

Plaintiff submits this memorandum of law in opposition to Defendant Houghton Mifflin's motion pursuant to Rule 62(b) of the Federal Rules of Civil Procedure for an immediate suspension of the preliminary injunction issued by this Court. That motion should be denied.

On April 20, 2001, this Court entered an order granting Plaintiff's motion for a preliminary injunction (the "Preliminary Injunction"). The Order went into effect on April 23, 2001 upon Plaintiff's deposit with the Court of a cash bond in the amount of \$250,000.00.

On April 24, 2001, Defendant filed an emergency appeal with the Eleventh Circuit (the "Appeal") seeking expedited review of the Preliminary Injunction. The Eleventh Circuit has set oral argument on the Appeal for May 25, 2001.

Granting Defendant's instant motion to stay enforcement of the Preliminary Injunction would cause immediate and irreparable harm to Plaintiff. Shipment of the books would moot the appeal. This Court has found that Plaintiff has a likelihood of success on the merits of its copyright claim, that Plaintiff will be irreparably harmed if the publication of "The Wind Done Gone" proceeds, that the harm to Plaintiff outweighs that to Defendant

if an injunction were improperly granted, and that the Preliminary Injunction is in the public interest.¹

The Appeal will be fully briefed and argued by May 25, 2001, three weeks from today. If Defendant is successful in obtaining a reversal of this Court's Preliminary Injunction, the short delay will not exact any appreciable harm upon Defendant. On the other hand, if staying enforcement of the Preliminary Injunction means that Defendant can and will print, ship and sell the books, it will give Defendant the very relief it is seeking from the Eleventh Circuit, without appellate review. Most importantly, as this Court found, "wide dissemination of the infringing work now would likely prevent the court from providing adequate relief in the future." Decision, p. 48. As such, no stay should be allowed.

¹Plaintiff incorporates herein the arguments and evidence contained in its prior submissions to this Court.

For all of the foregoing reasons, this Court should deny Defendant's motion for a stay of enforcement of the Preliminary Injunction.

Dated: Atlanta, Georgia
May 4, 2001



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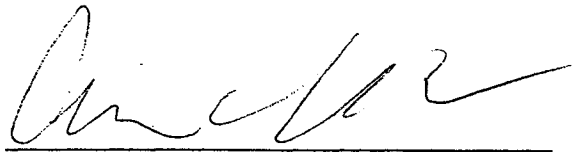
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CERTIFICATE OF SERVICE

This is to certify that I have this day caused a true and correct copy of the foregoing MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR IMMEDIATE SUSPENSION OF PRELIMINARY INJUNCTION PENDING APPEAL, to be hand delivered, to:

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This 4th day of May, 2001.



Anne M. Johnson