

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

AMERICAN CHEMICAL SOCIETY ET AL.,

Plaintiffs,

v.

RESEARCHGATE GMBH,

Defendant.

Civil Action No. 8:18-cv-03019-GJH

**DEFENDANT RESEARCHGATE GMBH'S ANSWER TO PLAINTIFFS' COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Defendant ResearchGate GMBH ("ResearchGate" or "Defendant"), through its undersigned counsel, hereby answers Plaintiffs' complaint for declaratory relief and damages as follows:

NATURE OF THE CASE¹

1. ResearchGate admits that Plaintiffs publish articles in their journals. As to the remainder of the second sentence of this paragraph, that sentence states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations. ResearchGate denies any remaining allegations of this paragraph.

2. ResearchGate admits that it was founded in 2008 and that it is a for-profit business. ResearchGate admits that it owns and operates an online, professional social network for scientists and researchers, and that its website is located at <http://ResearchGate.net>. As to the first four sentences of this paragraph, ResearchGate lacks knowledge or information sufficient to

¹ ResearchGate neither admits nor denies the contents of the various headings and subheadings in the Complaint, which are reproduced herein solely for convenience.

admit or deny the allegations of these sentences, and on that basis denies them. ResearchGate denies any remaining allegations of this paragraph.

3. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

4. ResearchGate admits that, through an automated process, it accesses copies, which are never publicly displayed, of certain publicly available publications (as well as certain textual content) that are then uploaded to servers it owns or controls for the purposes of indexing that content. ResearchGate admits that, through an automated process, it accesses and makes publicly available copies of some publications where the publication is subject to a Creative Commons license. ResearchGate admits that it stores copies of certain content obtained from publicly available websites on its servers at the direction of a user when the content's author chooses to make the content publicly available on ResearchGate. ResearchGate admits that its publication pages sometimes feature a "request full-text" button that causes a message to be sent from the requestor to the authors of a publication, and that the authors can ignore the request, decline it, or respond to it. ResearchGate admits that authors who choose to make the full text of their work available can choose to share their work privately or publicly. ResearchGate admits that ResearchGate's website has contained information about self-archiving. ResearchGate denies any remaining allegations of this paragraph.

5. ResearchGate admits that many articles published in Plaintiffs' journals undergo a peer review process. ResearchGate lacks knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

6. As to the first sentence of this paragraph, ResearchGate lacks knowledge or information sufficient to admit or deny the allegations of this sentence, and on that basis denies

them. ResearchGate denies any remaining allegations of this paragraph.

JURISDICTION AND VENUE

7. ResearchGate admits that Plaintiffs purport to bring claims under the Copyright Act, 17 U.S.C. §§ 101 et seq. For purposes of this action, ResearchGate does not contest subject matter jurisdiction. ResearchGate denies any remaining allegations of this paragraph.

8. For purposes of this action, ResearchGate does not contest personal jurisdiction. ResearchGate admits that some of its users are located in Maryland, that some of the institutions and companies with institution pages appearing on ResearchGate are based in Maryland, and that some of the content that authors have chosen to make publicly available via ResearchGate was written in Maryland. ResearchGate admits that it has sent emails to authors located in Maryland. ResearchGate admits that some of the companies that have advertised or posted jobs on ResearchGate are based in Maryland. ResearchGate denies any remaining allegations of this paragraph.

9. For purposes of this Action, ResearchGate does not contest venue. As to the remainder of the allegations of this paragraph, this paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

10. ResearchGate admits that Maryland is home to some of the country's leading universities, medical centers, and scientific, engineering and research institutions. ResearchGate is without knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

THE PARTIES

11. ResearchGate is without knowledge or information sufficient to admit or deny the

allegations of this paragraph, and on that basis denies them.

12. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

13. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

14. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

15. ResearchGate admits that it is a company organized under the laws of Germany, with its principal place of business in Berlin.

PLAINTIFFS ACS AND ELSEVIER

16. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

17. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

18. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

19. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

20. ResearchGate admits that an author's draft or final version of his or her research results or analysis prior to peer review or publication is often referred to as a "pre-print." ResearchGate admits that the version of an article printed in a journal is often referred to as a "version of record" or "VOR." ResearchGate is without knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

21. The allegations of this paragraph state legal conclusions to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

DEFENDANT RESEARCHGATE AND ITS ACTIVITIES

22. Denied.

The RG Website

23. ResearchGate admits that it owns and operates an online, professional social network for scientists and researchers. ResearchGate admits that its members use its website to share, discover, and discuss research, including by creating and editing profiles, asking and answering questions, and reading research, publications and other content that authors have chosen to make publicly available via ResearchGate. ResearchGate admits that more individuals visit ResearchGate's website from the United States than from any other country. ResearchGate denies any remaining allegations of this paragraph.

24. ResearchGate admits that Hamid R. Jamali published an article titled *Compliance and Infringement in ResearchGate Full-text Journal Articles* in the first issue of the 112th volume of *Scientometrics*. ResearchGate denies any remaining allegations of this paragraph.

25. ResearchGate admits that an account is required to ask or answer questions or upload documents. ResearchGate admits that to obtain an account, a person must register using an email address at a recognized institution, or be manually confirmed by ResearchGate as affiliated with a scientific or research institution or as a scientist or researcher. ResearchGate admits that a membership is not required to view some content that an author has chosen to make publicly available via ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

26. ResearchGate admits that, through an automated process, it accesses copies, which

are never publicly displayed, of certain publicly available publications (as well as certain textual content) that are then uploaded to servers it owns or controls for the purposes of indexing that content. ResearchGate admits that, through an automated process, it accesses and makes publicly available copies of some publications where the publication is subject to a Creative Commons license. ResearchGate admits that copies of content that authors have chosen to make publicly available via ResearchGate are stored at the direction of the user on computer servers that ResearchGate owns or controls. ResearchGate admits that it offers a search function that allows users to locate some content that authors have chosen to make publicly available via ResearchGate. ResearchGate admits that search engines like Google sometimes include in their search results links to content that authors have chosen to make publicly available via ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

27. ResearchGate admits that a membership is not required to view certain research, publications, or other content that an author has chosen to make publicly available via ResearchGate, and that users can download the full text of such content by using the “Download full-text” button appearing on ResearchGate’s website. ResearchGate admits that users can click a “share” button on ResearchGate’s website to post links on Facebook, Twitter, LinkedIn, Google+ and Reddit to content that authors have chosen to make publicly available via ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

Intentional Infringement

28. ResearchGate admits that, through an automated process, it accesses copies, which are never publicly displayed, of certain publicly available publications (as well as certain textual content) that are then uploaded to servers it owns or controls for the purposes of indexing that content. ResearchGate admits that, through an automated process, it accesses and makes publicly

available copies of some publications where the publication is subject to a Creative Commons license. ResearchGate admits that it stores versions of publications that are publicly available online on ResearchGate's system or network at the direction of authors who choose to make those publications publicly available via ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

29. ResearchGate admits that it sometimes informs authors that the full text of their work may be publicly available online and offers authors the option to do nothing, privately store it or make their work publicly available via ResearchGate, if they so choose. ResearchGate admits that its website features a "request full-text" button that causes a message to be sent from the requestor to the author of a publication, and that author can ignore the request, decline it, or respond to it. ResearchGate admits that authors who choose to make the full text of their work available can choose to share their work privately or publicly. ResearchGate admits that authors who choose to make their work publicly available in response to a user's request for the full text may do so by uploading their own copy or through a one-click upload or import feature. ResearchGate admits that when an author chooses to make a publication publicly available on ResearchGate via the import feature, ResearchGate, through an automated process and at the author's direction, accesses a pdf likely to be a publicly available version of the article, which is then uploaded to ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

30. ResearchGate admits that its website states "In general, proprietary full-text content only appears on ResearchGate when it has been uploaded by an author. So, if there's already a full-text of your publication available on ResearchGate, the most likely explanation is that it has been uploaded by one your co-authors." ResearchGate admits that a prior job posting

contained the language alleged in this paragraph. ResearchGate denies any remaining allegations of this paragraph.

31. ResearchGate admits that Hamid R. Jamali published an article titled *Compliance and Infringement in ResearchGate Full-text Journal Articles* in the first issue of the 112th volume of *Scientometrics*. ResearchGate denies any remaining allegations of this paragraph.

Facilitation Of Infringement

32. Denied.

33. ResearchGate admits that the images contained in this paragraph previously appeared on its website. ResearchGate denies any remaining allegations of this paragraph.

34. ResearchGate admits that it allows members to create and edit personal profiles. ResearchGate admits that its website features publication pages. ResearchGate admits that its website features pages with information about certain journals, including journals published by ACS, Elsevier and others. ResearchGate denies any remaining allegations of this paragraph.

35. ResearchGate admits that it allows members to create and edit personal profiles. ResearchGate admits that members have the option to add information about their education, employment, interests and projects to their profiles. ResearchGate admits that an author can add his or her published or unpublished work to his or her profile if the author so chooses. ResearchGate admits that if an author chooses to create a publication page for his or her work, or to confirm authorship of a publication or other content that already exists on ResearchGate, a link to that work could appear on his or her personal profile if the author has chosen to add that content to his or her profile. ResearchGate denies any remaining allegations of this paragraph.

36. ResearchGate admits that a publication page is a page created either by a user or by ResearchGate using publicly available information. ResearchGate admits that, when created,

publication pages contain information about particular content, such as a publication's title and author names, but generally no full text. ResearchGate admits that it may make a full text available in some cases where a publication has a Creative Commons license. ResearchGate admits that authors can choose to add the full text of their publications to publication pages. ResearchGate admits that publication pages can contain abstracts from certain publicly available sources. ResearchGate denies any remaining allegations of this paragraph.

37. ResearchGate admits that the SHERPA/RoMEO database (<http://www.sherpa.ac.uk/romeo>) is an online resource that aggregates and summarizes certain publisher policies. ResearchGate admits that its publication index used to be automatically matched with the SHERPA RoMEO data set of certain journals' and publishers' agreements to help authors decide whether they could legally upload their publications to ResearchGate. ResearchGate admits that it has sent emails to authors asking if they wanted to upload their work to ResearchGate, and that authors who choose to upload their work may do so privately. ResearchGate admits that its website features a "request full-text" button that causes a message to be sent from the requestor to the author of a publication, and that author can ignore the request, decline it, or respond to it. ResearchGate admits that authors who choose to make the full text of their work available can choose to share their work privately or publicly. ResearchGate admits that authors who choose to make their work publicly available in response to a user's request for the full text may do so by uploading their own copy or through a one-click upload or import feature. ResearchGate admits that when an author chooses to make a publication publicly available on ResearchGate via the import feature, ResearchGate's automated system, and at the author's direction, accesses a publicly available pdf, which is then available via ResearchGate. ResearchGate admits that copies of publications that authors have chosen to make publicly

available via ResearchGate appear on the publication pages found on ResearchGate's website, and that users can download a pdf of such publications. ResearchGate denies any remaining allegations of this paragraph.

38. ResearchGate admits that its website features pages with information about certain journals, including journals published by ACS and Elsevier. ResearchGate admits that these pages contain information about a specific journal, including a description of the journal and a link to its website. ResearchGate admits that journal pages may contain links to ResearchGate publication pages (which may or may not contain full texts or abstracts), and that, at some points in time in the past, abstracts and publication pages generally appeared in reverse chronological order as a default. ResearchGate admits that some publication pages feature a "request full-text" button that causes a message to be sent from the requestor to the authors of a publication. ResearchGate admits that authors who receive full-text requests may choose to ignore the request, decline, or, if they conclude that they have the legal right to do so, send the full text of a publication to the requestor privately, or make the full text of the publication available publicly on ResearchGate's website. ResearchGate denies any remaining allegations of this paragraph.

39. Denied.

40. ResearchGate admits that many publishers' agreements with authors allow them to share their work, and that permissible forms of sharing vary depending on the terms of the particular agreement at issue. ResearchGate admits that it has informed users that it offers a self-archiving repository. ResearchGate admits that it directed authors to Sherpa/RoMEO to help authors determine whether they may legally make their content publicly available via ResearchGate's website. ResearchGate denies any remaining allegations of this paragraph.

41. ResearchGate admits that many publishers' agreements with authors allow them to

share their work, and that permissible forms of sharing vary depending on the terms of the particular agreement at issue. ResearchGate admits that some forms of sharing are commonly referred to as “self-archiving,” although the meaning of the term “self-archive” varies. ResearchGate admits that the copyright section of its website informs users that “Many publishers do not allow the VOR to be shared publicly at any time. This is true even though you’re the author of the work.” ResearchGate admits that Michael Laakso published an article titled *Green Open Access Policies of Scholarly Journal Publishers: A Study of What, When, and Where Self-Archiving Is Allowed*, in the second issue of the 99th volume of the journal *Scientometrics*. ResearchGate denies any remaining allegations of this paragraph.

42. ResearchGate admits that it posted an announcement to its blog in September 2009, titled “Self-Archiving Repository goes online,” that read as follows:

This project makes full-text articles available to the public, for free – the first application of its kind worldwide.

We have now launched our Self-Archiving Repository! Currently, there is no way for researchers to access millions of publications in their full version online. We are now changing this by enabling users to upload their published research directly to their profile pages (a system called the “green route” to Open Access). Our publication index, containing meta data for 35 million publications, will be automatically matched with the SHERPA RoMEO (<http://www.sherpa.ac.uk/romeo>) data set of journal and publisher’s self-archiving agreements. As a result, authors will know which versions of their articles they can legally upload.

Since nine out of ten journals allow self-archiving, this project could give thousands of researchers immediate access to articles that are not yet freely available. Our Self-Archiving Repository does not infringe on copyrights because each profile page within ResearchGate is legally considered the personal website of the user (and the majority of journal publishers allow articles to be openly accessible on personal homepages). Therefore, each user can upload his or her published articles in compliance with self-archiving regulations.

Our publication index makes every publication identifiable and is searchable. Since each profile is networked to the larger platform, the uploaded resources will form an enormous pool of research for our members. Of course, it’s

free of charge.

ResearchGate denies any remaining allegations of this paragraph.

Financial Interest in the Infringement

43. Denied.

44. ResearchGate admits that the bolded text previously appeared when a user who was not a member of ResearchGate clicked the request full text button. ResearchGate denies any remaining allegations of this paragraph.

45. Denied.

46. ResearchGate admits that it sells advertising, and that paid advertisements sometimes appear, for example, on profile pages, journal pages and publication pages, among other pages. ResearchGate admits that employers may post jobs on ResearchGate, and that a single job posted on ResearchGate for 30 days costs \$499. ResearchGate denies any remaining allegations of this paragraph.

47. ResearchGate admits that it has received more than \$100 million in funding. ResearchGate denies any remaining allegations of this paragraph.

Attempts To Resolve

48. ResearchGate admits that STM is a trade association for academic and professional publishers, and that STM has promulgated a set of Voluntary Principles for Article Sharing on Scholarly Collaboration Networks that would, among other things, limit the sharing of articles to sharing within “research collaboration groups.” ResearchGate admits that STM asked ResearchGate to endorse the Voluntary Principles for Article Sharing on Scholarly Collaboration Networks, and that ResearchGate declined to do so. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of the last two sentences of this paragraph,

and on that basis denies them. ResearchGate denies any remaining allegations of this paragraph.

49. ResearchGate admits that ACS, Elsevier and others formed the Coalition for Responsible Sharing. ResearchGate admits that ACS and Elsevier brought suit against ResearchGate in Germany in October 2017. ResearchGate admits that it has received takedown notices from ACS, Elsevier and others, and that it acts expeditiously to remove or disable access to content identified in valid takedown notices. ResearchGate is without knowledge or information sufficient to admit or deny the allegations of the second sentence of this paragraph, and on that basis denies them. ResearchGate denies any remaining allegations of this paragraph.

50. ResearchGate admits that its Terms of Service provide that ResearchGate may delete or modify user member submissions, issue warnings to members, and suspend or terminate members' access to ResearchGate's website, and that ResearchGate has acted expeditiously to remove or disable access to content claimed to be infringing in valid takedown notices. ResearchGate admits that it has terminated members' accounts in appropriate circumstances pursuant to its repeat infringer policy. ResearchGate denies any remaining allegations of this paragraph.

51. ResearchGate admits that, without engaging in any analysis of whether particular content was likely to infringe copyright, it has previously made private certain content that authors had previously chosen to share publicly, and that the authors in some circumstances chose to make that content public again. ResearchGate admits that it has acted expeditiously to remove or disable access to certain publications in response to valid takedown notices, including takedown notices from ACS and Elsevier. ResearchGate denies any remaining allegations of this paragraph.

HARM

52. ResearchGate admits that search engine query results can include the publication page on ResearchGate's website if the content's author has chosen to make it publicly available via ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

53. ResearchGate admits that authors may choose to make all kinds of work publicly available via ResearchGate, including publications, conference papers, preprints, or negative results. ResearchGate admits that, until August 2016, certain references or hyperlinks within content uploaded to ResearchGate were hyperlinked to the corresponding publication page available on ResearchGate. ResearchGate denies any remaining allegations of this paragraph.

FIRST CLAIM FOR RELIEF
(Direct Copyright Infringement)

54. ResearchGate incorporates by reference its responses set forth above to paragraphs 1-53.

55. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

56. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

57. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

58. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

59. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

60. This paragraph states a legal conclusion to which no response is required. To the

extent a response is deemed required, ResearchGate denies the allegations.

SECOND CLAIM FOR RELIEF
(Inducement Of Copyright Infringement)

61. ResearchGate incorporates by reference its responses to paragraphs 1-53 set forth above.

62. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

63. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

64. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

65. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

66. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

67. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

68. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

69. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

THIRD CLAIM FOR RELIEF
(Contributory Copyright Infringement)

70. ResearchGate incorporates by reference its responses to paragraphs 1-53 set forth

above.

71. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

72. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

73. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

74. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

75. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

76. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

77. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

FOURTH CLAIM FOR RELIEF
(vicarious copyright infringement)

78. ResearchGate incorporates by reference its responses to paragraphs 1-53 set forth above.

79. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

80. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

81. This paragraph states a legal conclusion to which no response is required. To the

extent a response is deemed required, ResearchGate denies the allegations.

82. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

83. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

84. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

85. This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, ResearchGate denies the allegations.

PRAYER FOR RELIEF

With respect to the prayer for relief contained in Plaintiffs' Complaint, ResearchGate states that no response is required. To the extent a response is deemed required, ResearchGate denies that Plaintiffs are entitled to any of the relief requested and denies any factual allegations therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Cause of Action)

The Complaint fails to state a claim on which relief can be granted.

Second Affirmative Defense

(Safe Harbor)

Plaintiffs' claims are barred in whole or in part by one or more of the DMCA's safe harbor provisions as embodied in 17 U.S.C. § 512. ResearchGate has no actual knowledge that material or activity on its system or network is infringing, and is not aware of facts or circumstances from which infringing activity is apparent. ResearchGate faithfully complies with the DMCA by

expeditiously removing or disabling access to content identified by a DMCA-compliant notice and only re-enabling that content after receiving a valid DMCA-compliant counter-notification. ResearchGate also reasonably implements a policy against repeat infringers.

Third Affirmative Defense

(First Amendment and/or Fair Use)

To the extent there was any use of Plaintiffs' copyrighted materials, such use is protected by the First Amendment of the United States Constitution and/or the Fair Use Doctrine.

Fourth Affirmative Defense

(License)

Plaintiffs' claims fail in whole or in part because the complained-of use was validly licensed by express or implied license.

Fifth Affirmative Defense

(Waiver, Abandonment, and/or Forfeiture)

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, abandonment, and/or forfeiture.

Sixth Affirmative Defense

(Unclean Hands)

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

Seventh Affirmative Defense

(Laches)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Eighth Affirmative Defense

(Estoppel)

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

Ninth Affirmative Defense

(Acquiescence, Ratification, and/or Consent)

Plaintiffs' claims are barred in whole or in part by the doctrines of acquiescence, ratification, and/or consent.

Tenth Affirmative Defense

(No Willfulness)

Plaintiffs' claims fail in whole or in part because ResearchGate's conduct was innocent, not willful.

Eleventh Affirmative Defense

(Statutes of Limitations)

Plaintiffs' remedies are barred at least in part by the applicable statutes of limitations.

Twelfth Affirmative Defense

(Failure to Mitigate)

Plaintiffs are barred from recovery of damages because of and to the extent of their failure to mitigate their alleged damages (to which, in any event, they are not entitled).

Thirteenth Affirmative Defense

(No Causation)

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' damages, if any, were caused by independent, intervening, and/or superseding events beyond the control of ResearchGate and unrelated to ResearchGate's conduct. Any loss, injury, or damage claimed by Plaintiffs was proximately caused by Plaintiffs' own acts or omissions, forces, and events

unrelated to ResearchGate's conduct, and/or the acts or omissions of persons or entities other than ResearchGate, which ResearchGate does not control.

Fourteenth Affirmative Defense

(Injunctive Relief Unavailable)

Plaintiffs are not entitled to injunctive relief because any alleged injury to Plaintiffs is not immediate or irreparable and because Plaintiffs have an adequate remedy—if any—at law.

Fifteenth Affirmative Defense

(Misuse)

Plaintiffs' claims are barred in whole or in part by the doctrine of copyright misuse.

Sixteenth Affirmative Defense

(No Ownership)

Plaintiffs' claims are barred in whole or in part because Plaintiffs do not own the exclusive rights for some or all of the works.

Seventeenth Affirmative Defense

(Extraterritoriality)

Plaintiffs' claims are barred in whole or in part because ResearchGate did not undertake any activity in the United States covered by the Copyright Act.

PRAYER FOR RELIEF

WHEREFORE, ResearchGate respectfully prays that the Court:

1. Deny Plaintiffs' prayer for relief in its entirety;
2. Dismiss the Complaint with prejudice and enter judgment in favor of ResearchGate;
3. Award ResearchGate its attorneys' fees and costs incurred in this action, and any

other amounts recoverable under law; and

4. Award ResearchGate such other and further relief as the Court deems just and equitable.

5. ResearchGate hereby demands a trial by jury in this action.

Dated: February 13, 2019

By:



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Attorneys for Defendant
RESEARCHGATE GMBH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of February, 2019, a copy of the foregoing Answer to Complaint was electronically filed and served on all counsel and parties of record via the Court's CM/ECF system.



Tovia E. Kelley