

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

**In re LITERARY WORKS IN  
ELECTRONIC DATABASES  
COPYRIGHT LITIGATION**

---

**Master Docket No. M-21-90 (GBD)  
(MDL # 1379)**

**DECLARATION OF EDWARD JOHN HASBROUCK IN SUPPORT OF  
OBJECTIONS TO AMENDED SETTLEMENT**

I, Edward John Hasbrouck, declare as follows under penalty of perjury:

1. I am a writer. I have two published books on the subject of travel, one of which, *The Practical Nomad, How to Travel Around the World*, has been published in three editions. The first edition was published in 1997. I also write extensively on Web sites on the Internet.
2. I have filed an “opt out” form regarding this settlement for the reasons described in more detail below. In summary, I cannot even tell if I am a class member, but I want to protect myself from the possibility that anyone receives a right to copy my books, or any other writing of mine which may have appeared at some time in one of the databases covered by this settlement.
3. I am the owner of the registered copyrights in my two books, including all editions. So far as I know the books have never appeared in any database, with one exception that I now describe concerning Amazon.com.
4. In late 2003 I became aware from something I read on the Internet that Amazon was instituting a service which allowed anyone to search on the Amazon.com Web site for words, or combinations of words, from the content of books. This feature was called “Search Inside

The Book”. A copy of an announcement of this service, taken from the Amazon.com Web site at <http://www.amazon.com/exec/obidos/tg/feature/-/507108/102-5351812-0612146>, is attached as Exhibit A. Amazon has now trademarked the term “Search Inside” for this service, as shown by Ex. B, a copy of another page at the Amazon.com Web site:

<http://www.amazon.com/exec/obidos/tg/browse/-/10197021/102-5351812-0612146>.

5. In October 2003 I conducted a search and found that the second edition of my book, *The Practical Nomad, How to Travel Around the World*, was searchable on that Amazon service, and excerpts from the book were shown to an Internet user if they used the right words to access my book. I hold the copyright to the entire text of this book and I have never authorized Amazon or anyone else to have the text of it in a database. My understanding of computers and databases indicates that for Amazon.com to be able to present images of each page of my book in response to an “Inside the Book” search it must have the entire text of the book, and a scanned image of each page of the book, in a database.

5. I believe that Amazon.com has done something so that my book no longer comes up in response to a search that would otherwise reach it. However, this was an infringement of my copyright in the book. I communicated with my publisher about the Amazon infringement. My publisher told me that Amazon.com had a contract with someone which it relied on to put my book in its Search the Book feature. However, my publisher said the contract was confidential, so my publisher could not tell me whom the contract was with, or any of its terms.

6. I have spent some time reviewing the settlement agreement in relation to this issue. As I understand it, the above facts might make me a member of the class because Amazon.com has digitally or electronically reproduced, displayed and distributed, without

my authorization, a portion of my book. I understand from information from various sources, including the settlement Web site, that Amazon.com is a licensee of one or more database companies that are defendants in this action. If I am a class member, of which I am not sure, I would either have to file a claim for these events, or opt out to preserve my rights. Also, if I am a member, I would have opt out to protect myself from granting the defendants, and others, a non-exclusive license to my book. This is the “License by Default” feature which I have learned of by reading the Internet postings of objector Irvin Muchnick at <http://freelancerights.blogspot.com>, and which I’ve read myself in the settlement agreement.

7. Another reason I have opted out is that I read the settlement agreement as providing that any work placed on a database by any of the parties benefiting by this settlement (Defense Group, Database Defendants, Participating Publishers and Supplemental Participating Publishers) at any time up to the effective date of the settlement (§ 1.j.) will have the effect of making the copyright owner of that work a class member and will also have the effect of granting the License by Default provided in the settlement for that work. The effective date of the settlement will not be until this settlement is approved and all appeals have been completed or the time for them has expired. Thus companies can effectively grant themselves licenses to works by placing them in a database anytime up to the effective date, even after it is too late for me to opt out of the class or to file claims related to those works.

8. Finally, I have opted out because I don’t know whether my works have appeared in other databases besides the Amazon.com instance already described. I don’t think they have, but I cannot be sure. I asked the class action attorneys, by e-mail, how a class member is supposed to determine if they are in the class. They responded, in part, saying: “It is the author's

responsibility to establish which works he believes are eligible under the settlement and to include each of them in his claim form. We unfortunately have no easy way to do this or help you with this.” Since I cannot do it, and they cannot do it, at least easily, I have opted out as the best protection for myself. A copy of the e-mail is attached as Ex. C.

Executed at San Francisco, California, on September 12, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

---

Edward John Hasbrouck

CERTIFICATE OF SERVICE

I, Charles D. Chalmers, do declare:

I am over the age of eighteen and not a party to this action. On September 12, 2005, I served the above pleading by email service addressed as below:

|   |  |
|---|--|
| <p>Chuck Sims<br/>PROSKAUER ROSE<br/>1585 Broadway<br/>New York, NY<br/>E-mail: <a href="mailto:csims@proskauer.com">csims@proskauer.com</a></p> <p>Hank Gutman<br/>SIMPSON THACHER &amp; BARTLETT LLP<br/>425 Lexington Avenue<br/>New York, NY 10017<br/>E-mail: <a href="mailto:h-gutman@stblaw.com">h-gutman@stblaw.com</a></p> <p>Jack Weiss<br/>Jim Hallowell<br/>GIBSON DUNN &amp; CRUTCHER, LLP<br/>200 Park Avenue, 47<sup>th</sup> Flr<br/>New York, NY 10166<br/>E-mail: <a href="mailto:jmweiss@gibsondunn.com">jmweiss@gibsondunn.com</a><br/><a href="mailto:jhallowell@gibsondunn.com">jhallowell@gibsondunn.com</a></p> <p>Ian C. Ballon<br/>MANATT, PHELPS &amp; PHILLIPS LLP<br/>11355 West Olympic Boulevard<br/>Los Angeles, CA 90064<br/>E-mail: <a href="mailto:iballon@manatt.com">iballon@manatt.com</a></p> <p>Paul Cirino<br/>LATHAM &amp; WATKINS<br/>885 Third Avenue<br/>New York, NY 10022<br/>E-mail: <a href="mailto:paul.cirino@lw.com">paul.cirino@lw.com</a></p> <p>James F. Rittinger</p> | <p>Michael S. Denniston<br/>BRADLEY ARANT ROSE &amp; WHITE, LLP<br/>1819 Fifth Avenue North<br/>Birmingham, AL 35203<br/>E-mail: <a href="mailto:mdenniston@bradleyarant.com">mdenniston@bradleyarant.com</a></p> <p>Stacy Grossman<br/>FISH &amp; RICHARDSON P.C.<br/>Citigroup Center – 52<sup>nd</sup> Floor<br/>153 East 53<sup>rd</sup> Street<br/>New York, NY 10022-4611</p> <p>Kenneth A. Richieri<br/>Vice President &amp; Deputy General Counsel<br/>THE NEW YORK TIMES COMPANY<br/>500 Seventh Avenue<br/>New York, NY 10018<br/>E-mail: <a href="mailto:richierk@nytimes.com">richierk@nytimes.com</a></p> <p>George Freeman<br/>THE NEW YORK TIMES<br/>229 West 43<sup>rd</sup> Street, 12<sup>th</sup> Floor<br/>New York, NY 10036<br/>E-mail: <a href="mailto:freemang@nytimes.com">freemang@nytimes.com</a></p> <p>Robin Bierstedt<br/>VP/Deputy General Counsel<br/>TIME INC.<br/>1271 Avenue of Americas<br/>New York, NY 10020<br/>Email: <a href="mailto:robin_bierstedt@timeinc.com">robin_bierstedt@timeinc.com</a></p> |
|---|--|

|   |  |
|---|--|
| <p>SATTERLEE STEPHENS BURKE &amp; BURKE, LLP<br/> 230 Park Avenue<br/> New York, NY 10169<br/> E-mail: <a href="mailto:Jrittinger@SSBB.com">Jrittinger@SSBB.com</a></p> <p>Diane S. Rice<br/> HOSIE, FROST, LARGE &amp; McAUTHUR<br/> Spear Street Tower, 22<sup>nd</sup> Floor<br/> One Market Street<br/> San Francisco, CA 94105<br/> E-mail: <a href="mailto:drice@hosielaw.com">drice@hosielaw.com</a></p> | <p>Michael J. Boni<br/> KOHN, SWIFT &amp; GRAF P.C.<br/> One South Broad Street<br/> Suite 2100<br/> Philadelphia, PA 19107-3389<br/> E-mail: <a href="mailto:mboni@kohswift.com">mboni@kohswift.com</a></p> <p>A. J. De Bartolomeo<br/> GIRARD GIBBS &amp; DE BARTOLOMEO LLP<br/> 601 California St., Suite 1400<br/> San Francisco, CA 94108<br/> E-mail: <a href="mailto:ajd@girardgibbs.com">ajd@girardgibbs.com</a></p> |
|---|--|

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct. Executed at Fairfax, CA, September 12, 2005.

\_\_\_\_\_  
Charles D. Chalmers