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January 7, 2008

Re: IN RE: LITERARY WORKS IN ELECTRONIC DATABASES  
COPYRIGHT LITIGATION 05-5943-cv

**OBJECTORS-APPELLANTS' LETTER SUBMITTING  
SUPPLEMENTAL AUTHORITY - FRCP 28(j)**

This Circuit's recent decision in *Davis v. Blige*, 505 F.3d 90 (2d Cir. 2007), addresses core arguments concerning the license feature of this settlement.

Appellants argue that the license cannot be considered a release, or justified as a release. Brief for Objectors-Appellants, p. 48-50. Objectors also argue that the limitations in Rule 23, including adequate representation, prevent this granting of rights for future use of the class member copyrights, unless the class member affirmatively assents to the grant. *Id.* at 45-47. Calling this provision a "release of future claims" the defendants argue at length that it is justified as a release. Corrected Brief of Defendants-Appellees, p. 37-46. They never address the Rule 23 or adequate representation arguments. The plaintiffs defend the license on the basis that it is a release, or the same thing as a release. Corrected Brief of Plaintiffs-Appellees, p. 24-33. Like defendants, they never address Rule 23 and the adequacy of representation.

*Davis* is a copyright case, and it recognizes that releases for past infringement and licenses for future use are two different things.

We believe that reliance on cases involving settlements is misplaced. Licenses and assignments function differently from settlements and releases, and the use of the term "retroactive license" for "settlement" or "release" by the parties causes unnecessary confusion and potentially creates legal mischief.

*Davis*, at 102. The facts are different, but the question presented there that called for the distinction between a license and release was the same. A party in *Davis* was trying to equate a license to a release, by calling it a “retroactive license. Here we have parties trying to equate a license to a release, by calling it a “release of future claims.”

The plaintiffs and defendants chose to justify the license solely on the basis of the law of releases. Added to the arguments Objectors have already presented, the *Davis* holding shows the lack of merit in their position.

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