



21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

Elizabeth A. McNamara
(212) 489-8230 tel
(212) 489-8340 fax

lizmcnamara@dwt.com

September 7, 2021

Hon. John G. Koeltl
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, N.Y. 10007-1312

Re: *Hachette Book Group, Inc. et al. v. Internet Archive et al.*,
1:20-CV-04160-JGK (S.D.N.Y)

Dear Judge Koeltl:

Pursuant to Individual Rule 1.E. of this Court, we respectfully submit this letter motion on behalf of all parties in the above-captioned action to request an extension of certain dates set forth in the Revised Scheduling Order dated April 5, 2021. *See* Dkts. 44. Good cause exists for a limited three-month extension of current deadlines.¹ The Revised Scheduling Orders currently impose the following pertinent deadlines:

Deadline to complete fact depositions (close of fact discovery)	Friday September 24, 2021
Deadline to complete expert reports: issues on which each party bears the burden of proof	Friday October 29, 2021
Deadline to serve rebuttal expert reports: issues on which each party does not bear the burden of proof, but not limited to responding to the opening reports. Any response to the opening reports must be contained in the rebuttal reports, however.	Friday December 10, 2021

¹ The parties have requested and received one previous extension of the discovery deadlines. *See* Dkts. 33-34.

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Deadline to serve reply reports. Reply reports are limited to responding to the rebuttal reports.	Monday January 10, 2022
End of all discovery	Friday January 21, 2022
Deadline for dispositive motions	Tuesday February 22, 2022
Briefs in opposition to dispositive motions due	Thursday March 31, 2022
Reply briefs in further support of dispositive motions due	Friday April 22, 2022

There has been extensive progress on discovery. The parties completed party document productions and exchanged privilege logs within the deadlines set by the Revised Scheduling Order, *i.e.*, June 18 and June 30, 2021, respectively. The parties have also begun scheduling depositions. But looking ahead, it has become clear that more time is required to process the voluminous documentary evidence produced in this case. It inevitably takes a lot of time to review and synthesize such large volumes of documents and more time is required to prepare for the substantial number of fact witness depositions that will be required, particularly given additional persons identified in each party's amended initial disclosures. Given those burdens, it is no longer possible to complete fact discovery by the current September 24, 2021 deadline.

An extension of the discovery deadlines is also warranted to give the parties an opportunity to resolve discovery disputes. Internet Archive filed a letter motion on August 9, 2021 seeking to compel Plaintiffs to produce additional commercial performance data. Dkt. 47. Plaintiffs have opposed this motion. But, if the Court orders the data to be produced, Plaintiffs contend they would need months to do so given the technical complexities involved. Dkt. 49. The parties respectfully submit that an extension is necessary in order to resolve this discovery dispute – and any others that will likely require the Court's attention.²

The parties also believe that the requested extension will make it more likely that major witnesses can be deposed in person. As the parties noted in their previous letter to the Court dated April 5, 2021, there was optimism that COVID-19 vaccines would make it possible for Plaintiffs' New York-based counsel to depose Internet Archive witnesses in California (and *vice versa*). Unfortunately, the rapid emergence of the Delta variant has created new safety concerns and a climate of uncertainty. While the parties still hope to be able to conduct depositions in person, the proposed extension will provide additional time needed to work out COVID-19

² The parties recently have exchanged 30(b)(6) topics – and responses and objections thereto – and are working to establish a suitable deposition schedule. The parties are still meeting and conferring concerning the breadth of the topics and documents withheld based on assertions of privilege.

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ground rules to ensure the safety of the parties and their witnesses. It is also hoped that the COVID-19 situation will improve in the fall – or at least stabilize to a point where responsible decisions can be made about travel and in-person depositions.

For these reasons, the parties respectfully request an extension of the deadlines set forth above and an order imposing the following schedule, which is reproduced in the Second Revised Scheduling Order annexed hereto:

Deadline to complete fact depositions (close of fact discovery)	Friday December 17, 2021
Deadline to complete expert reports: issues on which each party bears the burden of proof	Thursday January 14, 2022
Deadline to serve rebuttal expert reports: issues on which each party does not bear the burden of proof, but not limited to responding to the opening reports. Any response to the opening reports must be contained in the rebuttal reports, however.	Friday February 25, 2022
Deadline to serve reply reports. Reply reports are limited to responding to the rebuttal reports.	Friday March 25, 2022
End of all discovery	Friday April 1, 2022
Deadline for dispositive motions ³	Friday April 29, 2022
Briefs in opposition to dispositive motions due	Friday June 10, 2022
Reply briefs in further support of dispositive motions due	Friday July 8, 2022

³ The parties note that the September 8, 2020 Scheduling Order provides that dates for submitting the Joint Pretrial Order (together with Memoranda of Law, Requests to Charge, Proposed Voir Dire, Proposed Findings of Fact and Conclusions of Law, as appropriate) shall be three (3) weeks from the decision on the dispositive motion. The ready trial date shall be adjourned to a date four (4) weeks after the decision on the dispositive motion. The parties will continue to abide by these dates unless and until otherwise ordered, but note that it will likely be necessary for the parties to request an additional adjournment to allow sufficient time to prepare for trial (assuming this case is not disposed on summary judgment).

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All parties consent to entry of the Revised Scheduling Order. Counsel for defendant Internet Archive has consented to this request for the proposed extension. Thank you for your consideration of this request.

Best regards,

/s/ Elizabeth A. McNamara

Elizabeth A. McNamara

cc: Counsel of Record (via ECF)