

The fact that named plaintiffs have \$1.6 million in registered claims is dramatic. We don't know the final number of total claims, but we do know that there were 1220 claims by September 13, 2005. (A 1541) Given the tremendous increase in value between September 13, 2005 and September 30, 2005, there must have also been a tremendous increase in the number of claims. But just using the 1220 figure, we see that 23 named plaintiffs, or 1.9% of the claims, would be taking 13.5% of the total settlement value.

The mistake disclosure shows it is possibly far worse. This statement of the error in their "facts" carries explosive importance. The Claims Administrator reduced "to Category C Subject Works that were claimed as registered works but lacked documentation and/or a registration number." (Declaration, Exhibit B, pp. 9-10.) That means that the named plaintiffs' 3,698 C claims may really be much more valuable A or B claims. They may be entitled to much more than 13.5 percent of the settlement.

The factual disclosures by the parties support the appellants' arguments and they should be considered. It would deny the appellants' due process rights to prevent them from using these factual admissions against interest.

VII. The Corrected Briefs Should Be Stricken

The "corrected" briefs should be stricken. Should the Court permit the corrected briefs, appellants should be given leave to file a revised Reply.

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BY HAND

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Re: Corrected brief for Defendants-Appellees in *In re Literary Works in Electronic
Databases Copyright Litigation*, 05-5943-cv

Dear Ms. MacKechnie:

Enclosed, in advance of the due date, please find the original and ten copies of a corrected brief for defendants-appellees ("defendants") in this matter. Defendants previously filed their brief ahead of time on May 25, 2006.

Six sentences (and parts of four other sentences) in defendants' previously submitted brief were based on information that we and plaintiffs' counsel believed to be reliable at the time. The information was post-judgment information provided by the official class action Claims Administrator, and the brief expressly identified it as such. We considered it appropriate to use the information in our briefs because we believed it would be useful to the Court in evaluating certain arguments of appellants. However, we have recently ascertained that we can no longer consider the post-judgment information reliable, and we therefore file this corrected brief.

The sentences and phrases struck from the previously-submitted brief have been discussed with counsel for the appellant, Charles Chalmers (as well as counsel for the plaintiffs-appellees). We believe that we have eliminated from the brief all post-judgment information about filed claims, as well as any assertions or arguments based on such information.¹

We apologize for any inconvenience, and regret having to submit this superseding brief.

¹ The struck passages were on pages 16, 21, 24, and 25. The brief and its arguments are otherwise unchanged. We have retained the page-endings in the original brief, so those four pages are each somewhat shortened (but the remaining pages are identical to those previously filed).