	Case 3:11-cv-08030-PGR Document	91 Filed 09/13/11 Page 1 of 3
1	WO	
2		
3		
4 5		
6	IN THE UNITED ST	TATES DISTRICT COURT
7	FOR THE DISTRICT OF ARIZONA	
8		
9	Tom Bean, et al.,	) CV 11-8030-PCT-PGR
10	Plaintiffs,	
11	V.	) ORDER
12	Pearson Education, Inc.,	) ) \
13	Defendant.	)
14		<u>}</u>
15	Before the Court is Plaintiffs' Motion to Compel Production of Documents Requested	
16	in First and Third Sets of Document Expenses and for Award of Expenses. (Doc. 69.)	
17	Defendant filed a response opposing the motion and Plaintiffs filed a reply. (Docs. 83, 88.)	
18	For the reasons set forth below, the motion will be denied.	
19	BACKGROUND	
20	Plaintiffs filed a complaint on February 25, 2011, alleging copyright infringement and	
21	fraud. (Doc. 1.) Plaintiffs filed their First Amended Complaint on June 14, 2011, and	
22	Defendant filed an answer on July 1. (Docs. 56, 66.)	
23 24	The First Amended Complaint omitted an allegation contained in the original	
24 25	complaint. Citing the omitted language, Defendant contended that the First Amended	
23 26	Complaint dramatically reduced the number of Plaintiffs' copyright infringement claims, from 834 to six (relating to five of 178 publications). ( <i>See</i> Doc. 67 at 4; Doc. 80 at 12; Doc.	
20 27	81 at 3.) In the parties' Joint Case Management Report, Defendant based its proposed	
27	discovery deadlines on the limited number of claims included in the First Amended	
20	discovery deddimes on the minited num	for of claims mended in the first finended

Complaint. (Doc. 67 at 12.) On August 16, 2011, the Court granted Plaintiffs' motion to file
 a Second Amended Complaint. (Doc. 77.)

3

## **DISCUSSION**

Federal Rule of Civil Procedure 37(a)(3)(B)(iv) provides that a party may file a
motion to compel if "a party fails to respond that inspection will be permitted—or fails to
permit inspection—as requested under Rule 34."

Plaintiffs move to compel Defendant to produce documents responsive to their first
and third sets of document requests, dated March 17 and May 6, 2011, which propound a
total of 14 document requests. (Doc. 69, Att. 2 at 2, 24.) These requests seek discovery
relating to the use of the photographs Plaintiffs licensed to Defendant for inclusion in
educational publications from 1986 to 2010. (*See* Doc. 88 at 10.)

Plaintiffs contend that Defendant has failed to produce the books in which Plaintiffs'
photographs were used; the licensing files for Plaintiffs' photographs; the date and quantity
printed for each individual printing session of the books in question; and Defendant's display
of Plaintiffs' photographs on any internet website. (Doc. 69 at 5.)

Defendant responds that it already has produced, or will produce in several weeks or months, the documents relevant to the claims in the First Amended Complaint. (*See, e.g.*, Doc. 83 at 3.) Defendant also states that it will produce additional materials relevant to the allegations in the Second Amended Complaint. (*Id.*) Plaintiffs reply that this "mere statement of intention to produce documents without actual production, several months after the requests were propounded, is an insufficient response under Rule 34." (Doc. 88 at 9.)

While sharing Plaintiffs' concern with the pace of disclosure, the Court will deny the
motion to compel. As set forth in the Court's scheduling order, discovery is to be completed
by January 6, 2012. (Doc. 78.) The Second Amended Complaint was filed August 16, 2011.
(Doc. 85.) Defendant has indicated that it is in the process of providing the disclosure sought
by Plaintiffs. Under these circumstances the Court concludes that a motion to compel is
premature.

28

1	However, the Court's denial of the motion should not be construed as a ruling that	
2	Defendant has fully complied with Rule 34. Inadequate compliance with discovery rules may	
3	warrant Court intervention and an award of attorneys' fees.	
1	The parties are again instructed to obey both the letter and spirit of the Federal Rules	

The parties are again instructed to obey both the letter and spirit of the Federal Rules
of Civil Procedure and to work together to manage discovery in the most efficient manner
practical.

Accordingly,

8 IT IS ORDERED that Plaintiffs' Motion to Compel Production (Doc. 69) is denied.
9 IT IS FURTHER ORDERED that a Status Conference has been set for Monday,
10 October 31, 2011, at 11:15 a.m., before the Hon. Paul G. Rosenblatt, in Courtroom 601,
11 Phoenix, Arizona.

DATED this 12<sup>th</sup> day of September, 2011.

Paul G. Rosenblatt United States District Judge