes a resolution of those issues that is fair, reasonable and adequate to the members of the Class certified herein.

Accordingly, it is hereby

ORDERED as follows:

4. The Settlement Agreement is approved as fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure and in the best interest of the Class, and the parties are directed to consummate the Settlement Agreement in accordance with its terms.
5. The following Class (the “Class”), provisionally certified in the Preliminary Approval Order, is now finally certified for purposes of this settlement only:

All persons who, individually or jointly, own a copyright under the United States copyright laws in an English language literary work that has been reproduced, displayed, adapted, licensed, sold and/or

distributed in any electronic or digital format, without the person's express authorization by a member of the Defense Group or any member's subsidiaries, affiliates, or licensees (a) at any time on or after August 15, 1997 (regardless of when the work first appeared in an electronic database) or (b) that remained in circulation after August 15, 1997, even if licensed prior thereto, including English language works qualifying for U.S. copyright protection under an international treaty (hereinafter "Subject Work"). Notwithstanding anything in the immediately preceding sentence to the contrary, a copyrighted work created prior to January 1, 1978, is a Subject Work only if it (a) has been electronically or digitally reproduced, displayed, adapted, licensed, sold and/or distributed by a Participating Publisher without the person's express authorization, and (b) is from a publication whose pre-1978 works have not been excluded from this settlement, as indicated on Exhibit A. Included in the Class are all copyright owners of Subject Works who, after June 25, 2001, responded to The New York Times Company's Restoration Request website or print advertisements.

The Court finds that (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) claims of the Representative Plaintiffs are typical of the claims of all members of the Class; (d) the Representative Plaintiffs have fairly and adequately protected and will fairly and adequately protect the interests of the Class; (e) common questions of law and fact predominate over questions affecting only individual members of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

6. The Action is hereby dismissed, with prejudice and without costs.
7. The releases contained in the Settlement Agreement are hereby effective.
8. There is no just reason for delay and the judgment of dismissal with prejudice as to defendants shall be final.

9. The Settlement Agreement and any proceedings taken pursuant thereto are not, and should not in any event be: (a) offered or received as evidence of a presumption, concession or admission by any Released Party of any fact or matter; or (b) offered or received as evidence of a presumption, concession or admission of any liability, fault, wrongdoing or other dereliction of duty, or (except with written consent of the Released Party) in any way referred to for any reason in the Action, or in any other civil, criminal, bankruptcy, or administrative action or proceeding; provided, however, that reference may be made to the Settlement Agreement in such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement.

10. Consummation of the Settlement shall proceed as described in the Settlement Agreement, and the Court hereby reserves jurisdiction over the subject matter and as to each party to the Settlement Agreement with respect to the interpretation, effectuation, and implementation of the Settlement Agreement for all purposes, including enforcement of any of the terms hereof at the instance of any party and resolution of any disputes that may arise relating in any way to, or arising from, the implementation of the Settlement Agreement or the implementation of this Order.

11. Attorneys' fees and reimbursement of expenses to Class Counsel in the total amount of \$4.4 million are hereby approved and awarded.

12. A special fee award to the twenty-one Representative Plaintiffs, in the amount of \$2,000 each, is hereby approved and awarded.

13. Pursuant to the terms hereof, final judgment shall be entered as provided herein.

DATED this _____ day of _____, 2005.

Honorable George M. Daniels,
United States District Judge

CANADIAN NOTICE

(in separate pdf file)

NOTICE OF CLASS ACTION SETTLEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC)
DATABASES COPYRIGHT LITIGATION)

M.D.L. No. 1379

Notice Of Class Action Settlement

TO: AUTHORS AND OTHER PERSONS WHO OWN A COPYRIGHT IN ENGLISH LANGUAGE LITERARY WORKS:

Your Rights May Be Affected By The Litigation And Proposed Settlement Described In This Notice. Please Read This Entire Notice Carefully Regarding Your Rights, Including Any Right You May Have To Share In This Settlement.

A pending class action lawsuit claims that commercial electronic databases, newspapers and magazines have violated the copyrights of freelance authors. The lawsuit asserts that after freelance authors' works were published in newspapers, magazines and other print publications with the authors' permission, those publications then licensed the works without the authors' permission to the commercial databases for electronic publication, in violation of the copyright laws.

A proposed settlement of the lawsuit has been reached on behalf a Class of all persons described in Section I.B. below. If you are a member of the Class, your rights will be affected by the proposed settlement. The purpose of this Notice is to inform you of the settlement, your legal rights as a member of the Class, and the possible courses of action available to you

IF, AFTER YOU HAVE READ THIS NOTICE, YOU HAVE QUESTIONS OR REQUIRE ASSISTANCE, PLEASE CONTACT THE AUTHORS GUILD AT WWW.AUTHORSGUILD.ORG; OR THE NATIONAL WRITERS UNION AT WWW.NWU.ORG; OR THE AMERICAN SOCIETY OF JOURNALISTS AND AUTHORS AT WWW.ASJA.ORG.

I. The Litigation

A. The Authors Claims

This lawsuit involves the copyright relationship between freelance authors, print publications (*e.g.*, newspapers and magazines) and electronic databases (*e.g.*, LEXIS/NEXIS) in

the age of electronic delivery of literary content. For years it was industry practice for freelance authors to sell their works to publications without a written contract. It was customary that, for a fee paid to the author, the author granted to the publisher the first right to publish the work in a specified edition of the newspaper or magazine, but in all other respects the author retained copyright ownership to the work.

In the 1980s and early 1990s, when electronic databases such as LEXIS/NEXIS came into existence, print publishers entered into license agreements authorizing the databases to copy and sell the first text (or portions) of the publications, including articles written by freelance contributors. (Articles written by the publications' staff writers are works made for hire and thus are the property of the publications. Accordingly, staff writers are not included in this litigation.) The print publications typically did not obtain the freelance authors' written permission for this subsequent publication of their works on the electronic databases. The Plaintiffs listed below and The Authors Guild, Inc., National Writers Union and American Society of Journalists and Authors allege that the databases and print publications violated the freelance authors' copyrights in the electronically reproduced works. They brought this lawsuit to provide relief to all freelancers. After nearly three years of difficult and contentious settlement negotiations mediated by Kenneth R. Feinberg, the parties reached the settlement described in this Notice.

The Defense Group (defined below) denies any wrongdoing or liability, and denies that any member of the Class would be entitled to damages if the case proceeded to trial. The Court has not ruled on any of the contentions of the parties. This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by either side.

B. The Parties

1. The Class

The Class consists of all persons who own a copyright under the United States copyright laws in an English language literary work that, at any time after August 14, 1997, has been reproduced, displayed, sold and/or distributed in an electronic format (*i.e.*, online, on CD-ROM, or in any other electronic format) by at least one of the databases or publications identified at Section I.A.3. below, without the person's authorization. **The works that are included in this definition and settlement will be referred to in this Notice as "Subject Works."**

IF YOU MEET THESE QUALIFICATIONS, YOU MAY BE INCLUDED IN THE SETTLEMENT EVEN IF:

- Your Subject Works were not registered with the U.S. Copyright Office.

- Your Subject Works were originally published outside of the U.S., **but only if** they were published in English in an English language publication.
- You signed a license agreement granting to a publisher “retroactive electronic rights” to Subject Works that had been previously electronically published without your permission. (However, if your written agreement contained express language waiving or releasing all copyright infringement claims pertaining to your previously written Subject Works, and you did not register your previously written Subject Works with the U.S. Copyright Office, then you may not submit claims for those Subject Works.)
- You authorized the New York Times Company to electronically publish your Subject Works pursuant to The Times Restoration Request Website or print advertisements shortly after June 25, 2001, when the U.S. Supreme Court ruled on New York Times v. Tasini.

2.

YOUR SUBJECT WORKS ARE EXCLUDED FROM THE SETTLEMENT IF:

- They were staff works, i.e., works written while you were employed by the publication(s) that originally published the works; or
 - You signed a written license granting the original print publisher the electronic rights to those works; or
 - They were not registered **and** you signed a written license agreement that contained a waiver or release against all copyright infringement claims for those works; or
- 3.
- They are letters to the editor, scientific and research-oriented medical journals, non-English language works, or content other than literary works.

If You Have One Or More Works That Qualify As “Subject Works,” And You Also Have Published Works That Do Not Qualify, You May Participate In The Settlement, But Only With Respect To The Subject Works.

ATTENTION FOREIGN AUTHORS:

If you own a copyright in a Subject Work published in a country outside the United States, you are advised to seek advice from an attorney familiar with the laws of that country to determine whether your interests would be better served by remaining in the Class and participating in this settlement or excluding yourself from the Class.

ATTENTION CANADIAN AUTHORS:

There are two copyright infringement class actions pending in Canada on behalf of freelance authors, among other contributors. The first action will be referred to in this Notice as Robertson I and is captioned Robertson vs. The Thomson Corporation, Thomson Canada Limited, Thomson Affiliates, Information Access Company and Bell Globemedia Publishing Inc. (Ontario (Canada) Superior Court of Justice 96-CU-110595CP), and the second action will be referred to in this Notice as Robertson II and is captioned Robertson vs. The Gale Group, Inc., Proquest Information and Learning Company, CEDROM-SNI Inc., Torstar Corporation, Rogers Media Inc. and Canwest Publications Inc. (Ontario (Canada) Superior Court of Justice 03-CU-252945CP). Both actions seek damages on behalf of freelance authors of original literary works that were published in a newspaper, magazine or other print media in Canada or in a Canadian edition of a non-Canadian-based publication (collectively “Canadian Publications”), which have been distributed or communicated to the public using electronic forms such as electronic databases or cd-roms. The plaintiff in these actions claims that the defendants (some of whom are also defendants and publishers participating in this settlement) have infringed rights under the Canadian *Copyright Act* by disseminating copies of such works in electronic form. **IF YOU AUTHORED FREELANCE WORKS IN A CANADIAN PUBLICATION, YOUR LEGAL RIGHTS MAY BE AFFECTED IN THESE ACTIONS, AND YOU ARE ENCOURAGED TO READ THIS INFORMATION VERY CAREFULLY.**

Robertson I:

On February 11, 1999, the Ontario Court of Justice granted permission for this case to proceed as a class action, on behalf of the class defined above. **IF YOU SUBMIT CLAIMS IN THIS SETTLEMENT FOR WORKS AS DESCRIBED ABOVE, YOU WILL NOT RELEASE ANY CLAIMS YOU MAY HAVE IN THE ROBERTSON I ACTION.**

Robertson II:

This proposed Canadian class action was commenced on July 25, 2003, but has not yet received permission of the Ontario Court to proceed as a class action. If plaintiff prevails, or if that case settles, the potential recovery through Robertson II may be greater or less than what you could receive under this settlement.

The Defendants In Robertson II May Take The Position That If You Do Not Exclude Yourself From This Settlement, You Will Be Releasing Your Claims In Robertson II. You Should Therefore Bear This In Mind When Deciding Whether You Wish To Participate In Or Exclude Yourself From This Settlement.

There is a difference of opinion whether the proposed settlement is satisfactory regarding the Canadian claims. The plaintiffs in the United States case and their lawyers (identified below) support this settlement, including as it relates to Canadian claims, and are of the opinion that:

(a) The claims in Robertson I are not being released at all, and therefore those claims are unaffected by this settlement.

(b) Robertson II is still in litigation and as with all litigation the outcome is uncertain. The proposed settlement offers freelance authors with works in Canadian Publications the opportunity to receive certain payments sooner without the risk associated with litigation.

(c) The proposed settlement is fair, reasonable and adequate for the Class including freelance authors of works first published in Canadian Publications. Under United States copyright law and international copyright treaties, freelance authors of works first published in Canadian Publications have the right to participate in the proposed settlement, and the Plan of Allocation described in the full Notice of Class Action Settlement reflects the differences in the value and risks of different class members' claims.

Heather Robertson, the plaintiff in the Canadian cases, and her lawyers (McGowan & Company, Suite 1400, 10 Bay St., Toronto, Ontario, Canada, M5J 2R8) oppose this settlement as it relates to the Canadian claims and are of the opinion that:

(a) Under Canadian law the U.S. Court does not have jurisdiction over Canadian claims, and, if the proposed United States settlement proceeds, Ms. Robertson will bring a motion to the Ontario Superior Court of Justice for an order to that effect.

(b) The proposed United States settlement is against the interests of the Canadian claimants because, among other things, it treats Canadian copyrights like unregistered United States copyrights. The proposed United States settlement does not properly take into account the fact that in Canada, unlike the United States, it is not necessary to register copyrights.

(c) To be certain that the United States settlement does not affect their rights under Canadian class actions, **ALL CANADIAN CLAIMANTS WHO READ THIS NOTICE SHOULD IMMEDIATELY OPT OUT OF THE UNITED STATES SETTLEMENT BY GOING ONLINE AT www.copyrightclassaction.com.**

You may wish to consult your own lawyer for a second opinion.

2. The Representative Plaintiffs And Associational Plaintiffs

The following individuals are serving as Representative Plaintiffs for the Class Michael Castleman, E.L. Doctorow, Tom Dunkel, Andrea Dworkin, Jay Feldman, James Gleick, Ronald Hayman, Robert Lacey, Ruth Laney, Paula McDonald, P/K Associates, Inc., Letty Cottin Pogrebin, Gerald Posner, Miriam Raftery, Ronald M. Schwartz, Mary Sherman, Donald Spoto, Robert E. Treuhaft and Jessica L. Treuhaft Trust, Constance Romilly, trustee, Robin Vaughan,

Robley Wilson, Marie Winn. The lawsuit was also brought by the following authors' rights trade associations: The Authors Guild, Inc., the National Writers Union and the American Society of Journalists and Authors. The Representative Plaintiffs and Associational Plaintiffs endorse this settlement and recommend that class members participate in the claims making process.

3. Defendants, The Defense Group, and The Supplemental Participating Publishers

a. The Defendants

Defendants are in the business of reproducing and selling access to literary works on electronic databases. Defendants are (1) commercial electronic databases, referred to as the "Database Defendants" (Reed Elsevier, Inc., which operates LEXIS/NEXIS; The Thomson Corporation; The Dialog Corporation; The Gale Group, Inc.; West Publishing Corporation d/b/a West Group; Dow Jones & Company, Inc.; Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva; Knight-Ridder, Inc.; Knight-Ridder Digital; Mediasstream, Inc.; NewsBank; ProQuest Information and Learning Company and EBSCO Industries, Inc.); and (2) two newspaper publishers (The New York Times Company and The Copley Press, Inc.).

b. The Participating Publishers

In addition to the defendants, the following newspaper and magazine publications have signed the Settlement Agreement and committed themselves to participate in this settlement by contributing funding and information concerning their freelance authors' works: **[list to come]**. (This group will be referred to in this Notice as the Participating Publishers.)

The Defendants and the Participating Publishers will be referred to in this Notice as the "Defense Group."

c. The Supplemental Participating Publishers

Supplemental Participating Publishers are publishers who are not members of the Defense Group because they did not sign the Settlement Agreement and agree up front to contribute to the settlement payments, but who, after the close of the Claims Period (_____, 2005), will have agreed to pay claims under the settlement for Subject Works first published in one of their publications. A list of all preliminary Supplemental Participating Publishers is available online at www.copyrightclassaction.com, or may be requested of the Claims Administrator at 1-800-xxx-xxxx. After all class members' claims are processed, such publishers will be asked to pay their share of the claim amounts. Those who decline to do so will be "de-listed" Supplemental Participating Publishers, and no legal claims against them will be released by the settlement. However, because the final list of Supplemental Participating Publishers cannot be made until after the deadline for excluding yourself from the Class, in

deciding whether or not to exclude yourself, you should base your decision on the assumption that all publishers on the list will be Supplemental Participating Publishers, and that the Released Claims will be released against them. To the extent that certain publishers do not step forward and pay for valid claims asserted against them, the database defendants will be paying those claims. A list of “de-listed” publishers will be made available on the web sites of the Associational Plaintiffs.

II. The Settlement

The Defense Group has agreed to pay up to \$18 million (or more under a circumstance described below), to compensate authors according to the Plan of Allocation described in the next section.

The Settlement Agreement provides that the litigation will be dismissed and that the Defense Group will be released from liability to all people who fall within the definition of the Class and who do not timely exclude themselves from the Class.

A. Plan of Allocation of the Settlement Fund

PLEASE NOTE THAT COPYRIGHT REGISTRATION IS NOT A PREREQUISITE TO RECOVERY.

Each class member who submits a timely, valid Proof of Claim will receive a cash distribution Settlement Payment, which will be calculated as follows:

1. **Category A Subject Works.** For each Subject Work you registered with the United States Copyright Office (a) before any infringement after the Subject Work was first published, or (b) within three months after first publication of the work, you will receive:

\$1,500 for each of the first fifteen Subject Works written for any one publisher;
\$1,200 for each of the second fifteen Subject Works written for that publisher;

and

\$875 for each Subject Work written for that publisher after the first thirty.

2. **Category B Subject Works.** If you registered your Subject Work before December 31, 2002, but after any infringement of the work and more than three months after the first publication of the Subject Work, you will receive, per Subject Work, the greater of \$150 or 12.5% of the original sale price of the Subject Work.

3. **Category C Subject Works.** For all other Subject Works (including Subject Works that were never registered), you will receive, per Subject Work:

\$60 for each Subject Work originally sold for \$3,000 or more;

\$50 for each Subject Work originally sold for \$2,000 to \$2,999;
\$40 for each Subject Work originally sold for \$1,000 to \$1,999;
\$25 for each Subject Work originally sold for \$250 to \$999;
The greater of \$5 or 10% of the original price of the Subject Work for all other works.

4. **Reduced Payments For Older Subject Works.** For Subject Works created before January 1, 1995, payments in **Categories B and C** above shall be reduced based on the years in which the Subject Work was created as follows:

Subject Works created in 1985-1994: a 5% reduction for each year beginning in 1994 and continuing through 1985, so that payments for Subject Works created in 1994 will be reduced by 5%; payments for Subject Works created in 1993 will be reduced by 10%, and so on until works created in 1985 (payments reduced by 50%).

Subject Works created before 1985: Payments reduced by 50%.

5. **Rights With Respect to the Future Electronic Use of Your Subject Works**
Valid claims will be awarded a single payment for the past infringement and for the future electronic use of the Subject Works. Plaintiffs consider that 65% of each Settlement Payment is compensation for past infringement, and 35% is compensation for future electronic use by the Database Defendants and original publisher of the Subject Works. You may choose not to grant the rights to future use. If you do choose not to grant the right to future electronic use, your Subject Works will be removed from the databases, and you will receive 65% of the Settlement Payment.

You will not be able to prevent the continued electronic use of unregistered Subject Works (meaning Category C Subject Works under the Plan of Allocation) if you signed a written agreement granting the electronic rights to your present and past Subject Works for that publication. If you signed such an agreement, then you are only eligible to receive the amount allocated for past infringement with respect to that Subject Work, *i.e.*, 65% of the Settlement Payment.

6. **Other Plan of Allocation Provisions**

a. The Defense Group has agreed to pay a minimum of \$10 million under the settlement, to be applied to valid claims and all fees and expenses, all of which must be Court-approved. If the sum of all such amounts is less than \$10 million, then the remainder of the \$10 million will be distributed pro rata to those claimants whose Subject Works were first published after 1977 and were reproduced, distributed, displayed or transmitted by a Database Defendant.

b. If the claims for the Subject Works that were first published after 1977 and/or that were reproduced, distributed, displayed or transmitted by a Database Defendant, together with all fees and costs, total \$18 million or less, then all claims for all Subject Works will be paid in full, even if the total of all Settlement Payments, *i.e.*, including Settlement Payments for Subject Works first published prior to 1978 and/or that were not reproduced, distributed, displayed or transmitted by a Database Defendant, together with approved fees and costs, exceeds \$18 million.

c. If the claims for the Subject Works that were first published after 1977 and that were reproduced, distributed, displayed or transmitted by a Database Defendant (“Post 1977 Claims”), together with all fees and costs, exceed \$18 million, then (i) beginning with Category C claims, and then, only if necessary, the Category B and Category A claims will be reduced pro rata by the remaining amount that the total Post 1977 Claims exceeds \$18 million as compared to the total amount of Post 1977 Claims for that category; and (ii) the remaining claims (*i.e.*, claims for Subject Works first published prior to 1978 and/or that were not reproduced, distributed, displayed or transmitted by a Database Defendant (“Pre 1978 Claims”)) will, beginning with Category C claims, and then, only if necessary, Category B and Category A claims, each be reduced pro rata by the same percentage as the corresponding Post 1977 category claims were reduced, if at all.

The reason that the claims for the Subject Works first published after 1977 and reproduced, distributed, displayed or transmitted by a Database Defendant are valued higher than the claims for Subject Works first published prior to 1978 or that were not reproduced, distributed, displayed or transmitted by a Database Defendant is that plaintiffs have concluded that the former claims would have a higher likelihood of success if the case were to go to trial than the latter claims.

B. Proof of Claim

Attached to this notice is a Proof of Claim. The Proof of Claim is also available at www.copyrightclassaction.com and may be completed online or copied and submitted by mail. You should submit only *one* Proof of Claim (which can cover all your eligible works). The Proof of Claim must be returned to the Claims Administrator by submitting it online or postmarking it on or before **[date]**. Only class members who submit a valid, timely Proof of Claim will be eligible to receive a Settlement Payment.

You may be required to provide further information at a later date concerning your claim. You should keep all of your records that contain information pertaining to any of your Subject Works.

C. Attorneys' Fees and Costs; Special Award to the Representative Plaintiffs

Class Counsel have devoted substantial time and resources to this litigation over the course of more than four years. Class Counsel have pursued this litigation on behalf of the Class without having received any compensation, or assurance of any compensation, or reimbursement for expenses, for their services rendered. At the hearing on final settlement approval, Class Counsel will seek approval of an award of attorneys' fees in the amount of [\$3,825,000], and reimbursement of their reasonable costs, which, as of this date, are \$500,000. Class Counsel will also seek approval of a special award for the Representative Plaintiffs in the amount of \$2,000 each, in recognition of their efforts in this action. The Defense Group does not oppose the payment of these fees, costs and special awards, all of which are subject to Court approval.

D. Release and Disclaimer

If approved, the settlement will bar and release each and every claim of any class members, whether arising under federal, state, or foreign law, that has been or could have been asserted in this lawsuit against every member of the Defense Group, every Supplemental Participating Publisher, and all their past, present, and future parents, predecessors, subsidiaries, affiliates, and divisions, and all of their respective officers, directors, owners, partners, governors, employees, agents, nominees, successors, assigns, legal representatives and licensees, with respect to any and all of the Subject Works in every electronic or digital format, including but not limited to all claims arising out of the same facts as their claims of copyright infringement, past, present, or future, known or unknown, and all claims with respect to the electronic reproduction, distribution, display, license, sale or adaptation of Subject Works to or by the Defense Group or Supplemental Participating Publishers.

However:

1. Only claims for past infringement are hereby released with respect to Subject Works that class members elect to have removed or not restored.
2. Only claims concerning Subject Works are being released.
3. Subject Works that class members do not elect to have removed or not restored may be displayed electronically only by the Database Defendants and by the Participating or Supplemental Participating Publisher(s) that have allegedly infringed those Works, and no other Participating or Supplemental Participating Publisher is released from any claims pertaining to the reproduction, distribution, display, sale, license or adaptation of those Subject Works.
4. No claims shall be released with respect to works that have not, on or prior to the date of this Agreement, been reproduced, distributed, displayed or transmitted by any Defense Group member.
5. No claims shall be released based on retaliation for participating in, objecting to or opting out of the settlement, or for exercising your right not to permit the future electronic use of your Subject Works.

6. None of the claims of class members who timely exclude themselves from the Class shall be released or in any other way adversely affected by the Settlement.
7. No claims shall be released that are also compensable in Robertson I.

The above is only a summary of the settlement, and you are referred to the Settlement Agreement on the official website at www.copyrightclassaction.com and on file with the Court for its precise terms and conditions.

III. How To Remain In The Class

If you are a member of the Class, you need not do anything if you desire to remain a member of the Class. If you choose to remain in the Class, your rights in this litigation will be represented by the Representative Plaintiffs and Class Counsel. You will receive the benefits of the settlement if approved by the Court (and if you timely submit a valid Proof of Claim) and your claims against the Defense Group will be released and will be dismissed by the Court. If you remain in the Class, you will be bound by any judgment or determination of the Court in connection with the settlement, whether favorable or unfavorable. You will not be personally responsible for any attorneys' fees or costs in the litigation, unless you retain your own counsel. Any attorneys' fees and costs will be paid, pursuant to Court approval, out of the settlement funds. If you wish, you may enter an appearance through your own counsel at your own expense. If you desire to be represented by your own counsel, you must advise the Court of this request by filing an Entry of Appearance in writing by first class mail, postage prepaid, postmarked no later than _____, and you must serve a copy on the attorneys listed at Section VI.4. below; -----, counsel for defendant -----, and -----, -----, counsel for defendant -----.

IV. How To Be Excluded From The Class

You may exclude yourself from the Class upon specific written notice, provided your notice is mailed by first class mail, postage prepaid, on or before **[45 days from date of mailed notice]** to the Claims Administrator, at the address listed below in Section VI. The postmark will determine the time of mailing. You may also exclude yourself by going online at www.copyrightclassaction.com. You need not state your reason for requesting exclusion. However, your request for exclusion must be signed by an authorized person, must state that you wish to be excluded from the Class, and must specifically state the name and address of the class member requesting exclusion.

If you exclude yourself from the Class, you will not be eligible to share in the settlement proceeds should the Settlement Agreement be approved. You will, however, have the right to bring a case on your own behalf.

V. Hearing On Final Approval Of Settlement

A hearing will be held on _____, 2005 at ____ in Courtroom 618 of the United States District Court Southern District of New York, United States Courthouse, 40 Centre Street, New York, NY 10007, for the purpose of determining whether the proposed settlement is fair, adequate and reasonable and should be approved by the Court. At the hearing, the Court will also consider related matters, including the fairness of the proposed Plan of Allocation and the application for attorneys' fees and reimbursement of expenses and for a special award to the Representative Plaintiffs. Although not necessary, you are entitled to appear and be heard at the hearing. The time and date of the hearing may be rescheduled by the Court without further notice. **If you desire to remain in the Class and participate in the settlement and submit a claim, you are not required to do anything further at the present time.**

If you remain in the Class, you have the right to object to any or all of the proposed settlement, including the entry of final judgment dismissing the litigation with prejudice, the request for Class Counsel's attorneys' fees and costs and the request for a special award to the Representative Plaintiffs. If you wish to object to the settlement, you must follow these instructions: (1) You must appear at the hearing in person or if you are represented by an attorney, your attorney must appear in person and demonstrate why the settlement or any part of the settlement should not be approved as fair, reasonable and adequate and why a final judgment dismissing all claims against the Defense Group with prejudice should not be entered; (2) On or before **[45 days from date of mailing]**, you must file with the Court a notice of intention to appear and a statement of your objection or position to be asserted and the grounds for your objection, together with copies of any supporting papers or briefs, and you must serve a copy of such papers by first class mail **on the attorneys listed at Section VI.4. below;** -----, -----, -----, counsel for defendant -----, and-----, -----, -----, counsel for defendant If you do not wish to object to the Settlement Agreement, it is not necessary to appear at the hearing.

Unless you object as provided in this Notice, you will not be entitled to contest the terms and conditions of the settlement, including the application for attorneys' fees and costs and the application for a special award, and persons who fail to object as provided shall be deemed to have waived and shall be forever foreclosed from raising any such objections.

VI. Additional Information

You are requested to preserve all of your records relating to your Subject Works.

The Claims Administrator is:

Garden City Group, Inc.
105 Maxess Road
Melville, NY 11747
(800) xxx-xxxxx
_____@_____.com

If you have any questions, or if you change your address or if this Notice was not mailed to your correct address, you should notify the Claims Administrator. If the Claims Administrator does not have your correct address, you may not receive your Settlement Payment or notice of important developments in this class action.

Any questions that you have concerning the matters contained in this Notice may also be directed in writing to any of the following Co-Lead Counsel for plaintiffs and the Class:

Michael J. Boni
Kohn, Swift & Graf, P.C.
One South Broad Street,
Suite 2100
Philadelphia, PA 19107-3389
mboni@kohmswift.com

Diane S. Rice
Hosie, Frost, Large &
McArthur
Spear Street Tower, 22nd Floor
One Market Street
San Francisco, CA 94105
drice@hosielaw.com

A. J. De Bartolomeo
Girard Gibbs & De Bartolomeo
LLP
601 California St., Suite 1400
San Francisco, CA 94108
ajd@girardgibbs.com

The pleadings and other records in this litigation may be examined and copied during regular office hours at the Office of the Clerk, J. Michael McMahon, U.S. District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007.

PLEASE DO NOT TELEPHONE OR ADDRESS ANY INQUIRIES TO THE COURT.

Dated: March __, 2005

BY ORDER OF THE COURT:
Honorable George M. Daniels,
United States District Judge
for the Southern District of New York

In re Literary Works in Electronic Databases Copyright Litigation

CLAIM FORM

INSTRUCTIONS FOR CLAIM FORM AND WORKSHEET

Please provide the information requested in Section A below, fill out a separate Worksheet for each of your Subject Works, in accordance with the instructions at Section B below, sign the certification in Section C, and mail your completed Claim Form to the address listed in Section D. Prior to completing the Claim Form and Worksheets, you should gather as much of the following information and documentation as you can with respect to each of your Subject Works: Title, date and publisher of first publication, amount the original publisher paid you for the Subject Work, and, if applicable, U.S. Copyright Office registration certificates, applications or other documentation of copyright registration.

The inability to document your claims is not a bar to your participation in this Settlement, and you are encouraged to complete and submit the Claim Form and Worksheets with whatever information you are able to provide.

A. GENERAL INFORMATION

1. Name: _____
2. Social Security No.: _____
3. Street Address: _____
City: _____
State: _____
Zip code: _____
4. E-mail Address: _____
5. Were you ever an employee of the original publisher of any of your Subject Works?
Yes No

If you checked “Yes,” please state the name of each publisher that employed you, and the dates of your employment with that publisher (if you do not know the exact dates of employment, give your best approximation of the dates): _____

6. Did you ever sign a written agreement granting electronic rights to the original publisher of any or all of your Subject Works?

Yes No

If you checked “Yes,” please attach a copy of any such agreements to this Claim Form.

B. INSTRUCTIONS FOR COMPLETING THE WORKSHEETS

You must complete a separate Worksheet for each of your Subject Works.

Number your Worksheets in the box next to “Subject Work Number,” and attach all of your Worksheets to this Claim Form.

Other versions, revisions, or variants of a Subject Work for which you received additional payment, or that were prepared with material additional editing, revision or composition by you, are considered separate Subject Works. In those cases, you should fill out separate Claim Worksheets for each such version, revision or variant.

“Letters to the Editor” and articles in scientific and research-oriented medical journals are not considered Subject Works, and you should not complete Worksheets for them.

On the Worksheet, provide the information requested in accordance with the following instructions. If you need more Worksheets, please make photocopies of the attached Worksheet.

1. Title or subject matter of the Subject Work

As accurately as possible, state the title of the Subject Work. If you cannot supply the title, describe the subject matter of the Subject Work as completely as possible to permit identification of the Subject Work.

2. Name and date of publication

State the name of the publication that first published the Subject Work, and the date of original publication. If you cannot supply the exact date, give your best approximation of the date.

3. U.S. copyright registration

Indicate whether you registered your Subject Work with the U.S. Copyright Office, and, if so, supply any of the following documentation:

(a) registration certificate, or (b) the registration application, or (c) a printout from the Library of Congress Web site showing the registration number, date of registration or registration application. (This information may be available at <http://www.copyright.gov/records/cohm.html>.)

If you require assistance, please go online at www.copyrightclassaction.com, or call 1-800-xxx-xxxx.

4. Amount paid to you for Subject Work

Please state the amount you were paid by the original publisher for the Subject Work, and, if available, attach to the Worksheet a copy of any documentation that you were paid that amount.

5. Removal of Subject Work

You have the option of requiring the removal of some or all of your Subject Works from the electronic databases (except ProQuest, which is an image-based, “microform” format). **Please note that for every Subject Work you request be removed, you will receive only 65% of the amount otherwise payable under the settlement for the claim based on that Subject Work.**

If you want all of your Subject Works removed, please check this box:

If you want some but not all of your Subject Works removed, you will have an opportunity in the Worksheets to identify which specific Subject Works you want removed.

C. CERTIFICATION

I certify under penalty of perjury that the information I have provided on this Claim Form and the accompanying Worksheet(s) is accurate to the best of my knowledge, information, and belief.

Date: _____

Signature

D. MAIL THE CLAIM FORM, ALL WORKSHEETS AND SUPPORTING DOCUMENTATION (IF ANY), POSTMARKED NO LATER THAN [DATE], TO:

Claims Administrator
Electronic Databases Copyright Litigation
P.O. Box _____
[City, State ZIP]

In re Literary Works in Electronic Databases Copyright Litigation

CLAIM WORKSHEET

For: _____
[Write your name here]

Social Security Number: _____

Subject Work Number

1. Title or subject matter of the Subject Work: _____

2. Name of the original print publication and publication date (if you do not know the exact date, give your best approximation of the date): _____

3. Did you register the Subject Work with the United States Copyright Office?
Yes No

If you checked "Yes," please attach supporting documentation to this Worksheet.

4. Amount the original publisher paid you for the Subject Work: _____

If available, please attach to this Worksheet a copy of any documentation that you were paid that amount.

5. Check here if you want this Subject Work removed from the electronic databases:

(Applicable only if you did not check the box in Section B.5. of the Claim Form.)

If you check the box, you will receive only 65% of the amount otherwise payable under the settlement for the claim based on this Subject Work.

- END OF WORKSHEET -