

Mr. Charlie McCreevy
Member of the European Commission responsible for Internal Market and Services
By Email

cc. Commissioners Ashton, Figel, Kroes, Kuneva, Orban, Reding, Verheugen

Brussels, 18 September 2009

Dear Commissioner,

On behalf of our members we would like to thank you and your services for the organisation of last week's hearing on the Google US book search settlement. We very much welcomed this opportunity to set out our views on the proposed settlement, which we believe is unacceptable in its present form as it violates the rights of copyright holders and authors and would lead to a *de facto* monopoly.

During the hearing dozens of questions were asked about the deal. Despite having been given ample opportunity to respond, Google chose to leave many of them unanswered. Please see the attached overview for some of the most important ones.

We urge you and your services to seek an urgent and satisfactory answer to these questions. Only this will allow courts, regulators, stakeholders and the general public on both sides of the Atlantic to come to a full and proper assessment of the impact of the proposed deal on European consumers, businesses and rights holders.

Yours sincerely,

Auke Haagsma and **David Wood**, ICOMP (the Initiative for a Competitive Online Marketplace, www.i-comp.org)

Prof. Dr. Gottfried Honnefelder, Börsenverein des Deutschen Buchhandels (German Publishers' and Booksellers' Association, <http://www.boersenverein.de/de/portal/index.html>)

Sylvie Fodor, CEPIC (Coordination of European Picture Agencies Press Stock Heritage, <http://cepic.org>)

Dr. Wolfgang Sander-Beuermann, SuMa (Association for the Promotion of Search Engine Technology and Free Access to Knowledge, <http://www.suma-ev.de>)

Some unanswered questions about the Google book search settlement

1. Why does the settlement force non-U.S. authors and publishers to opt out of a deal they were never consulted on, or even received notice of, in order to protect their copyright? Why can't they be asked to opt in?
2. How can Google claim that the Authors Guild and AAP—which according to each association's rules are limited to U.S. authors and publishers, respectively—represent all the authors and publishers in the world?
3. Why was the settlement not made available in all EU languages, to allow European authors and publishers who don't speak English to understand what the deal would mean for them?
4. What efforts have been made to ensure that the fine arts and photographic rights, which appear to be outside the scope of the proposed Settlement, are not adversely affected?
5. Google has repeatedly claimed that the settlement is not anti-competitive because the proposed Books Rights Registry (BRR) will have the ability to license rights in books to others, but there is nothing in the settlement that would authorise the BRR to license orphan books or unclaimed books —*i.e.*, books where the rights holder cannot be located or chooses not to register with the BRR. Can Google identify the provision in the settlement that explicitly authorises the BRR to license orphan books and unclaimed books?
6. In response to European anger over the settlement, Google has reportedly issued a letter saying that it will not exploit books that are commercially available in Europe. Doesn't this conflict with the express terms of the settlement? If this assurance is going to be worth anything as a legal matter, doesn't Google need to revise the settlement to incorporate it?
7. Is it true that the database of books Google is building can only be searched with the Google search engine, and if so, won't this reinforce Google's overwhelming market power in search and search advertising? Isn't this a reason that European competition regulators might have legitimate concerns about the settlement?

8. Will Google agree to provide competitors – including search competitors - with direct access to the database of books it is scanning in order to promote competition in book search and related markets -- and to ensure that this settlement does not confer a *de facto* monopoly on Google in book search or strengthen its monopoly in search and search advertising? And if so, will the settlement be revised to incorporate this?
9. Will Google guarantee not to combine any user data it collects in connection with Google book search with data it collects in connection with any of its other services?
10. The settlement authorises Google to engage in non-display uses and to conduct algorithmic experiments (“non-consumptive research”) on books in order to improve its search services, but also gives it the right to exclude any commercial company from doing the same (see §7.2 and §1.121). Why does Google feel that provision is necessary? Isn’t there a valid concern that this might aggravate the anti-competitive impact of the settlement?