

10-23-2001



To the Honorable Commission

... original documents or copy thereof.

101882293

1. Name of conveying party(ies):

NETLIBRARY, INC.

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State: DELAWARE

Other:

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of Conveyance:

Assignment

Merger

Security Agreement

Change of Name

Other

Execution Date: August 28, 2001

Name of receiving party(ies):

Name: COMERICA BANK-CALIFORNIA as successor in interest
To IMPERIAL BANK

Address: 226 AIRPORT PARKWAY

City: SAN JOSE State: CA Zip: 95110

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State:

Other: a California chartered bank

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or trademark number(s):

A. Trademark Application No.(s)

75/537,274

75/655,523

75/655,956

75/655,517

B. Trademark Registration No.(s)

2,419,989

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133

6 Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41) \$ 140.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

October 22, 2001
Date

Total number of pages comprising cover sheet: [10]

Mail Documents to be recorded with required cover sheet information to:

U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

10/23/2001 6TDM11 00000152 75537274

01 FC:481
02 FC:482

40.00 OP
100.00 OP

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of August 28, 2001, by and between NETLIBRARY, INC., a Delaware corporation ("Grantor"), and IMPERIAL BANK, a California chartered bank ("Secured Party").

RECITALS

A. Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that certain Loan and Security Agreement, dated as of August 28, 2001 (the "Loan Agreement"; all capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement).

B. Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in all of Grantor's right title, and interest in, to and under all of the Collateral whether presently existing or hereafter acquired.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral, except for licenses granted by Grantor to its customers in the ordinary course of business;

(b) [Intentionally Deleted];

(c) Performance of this Agreement does not conflict with or result in a breach of any material agreement to which Grantor is party or by which Grantor is bound;

(d) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral without Secured Party's consent, except for (i) Permitted Liens and (ii) licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(e) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made against Grantor that any part of the Collateral violates the rights of any third party;

(f) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, (i) a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations and (ii) a schedule of book titles generating revenue from the sale thereof and their respective authors. Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(g) Grantor shall upon its reasonable determination (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its commercially reasonable efforts to detect material infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld;

(h) Grantor shall apply for registration (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable:

(i) those intellectual property rights listed on Exhibits A, B and C to the Intellectual Property Security Agreement delivered to Secured Party by Grantor in connection with this Agreement, within thirty (30) days of the date of this Agreement, and

(ii) those additional copyright rights developed or acquired by Grantor after the date hereof in connection with (x) major revisions or additions to the intellectual property rights listed on Exhibits A, B and C of the Intellectual Property Security Agreement and (y) major revisions or improvements of, or a series of minor revisions or improvements of, the operating system of Grantor described on Exhibit A.

Grantor shall give Secured Party notice of all such applications or registrations required hereunder.

(i) Except as set forth on the Schedule under the Loan Agreement, this Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Documents.

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(l) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

3. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 3.

4. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

5. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral, provided that the documents, registrations, filings and further action required in connection with the United States Patent and Trademark Office and the register of Copyrights shall be in accordance with provisions of Section 6.12 of the Loan Agreement.

(b) For as long as Obligations under the Loan Agreement are outstanding, Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature solely to amend Exhibit A, Exhibit B and Exhibit C, hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest; provided that Grantor shall not be obligated to register any intellectual property rights included on Exhibit A, B, or C by Bank without Grantor's consent, except

those intellectual property rights set forth in Section 6.12(a) of the Loan Agreement, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

6. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Loan Documents; or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) Business Days of the occurrence of such breach.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any third party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor under this Agreement (including without limitation reasonable attorneys' fees and reasonable expenses), except in each case for losses arising from or out of Secured Party's gross negligence or willful misconduct.

9. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

10. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

11. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

13. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

GRANTOR:

Address of Grantor:

NETLIBRARY, INC.

3080 Center Green Drive
Boulder, CO 80301

By:  Alan Kimberly

Its: SVP Finance

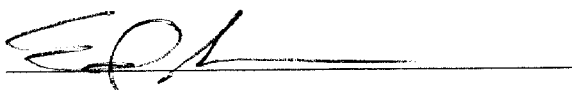
Attn: Senior Vice President, Finance
With a copy to: General Counsel

SECURED PARTY

Address of Secured Party:

IMPERIAL BANK

226 Airport Parkway
San Jose, CA 95110-1024

By: 

Its: VP

Attn: Corporate Banking Center

Exhibit A
Copyrights

Description

netLibrary's Hosting Platform containing the proprietary code base created to (a) associate collections of purchased eBooks with the customer who purchased those books and other authorized organizations, (b) grant access to those eBooks only to designated patrons or patron-groups of a customer, (c) control access to eBooks by enforcing viewing limits and copyright protections, and (d) allow patrons and customer representatives to search and access both the metadata associated with content as well as the content itself.

Registration Number

[To be provided once registered]

Registration Date

[To be provided once registered]

Gray Cary\PA\10166469.6
1090371-900000

1090371-900000

Exhibit B
Patents

<u>DESCRIPTION</u>	<u>REGISTRATION/SERIAL NUMBER</u>	<u>REGISTRATION/APPLICATION DATE</u>
Electronic Bookshelf with Multi- User Features	09/006,815	January 14, 1998

Notes

1. Pending U.S. patent application directed to various methodologies for managing the transmission of information over a computer network, such as the Internet. All claims, except for three, stand allowed. A "Reply after Final" was submitted in an effort to overcome the rejection with respect to the excepted claims.
2. Based up a Patent Cooperation Treaty application, there are applications pending in Australia, Brazil, Canada, China, Europe, Japan, Mexico, Singapore and South Korea. The "Requests for Examination" were timely filed in Australia, China and Europe. The filing dates of the "Request for Examination" for Canada, South Korea, and Japan have not yet come due. Mexico and Singapore do not require "Request for Examination". Applications for these two countries are pending.

**Exhibit C
Trademarks**

TRADEMARK	REGISTRATION/ APPLICATION NO.	REGISTRATION/ FILING DATE	STATUS AS OF 8/10/01
MetaText and Design (US)	2419989	1/9/01	Registered
MetaText and Design (US)	[To be provided]	[To be provided]	[Application in process]
NetLibrary (US)	75/537274	8/17/98	Preliminarily approved; in publication process.
NetLibrary and Design (US)	75/655,523	3/8/99	Approved for publication; has not been published yet.
netLibrary Interactive Knowledge and Design (US)	75/655,956	3/8/99	Approved for publication; has not been published yet
E and Design (US)	75/655,517	3/8/99	Approved for publication; has not been published yet
E and Design Argentina IC009	2.239.352	9/7/99	Examiner has matter under consideration
E and Design Argentina IC035	2.239.353	9/7/99	Published; awaiting examiner's report
E and Design Argentina IC041	2.239.354	9/7/99	Published; awaiting examiner's report
E and Design Australia 009, 035, 041	806110	9/6/99	Registered
E and Design Brazil IC009	821.968.238	9/8/99	Published for opposition
E and Design Brazil IC035	821.968.270	9/8/99	Published for opposition
E and Design Brazil IC040	821.968.254	9/8/99	Published for opposition
E and Design Brazil IC041	821.968.246	9/8/99	Published for opposition
E and Design Canada IC009, 035, 041	1,028,081	9/7/99	Response to Examiner's report due 9/21/01
E and Design Chile IC009	561.972	2/22/00	Registered
E and Design Chile IC035, 41	562.438	2/28/00	Registered
E and Design European Union IC009, 035, 041	001299775	1/29/01	Registered
E and Design Mexico IC09	635404	9/8/99	Registered
E and Design Mexico IC035	390179	9/8/99	Awaiting Examiner's determination
E and Design Mexico IC041	633984	9/8/99	Registered
E and Design South Africa IC009	99/16288	9/6/99	Administrative backlog; action expected 9/02
E and Design South Africa IC035	99/16289	9/6/99	Administrative backlog; action expected 9/02
E and Design South Africa IC041	99/16290	9/6/99	Administrative backlog; action expected 9/02
E and Design Venezuela IC009	99/015539	9/8/99	Awaiting Examiner's action
E and Design Venezuela IC035	99/015540	9/8/99	Awaiting Examiner's action
E and Design Venezuela IC041	99/015541	9/8/99	Awaiting Examiner's action
Knowledge Station European Union 001161157	001161157	6/13/00	Registered
netLibrary Interactive Knowledge Argentina IC009	2.239.349	9/7/99	Examiner has matter under consideration
netLibrary Interactive Knowledge Argentina IC035	2.239.350	9/7/99	Published; awaiting examiner's report

TRADEMARK	REGISTRATION/ APPLICATION NO.	REGISTRATION/ FILING DATE	STATUS AS OF 8/10/01
netLibrary Interactive Knowledge Argentina IC041	2.239.351	9/7/99	Published; awaiting examiner's report
netLibrary Interactive Knowledge Australia IC009,035,041,042	806109	9/6/99	Registered
netLibrary Interactive Knowledge Brazil IC009	821.968.262	9/8/99	Published for opposition
netLibrary Interactive Knowledge Brazil IC038	821.968.211	9/8/99	Published for opposition
netLibrary Interactive Knowledge Brazil IC040	821.968.220	9/8/99	Published for opposition
netLibrary Interactive Knowledge Brazil IC041	821.968.203	9/8/99	Published for opposition
netLibrary Interactive Knowledge Canada IC009,035,041	1,028,080	9/7/99	Response to examiner's report due 11/8/01
netLibrary Interactive Knowledge Chile IC009	460.432	9/8/99	Appealed; Denied
netLibrary Interactive Knowledge Chile IC035, IC041	460.433	9/8/99	Appealed; Denied
netLibrary Interactive Knowledge European Union IC009,035,041,042	001298777	1/29/01	Registered
netLibrary Interactive Knowledge Mexico IC009	635403	9/8/99	Registered
netLibrary Interactive Knowledge Mexico IC035	654359	9/8/99	Registered
netLibrary Interactive Knowledge Mexico IC041	438067	7/24/00	Application was re-filed after Mexican counsel failed to file a response; Awaiting Examiner's action on new application
netLibrary Interactive Knowledge South Africa IC009	99/16285	9/6/99	Administrative backlog; action expected 9/02
netLibrary Interactive Knowledge South Africa IC035	99/16286	9/6/99	Administrative backlog; action expected 9/02
netLibrary interactive knowledge South Africa IC041	99/16287	9/6/99	Administrative backlog; action expected 9/02
netLibrary Interactive Knowledge Venezuela IC009	99/015536	9/8/99	Awaiting Examiner's action
netLibrary Interactive Knowledge Venezuela IC035	99/015537	9/8/99	Awaiting Examiner's action
netLibrary Interactive Knowledge Venezuela IC041	99/015538	9/8/99	Awaiting Examiner's action