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November 24, 2021

**VIA ECF**

Hon. Ona T. Wang  
United States Magistrate Judge  
Courtroom 20D  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *Hachette Book Group, Inc. et al. v. Internet Archive*, Case No. 1:20-CV-04160-JGK

Your Honor:

Pursuant to Section II.b of Your Honor’s Individual Practices in Civil Cases, Defendant Internet Archive respectfully submits this responsive letter regarding Plaintiffs’ letter-motion of November 19, 2021 (ECF No. 58).<sup>1</sup>

As Your Honor is aware, currently pending and set for conference on December 2, 2021 are the Internet Archive’s two letter-motions regarding Plaintiffs and the Association of American Publishers’ failure to produce documents (ECF Nos. 47, 49, 54, 56). While Plaintiffs may be eager to portray the Internet Archive as also refusing to produce relevant documents, there is no basis for Plaintiffs’ assertion that the Internet Archive is “stonewalling.” As explained below, Plaintiffs’ requests are for documents that the Internet Archive has either already provided to Plaintiffs, or that the Internet Archive is working diligently to collect and provide with no need for this Court’s intervention.

- **Category 1**—The requested document has already been produced, bearing Bates number INTARC00151319.
- **Category 2**—The Internet Archive informed Plaintiffs on November 9 that the Internet Archive has already searched for and produced documents concerning overlap analyses. Nonetheless, out of abundance of caution and in the spirit of good-faith engagement with the meet-and-confer

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<sup>1</sup> Plaintiffs addressed their letter-motion to Judge Koeltl. However, Judge Koeltl referred “General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement)” to Your Honor (ECF No. 55). The Internet Archive therefore addresses this responsive letter to Your Honor.

November 24, 2021

Page 2

process, the Internet Archive offered to conduct an additional search. That search is now complete and identified no additional documents.

- **Category 3**—In response to Plaintiffs’ correspondence, the requested documents were produced on November 22, 2021, bearing Bates numbers INTARC463610, INTARC465463, and INTARC465468.
- **Category 4**—The Internet Archive has explained to Plaintiffs that the data they request was not systematically stored in an indexed form during the entire period at issue, but may be available in a raw form, the retrieval of which would be disproportionately burdensome. The parties had begun discussing alternate ways of getting Plaintiffs the information they seek, such as sampling of a small time frame, or production from alternate data sources that do not cover the entire period at issue. The Internet Archive looks forward to continuing that discussion, which has not reached anything approaching an impasse.
- **Category 5**—Plaintiffs represent that they are not asking the Court to compel the Internet Archive to produce additional usage data related to the “listen” feature. The Internet Archive is nonetheless investigating whether such usage data exists.
- **Category 6**— In response to Plaintiffs’ correspondence, the requested documents were produced on November 22, 2021, bearing Bates numbers INTARC464165–465462.
- **Category 7**—Plaintiffs asked for over a dozen sub-categories of documents related to the depositions of IA witnesses. The Internet Archive informed Plaintiffs on November 9, then again on November 15, that the Internet Archive is in the process of reviewing and producing the requested supplemental documents related to the depositions of Jacques Cressaty and Lila Bailey. The Internet Archive’s production of those documents will be completed by December 1, 2021. As to the document related to the testimony of Andrea Mills, the Internet Archive has conducted an additional search and has no additional documents to produce.

It is unfortunate that Plaintiffs chose to involve the Court rather than completing the normal meet-and-confer process. The Internet Archive looks forward to the conference on December 2 with Your Honor to discuss the actual discovery disputes outlined in ECF Nos. 47 and 54.

Respectfully submitted,



Joseph C. Gratz

JCG: