

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

CHRONICLE BOOKS, LLC; HACHETTE
BOOK GROUP, INC.; HARPERCOLLINS
PUBLISHERS LLC; MACMILLAN
PUBLISHING GROUP, LLC; PENGUIN
RANDOM HOUSE LLC; SCHOLASTIC INC.;
AND SIMON & SCHUSTER, INC.

Plaintiffs,

- against -

AUDIBLE, INC.

Defendant.

Case No. 19 Civ. 7913 (VEC)

ECF Case

**REPLY DECLARATION OF LOIS BRIDGES, PH.D. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Lois Bridges, Ph.D., declare as follows:

1. I submit this declaration in response to claims made by Audible in its memorandum of law in opposition to the plaintiffs' motion for a preliminary injunction in the above-captioned litigation, as well as the declarations of Richard Stern, Timothy Shanahan, and Michael Yudin. *See* Dkt. Nos. 36, 37, 38, 41.

2. I am the Vice President and Literacy Publisher of Scholastic Professional, a division of Scholastic Inc. ("Scholastic") specializing in publishing professional literacy resources for educators and families. My job is to create high-quality resources to meet the professional needs of educators, and ultimately to encourage passion for reading and writing. I hold a Ph.D. and an M.A. from the University of Arizona, Tucson in Elementary Education with a focus in language and literacy, as well as a B.A. from University of California, Riverside, where I graduated with high honors. I also have decades of practical experience as an educator and literacy consultant.

3. Literacy professionals seek to present readers with approachable, authentic and well-designed text—what they call "considerate text." *See* Fran Lehr et al., *A Focus on Comprehension*, Pacific Resources for Education and Learning, at 12 (2005) ("A Focus on Comprehension"). This is because students absorb more meaning when they engage with considerate text. *See* Bonnie C. Konopak, *Effects of Inconsiderate vs. Considerate Text on Secondary Students' Vocabulary Learning*, 20 *Journal of Reading Behavior* 1 (1988). When text has natural patterns of language, readers develop deeper relationships with what they are reading. *See* Lois Bridges, *All Children Deserve Access to Authentic Text*, Scholastic EDU (Apr. 26, 2018).¹

¹ Available at <http://edublog.scholastic.com/post/all-children-deserve-access-authentic-text>.

4. By contrast, text is “inconsiderate” when it is syntactically disorganized or garbled, poorly structured, or hard to understand. A Focus on Comprehension at 12. Inconsiderate text does not provide the context that readers need to generate connections, and ultimately meaning. *Id.* The more inconsiderate the text, the harder the reader has to work to understand it. Thus, best practices have developed to ensure that readers are able to fully engage with the text.

5. As discussed in greater detail below, in Audible’s declarants’ rush to praise Audible, they do not mention these best practices. Instead, they resort to either the general proposition that literacy is beneficial, or unsubstantiated statements that it is beneficial to generate text from our audiobooks algorithmically and distribute it in its entirety to customers (the “Distributed Text”). After reviewing the materials that Audible submitted, I believe that the Distributed Text contains major defects in its presentation and format that are antithetical to well-established best practices in the field of literacy instruction.

- **First**, considerate text is coherent. As any reading teacher would tell Audible, word-by-word reading is inefficient, artificial, and at odds with the way readers of all ages engage with complex texts. Eye movement studies and reading comprehension research do not support the idea that students will benefit from reading text fragments that quickly disappear.
- **Second**, considerate text is well-structured. Prior to this case, Timothy Shanahan, one of Audible’s declarants, actually wrote that students *need* a cohesive, whole text. *See Comprehension Skills or Strategies: Is there a difference and does it matter?* Shanahan on Literacy (May 20, 2018) (“Once you have [complex] texts then you need to scaffold text elements and content features to support the student

in making sense of the text (including text structure, syntax, cohesion, vocabulary, tone, decidability, literary devices, graphic elements, etc.).² The Distributed Text, with its lack of formatting and structure, is inconsiderate text that frustrates reading comprehension.

- **Third**, considerate text is error-free. The embarrassing errors in Audible’s own demonstration videos demonstrate that the Distributed Text inhibits comprehension of complex texts.

6. Moreover, Audible’s fragmented approach is inconsistent with best practices when combining full text and audio. Dr. Shanahan has explained that reading comprehension and listening comprehension must be treated differently. *See 10 Things Teachers Should Know About Reading Comprehension*, Shanahan on Reading (“Studies do not yet show that improving listening comprehension is an effective intervention for improving reading comprehension[.]”).³ I think that Dr. Shanahan would agree that listening intently to the audiobook track will not improve comprehension of the Distributed Text. *See id.* (“Reading [unlike listening] requires students to think about text while decoding.”). Thus, although Audible’s declarants state that the Distributed Text offers a literacy benefit, it offers only stumbling blocks.

7. To be clear, however, I do think that the Distributed Text will be used as a substitute for reading books or using cross-format products. At the end of the day, Audible is providing text to the public, and the public is likely to read it, despite the harms discussed in this declaration.

² Available at <https://shanahanonliteracy.com/blog/comprehension-skills-or-strategies-is-there-a-difference-and-does-it-matter>.

³ Available at <https://shanahanonliteracy.com/publications/10-things-teachers-should-know-about-reading-comprehension> (PPT).

I. SCHOLASTIC IS A LEADER IN RESEARCH-BACKED LITERACY INITIATIVES; AUDIBLE HAS NOT EMPLOYED A SIMILAR APPROACH

8. As noted in my colleague Lori Benton’s declaration, Scholastic is well-known for its efforts to promote and develop literacy. *See* Declaration of Lori Benton (Dkt. No. 18) (“Scholastic Decl.”) ¶¶ 5, 17. We believe strongly in the power of reading to improve lives. Reading provides incalculable academic and social-emotional benefits, especially at a young age. *See Kids & Family Reading Report: Finding Their Story* 6 (7th ed. 2019).

9. Through our research arm, Scholastic has analyzed literacy patterns and determined how best to enable reading comprehension. At Scholastic Professional, we have developed and published hundreds of titles meant to serve as resources for educators to help students achieve their academic goals. These resources include our research into the effective use of audiobooks within literacy instruction. *See, e.g.,* Stephanie Harvey & Annie Ward, “Share pathways to understanding through digital reading, listening, and viewing,” in *From Striving to Thriving: How to Grow Confident, Capable Readers* (2017). As a result of our extensive research, we have developed an extremely robust understanding of how students read, and put these research efforts into practice with our industry-leading literacy instruction products. *See* Scholastic Decl. ¶ 11. These products are consistent with Scholastic’s view that literacy is best served through authentic and culturally relevant books alongside a rigorous, research-backed methodology.

10. Although Audible’s declarants seek to promote access to text for students who are struggling with learning, *see* Declaration of Timothy Shanahan (Dkt. No. 37) (“Shanahan Decl.”) ¶ 4, it does not appear that Audible has adopted a methodology like that used throughout the field of literacy development. There is very good data on how people—young and old—develop reading skills. Audible’s declarants mention none of it. This is especially troubling as the

Distributed Text is a one-size-fits-all approach to Audible’s audiobook titles, which include a wide variety of literary works of fiction, nonfiction, and other genres and formats. Different text structures place different demands on comprehension: for example, one would not read a poem in the same way that one would read a novel. *See A Focus on Comprehension 10 (2005)*. Even Dr. Shanahan advocated (prior to this lawsuit) that complex text should be taught differently than simple text. *See Timothy Shanahan, Text Complexity (2018)*.⁴ A well-designed and deliberate strategy is needed to enable readers and listeners to generate meaning from these works. I have not seen anything to suggest that the Distributed Text is the result of this type of strategy.

II. THE DISTRIBUTED TEXT IS INCOHERENT, DISJOINTED, ERROR-RIDDEN “INCONSIDERATE TEXT” DETRIMENTAL TO COMPREHENSION

11. Reading comprehension is greatly affected by the quality and presentation of the underlying textual material. *See* Elfrieda H. Hiebert, *The Texts of Literacy Instruction: Obstacles to or Opportunities for Educational Equity?* TextProject & University of California, Santa Cruz, at 3 (July 2018) (“Hiebert”). It is, at root, the means by which a reader constructs meaning from text. *See Reading for Understanding: Toward an R&D Program in Reading Comprehension*, RAND Reading Study Group, at 11 (2002) (“RAND Reading Study Group”). Literacy researchers say that there are three elements to reading comprehension: the reader, the text, and the activity of reading itself. *Id.* (Researchers use the word “text” to refer to any form of connected written language.). Comprehension of text takes place on many levels. Even Dr. Shanahan, when he isn’t submitting declarations for Audible, has supported the idea that understanding a text’s broader structural components is necessary to comprehension. *See Eight Ways to Help Kids to Read Complex Text*, Shanahan on Literacy (Sept. 6, 2016) (“[W]hen

⁴ Available at <https://s3.amazonaws.com/ecommerce-prod.mheducation.com/unitas/school/explore/sites/reading-wonders/wonders-white-paper-text-complexity.pdf> (PDF).

reading the text for comprehension, chunk it into small sections (a paragraph, a page).”⁵ In this section, I discuss the three categories of concerns that I have with the Distributed Text from a literacy perspective.

A. Audible’s Distributed Text is Displayed Without Coherence

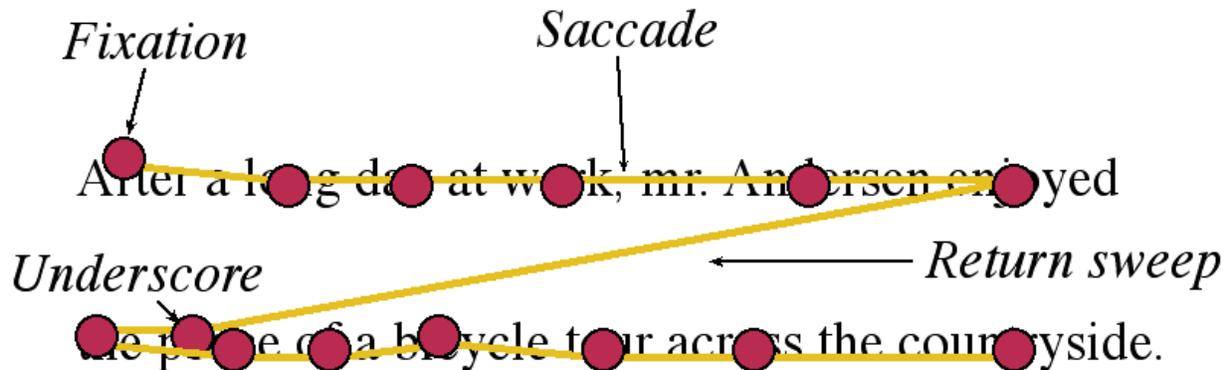
12. Audible’s advisory council member, Mr. Michael Yudin, touts the Distributed Text as a feature that unlocks access to information within text. *See* Declaration of Michael Yudin (Dkt. No. 36) (“Yudin Decl.”) ¶ 15. Yet, for students to derive that benefit, text has to be thoughtfully constructed. The classic definition of considerate text is that it is *coherent*. Coherence applies both globally, with an identifiable main idea and supporting details, as well as locally, with the reader being able to apply the idea within and between sentences. In other words, “the way in which authors express their ideas in a text [] directly determine how well readers are able to access and understand those ideas.” *A Focus on Comprehension* 12.

13. Another key principle of considerate text is that it must be properly positioned for natural eye movement. Contrary to Dr. Shanahan’s statements, *see* Shanahan Decl. ¶ 12, there is no benefit to providing students one word at a time. Decades of research into literacy and eye movement has shown that readers do not consume text one letter at a time, one word at a time, or even one line at a time. Instead, we read text in nonlinear chunks, with our eyes scanning across the page in a series of fits and starts called fixations, saccades, and regressions.

14. As shown below, the reader’s eye *fixates* on one point, with each fixation absorbing multiple words at a time. The eye then zooms forward to a new word (a *saccade*), and

⁵ *Available at* <https://shanahanonliteracy.com/blog/eight-ways-to-help-kids-to-read-complex-text>.

jumps backward to check on previously seen words (a *regression*). All this takes place in milliseconds. See Andrew Johnson, *Eye Movement During Reading* (Apr. 7, 2019).⁶

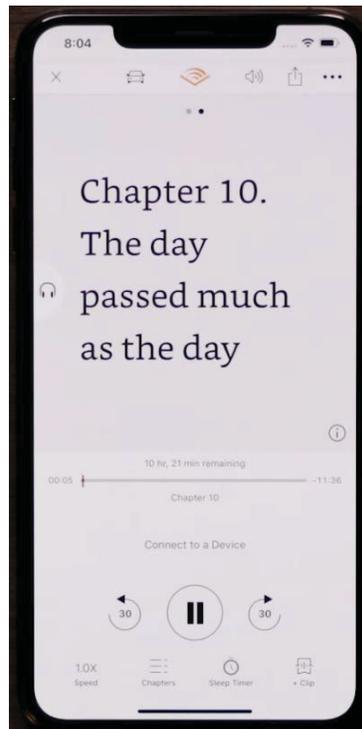


This is how all readers—young and old—organically consume text. Even before we have constructed meaning from text, we are absorbing it holistically. Thus, it is imperative for educators to give readers text in a format that supports the natural process of eye movements.

15. The disappearing act of the Distributed Text detracts from the natural reading process of reading through fixations, saccades, and regressions. As Audible’s product officer states, Captions displays text word by word, with each word displaying on a white background until the app screen is filled, at which point all the words disappear. See Declaration of Richard Stern (Dkt. No. 38) (“Stern Decl.”) ¶ 18. The amount of text a reader can see at one time may be only a small portion of a given sentence. Moreover, the rate at which text appears and disappears is dictated only by the rate of the audiobook playback, rather than the reader’s preferred reading speed. To confirm whether a displayed sentence fragment makes sense, a user reading the Distributed Text must constantly rewind or fast-forward the audio track. See Stern Decl. ¶ 21.

⁶ Available at <https://www.linkedin.com/pulse/eye-movement-during-reading-andrew-johnson/>.

16. Audible’s declarants claim that this approach benefits struggling students who are “overwhelmed by the sheer volume of words in a traditional book,” Shanahan Decl. ¶ 12, or who are “learning English,” Stern Decl. ¶ 10. Yet the Distributed Text is not the natural presentation of text in a literary work. For example, consider the excerpt highlighted in Audible’s demonstration video—a transcription of Chapter 10 of Jane Austen’s *Pride and Prejudice*. The first sentence in the original text reads, “The day passed much as the day before had done.” In the demonstration, the Distributed Text disappears midway through the first sentence after the word “day.”



Complaint (Dkt. No. 1) Ex. 2. Thus, a student will see only “The day passed much as the day,” which is an entirely *different* sentence from “The day passed much as the day before had done.”

17. With the Distributed Text, the reader’s eye has no opportunity to saccade forward in anticipation of predicted syntax or regress backward to confirm the meaning of a sentence. By the time a reader focuses on one word, the preceding words are on their way to disappearing.

Many times, it will be impossible to even see the entirety of a single sentence. Each word is sealed off from every other, impeding the ability of a reader to generate connections. Thus, for those struggling students, the format is actually *detrimental* to their comprehension and does not help improve engagement with a literary work.

18. Nor does it appear that Audible has given any attention to pagination, beyond the amount of text that can feasibly fit on a device's screen. Although the next screen shows the resolution of the sentence (and as discussed below, even the excerpt in the demonstration video contains a major error), for a critical moment the reader has no context. In the absence of the end of the sentence, she is liable to commit a miscue, thus detracting from her comprehension of the text. This is incoherent presentation—as Audible admits. *See* Def.'s Mem. Opp. Mot. Prelim. Inj. (Dkt. No. 34) (“Def.’s Br.”) 27.

19. The limited word-by-word display is also contrary to Dr. Shanahan's previously published views about how to teach students to read complex texts. *See, e.g., What's the Difference Between Close Reading and Teaching Complex Text?* Shanahan on Literacy (Jan. 3, 2018) (“By teaching kids how to decode words, figure out vocabulary, discern text structure, conquer complicated grammar, connect subtle cohesive links, or to overcome any other type of textual or linguistic barrier, teachers enable students to read and learn from books that in the past might have been avoided.”);⁷ *Eight Ways to Help Kids to Read Complex Text*, Shanahan on Literacy (Sept. 6, 2016) (“It's amazing that teachers, who are often willing to guide kids in breaking down multi-syllable words, don't provide similar support with complicated sentences.”).

⁷ Available at <https://www.readingrockets.org/blogs/shanahan-literacy/whats-difference-between-close-reading-and-teaching-complex-text>.

B. The Distributed Text Lacks Organization or Formatting

20. Dr. Shanahan seems to forget his prior statement that text is not just an unbroken string of individual words. *See supra* ¶ 5. Readers draw meaning from many syntactic sources beyond the individual meaning of each particular word. *See* RAND Reading Study Group 105 (“Sentences with complex syntax may present comprehension problems or a high load on working memory when a sentence is left-embedded, dense, ambiguous, gardenpath, ungrammatical, or replete with logical expressions.”). This is why teachers emphasize the importance of paragraphing as a tool to demarcate certain ideas in a text. When a paragraph ends, the reader understands that one idea has ended and another is to begin. The length of a paragraph can serve to call attention to the importance of a particular idea. Punctuation, pagination and typographical choices (such as italics and underlining) are similarly essential to a considerate text that a reader can understand. *Id.* 107 (noting lack of connectors, topic sentences, headers, and subheaders contributes to incoherent text). It is not enough to use Wikipedia to look up each individual word. *See* Stern Decl. ¶ 18.

21. As Mr. Stern admits, the Distributed Text is not capable of reproducing the paragraphs deliberately created by the author of the work. *See* Stern Decl. ¶ 21. Instead, it treats a book as a linear and unstructured string of words. A customer reading the Distributed Text is deprived of the meaning generated by the deliberately crafted context clues in the original text. Nor does the Distributed Text allow readers to rely on the oral context clues in the audiobook track to build comprehension of the text.

22. The Distributed Text’s stripping of formatting goes beyond paragraphs, and extends into the syntax itself. Audible has stated that it will not be able to accurately transcribe the punctuation in a given sentence. *See* Stern Decl. ¶ 21. It is unable to tell the difference between, a semicolon, a colon, a comma, an em dash, parenthesis, ellipsis, or any other of the

versatile punctuation present in the English language, based purely on the inflections in the audiobook recording. *See* Stern Decl. Ex. A, at 2:22 (mistranscribing *A Tale of Two Cities*). Quotation marks also appear beyond the capacity of the transcription system. If the Distributed Text will not faithfully reproduce the original text’s written punctuation, readers using it will not be able to do so either. This is harmful as accurate punctuation is vital to interpreting syntax. *See* RAND Reading Study Group 104. Likewise, typographic and structural choices within the text, such as italics, bold print, or sub-headings, give valuable information to readers from which they can construct meaning. These, too, are unavailable to a Distributed Text user, who is left with a sterile and unraveled text, even before she starts spotting the inevitable typos.

C. Even Audible’s Own Examples Illustrate These Harms

23. Finally, Audible’s declarants ignore that to glean information from text, it must be error-free. Mr. Stern states Audible is planning to release Distributed Text for books with up to a 6% error rate. *See* Stern Decl. ¶ 19. This is remarkable and an error rate that Scholastic would never permit in its own texts. To illustrate why, consider that an average page in a book contains 300 words. A 6% error rate would mean that there are 18 mistakes on *every page in the book*.

24. Moreover, the types of errors that automatically-generated transcription software is likely to generate from a speech recording are actively harmful. We teach students not to rely too heavily on graphophonic cueing—that is, depending on matching the visual impression of each word to the underlying sounds (i.e., “sounding it out”). As students develop reading proficiency, they learn to look for other cues in a sentence, such as syntax and semantical meaning. Because the Distributed Text strips the text of syntax and isolates the words from a meaningful, coherent text, users would be forced to lean on the transcription software’s erroneous phonetic interpretation. This would grievously interfere with comprehension of complex texts, and I am shocked that Audible finds it tolerable.

25. Nor does Audible’s self-effacing disclaimer that there may be “tyypos” [sic] cure the harm. *See* Stern Decl. Ex. A, at 1:12. Audible’s transcription software generates *phonetic* errors, not *orthographic* (spelling) errors. It is the difference between transcribing “spelling” as “speeling” and “smelling.” The latter mistake creates a far greater harm to literacy, as can be shown below.

26. Error Example #1. Audible itself has provided a particularly egregious example in its own demonstration video. *See* Compl. Ex. 1. Compare again the full paragraph text of *Pride and Prejudice* with the Captions version displayed in the video:

Original Text	Audible's Distributed Text
<p>The day passed much as the day before had done. Mrs. Hurst and Miss Bingley had spent some hours of the morning with the invalid, who continued, though slowly, to mend; and in the evening Elizabeth joined their party in the drawing-room. The loo-table, however, did not appear. Mr. Darcy was writing, and Miss Bingley, seated near him, was watching the progress of his letter and repeatedly calling off his attention by messages to his sister. Mr. Hurst and Mr. Bingley were at piquet, and Mrs. Hurst was observing their game.</p>	

As is plainly apparent, Audible erroneously transcribes “and Miss” for “amiss,” thereby inserting a period where none exists *and* injecting a phonetic miscue into the entire paragraph.

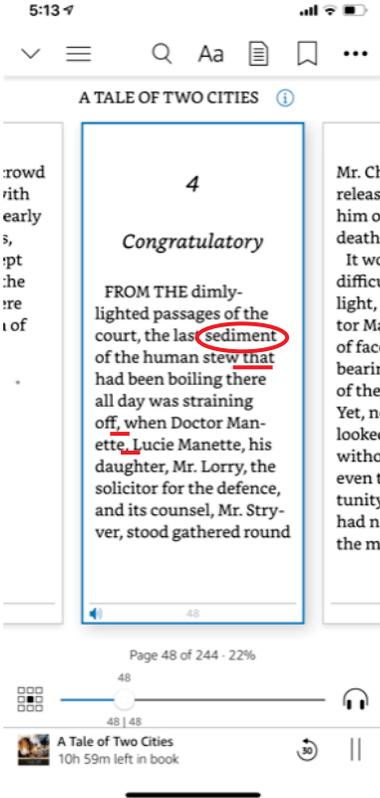
27. The transcription error has thus fundamentally altered the meaning of the sentence: “**The day passed much as the day before had done Mrs Hurst amiss.**” In Jane Austen’s original, the sentence succinctly conveys that the days were monotonous. The entire paragraph confirms this main idea, with a window into the doldrums of each character. In

Audible's inconsiderate adaptation, the sentence muddily suggests that the prior day had somehow wronged Mrs. Hurst, and that the current day was continuing such a pattern of grievances.

28. A reader could understandably begin to wonder whether Jane Austen intended to personify the passage of time, or whether Mrs. Hurst was in trouble, and look for support in the coming sentences. The reader will not be able to find support, however, and the ensuing frustration will decrease her engagement with the text. Similarly, the altered second sentence will force the reader to discern whether the referenced "Bingley" is the antagonistic Miss Bingley or the love interest Mr. Bingley, who is also identified in the paragraph as occupied with an entirely different activity. (One can only hope that the Distributed Text can accurately transcribe "piquet.").

29. This is a classic instance of inconsiderate text, which harms reading comprehension at no fault of the reader. It also shows how even one small phonetic error can cascade into broken syntax and ultimately changed meaning. With a 6% error rate, a Distributed Text user can expect *four more* such errors in the transcription of Ms. Austen's 91-word paragraph.

30. Error Example #2. A similar error occurs in the video that Audible prepared for this litigation. See Stern Decl. Ex. A, at 1:13. As can be seen below, this error is not present in Audible’s Immersion Reading product, which provides the original text to users:

Original Text (Immersion Reading)	Audible’s Distributed Text
	

31. The Distributed Text appears to entrench miscues. As indicated in the above example, homophones and other phonetically similar words are at risk of confusion. There are further areas for potential errors, however. Take the *Pride and Prejudice* passage again. The second sentence contains a semicolon. This shows to the reader that there are separate ideas. Note the subtle but marked difference between these two sentences:

“Mrs. Hurst and Miss Bingley had spent some hours of the morning with the invalid, who continued, though slowly, to mend, and in the evening Elizabeth joined their party in the drawing-room.”

“Mrs. Hurst and Miss Bingley had spent some hours of the morning with the invalid, who continued, though slowly, to mend; and in the evening Elizabeth joined their party in the drawing-room.”

This header sentence is significant to the overall structure of the chapter, which relates the conversations that Elizabeth has in the drawing room. The semicolon therefore serves to call attention to the setting of the entire chapter. An imperfect transcription, such as the one in Audible’s demonstration video, *see* Stern Decl. Ex. A, at 1:13, would deprive a reader of this important context clue.

32. Similarly, the stylistic choice to hyphenate “drawing-room” and “loo-table,” while archaic, does assist the reader in understanding that she is reading a phrasal adjective. If an Audible user called up a dictionary definition of “loo table” through the app, she would have an entirely different result if the system interpreted “loo” and “table” separately.

33. For struggling students, this is inconsiderate text and an inconceivable product.

* * *

34. Even if students can keep up with the disappearing, unsynchronized and unformatted lines of text, they will *still* stumble over the words that are plainly wrong. Accordingly, I do not see the Distributed Text providing a literacy benefit.

III. THE DISTRIBUTED TEXT IS A SUBSTITUTE FOR A BOOK, AND NOT A GOOD ONE

35. Audible admits the defects discussed above—in fact, it characterizes them as reasons why it claims the Distributed Text will not substitute for a reading experience. *See* Def’s. Br. 19; Shanahan Decl. ¶ 12; Stern Decl. ¶ 21. This is illogical. The Distributed Text is the entire written text of the books, from which one would anticipate a customer will consume and derive meaning. The Distributed Text will be used for the same purpose as the original text—it will be read by Audible’s customers to enjoy, learn, or research. *See* RAND Reading

Study Group at 11 (defining reading comprehension as “the process of simultaneously extracting and constructing meaning through interaction and involvement with written language”).

36. The problem is that a customer reading the text will think that she is gaining insights into the author’s intent and meaning, and developing a better understanding of the written word. In reality, the Distributed Text will be misleading the reader, presenting inaccurate and ultimately harmful text. I cannot understand why Audible thinks that this is a pedagogically useful tool, but it makes complete sense as an attempt to supplant Scholastic and the other plaintiffs in the market for their own titles in print, digital, and cross-format versions.

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

Executed this 17th day of September, 2019

A handwritten signature in cursive script that reads "Lois Bridges". The signature is written in black ink and is positioned above a horizontal line.

Lois Bridges, Ph.D.