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July 7, 2006

Via Federal Express

Roseann B. MacKechnie, Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Corrected Brief For Plaintiffs-Appellees in *In re Literary Works in Electronic Databases Copyright Litigation*, 05-5943-cv

Dear Ms. MacKechnie:

Plaintiffs-Appellees hereby file the enclosed Corrected Brief For Plaintiffs-Appellees, which replaces and supersedes the brief that was filed on May 25, 2006. The enclosed brief deletes from the May 25 brief (1) the sentence on pp. 12-13, (2) sixteen words in the last full sentence on p. 22, (3) three words in the sentence on pp. 22-23, (4) the parenthetical clause in the middle of p. 37, and (5) footnotes 7, 12 and 15. The reason for our striking such language is as follows.

Prior to the May 25 filing, the parties asked the Claims Administrator to calculate the aggregate potential value of the claims, in order to determine whether two of the appellants' arguments may be moot. Appellants argue that (1) it is unfair for the settlement to reduce the amount of certain class members' awards before others (with weaker claims) in the event the aggregate claims value exceeds the $18 million settlement cap; and (2) the named plaintiffs, who registered some of their works with the U.S. Copyright Office, are inadequate representatives of class members who did not register any of their works. The information the Claims Administrator provided to us indicated that the $18 million cap would not be reached, and that the named plaintiffs actually submitted far more claims for unregistered works than registered works. That is why we included that information in the brief filed on May 25, 2006.

However, contrary to our clear instructions, and unbeknownst to us, the Claims Administrator provided us with a value that excluded claims that were the subject of deficient but potentially curable claims. We learned of this only after June 16, 2006, when the Claims Administrator mailed out deficiency letters to claimants. As a result, we are striking the language that pertains to the information we received from the Claims Administrator after the record was closed.

At this point, we have insufficient data to determine whether the $18 million cap will be reached, and will not know this until after the claims have been examined by the defense group pursuant to the terms of the settlement, sometime in the Fall of 2006. It may be that the prima facie claims with the deficiencies put back in will raise the number over $18 million; even if that were the case, the number might thereafter fall below $18 million after the August 31, 2006 deadline for claimants to respond to the deficiency letters, and after the defense group examines the claims.

We are available to answer any questions the Court may have, and we apologize for any inconvenience caused by our having to file a corrected brief.

Sincerely yours,

Michael J. Boni

MJB/yr
Enclosures

cc: Charles Chalmers, Counsel for Appellants (w/encl.)
Counsel for Plaintiffs-Appellees (w/encl.)
Counsel for Defendants-Appellees (w/encl.)