

AMERICAN SOCIETY OF



September 14, 2010

The Honorable Henry Johnson  
Chairman  
Subcommittee on Courts and Competition Policy  
Judiciary Committee  
United States House of Representatives  
B-352 Rayburn House Office Building,  
Washington, DC 20515

Dear Chairman Johnson:

On behalf of the American Society of Journalists and Authors (ASJA) and the freelance, nonfiction writers we represent, I am writing to reiterate my concern over the proposed Google Book Search settlement and to urge you, as the Chairman of the House Subcommittee on Courts and Competition, to raise this issue during the Subcommittee's upcoming hearing on Competition in the Evolving Digital Marketplace.

- We hope you will use this forum to reemphasize the risks that the proposed settlement presents not only to the rights of all class members bound by the settlement, but also the essential values and public policies that are central to competition in the marketplace for digital works.
- The Subcommittee is in a unique position to highlight this critical issue. Please encourage the Department of Justice to take the steps necessary to preserve competition in these important sectors and to protect incentives for creativity and authorship.
- With this matter still undecided in the courts after five years, Google is still scanning something akin to 10,000 books each day – without the permission of their authors. More than 12 million books have been scanned. Generally, when parties agree to settle, the courts allow a contested behavior to continue. In the case of the Google settlement, this presumption has served to kill off competition. What competitor could ever catch up, now that Google has a five-year head start?
- An unintended consequence of this settlement has been the exposure of millions of books to book piracy, a killer of competition if there ever was one. A quick stroke of the keyboard will allow anyone to buy a program (or obtain one free) that overrides Google's prevention measures and lets one download an entire book, including many still sold in stores. Any book, not just the out-of-copyright ones Google has made easily available. Want to see how

Alexandra Owens • Executive Director • [director@asja.org](mailto:director@asja.org)

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**American Society of Journalists and Authors, Inc.**

1501 Broadway, Suite 302 • New York, NY 10036 • (212) 997-0947 • Fax (212) 937-2315 • [www.asja.org](http://www.asja.org)

it works? Here is one free program, found, ironically, by “googling” “Google book hack.”  
<http://hackaday.com/2009/09/09/how-to-download-books-from-google/>

As you may recall, the Google Books issue was raised in a hearing last September, and your incisive commentary and questions shined a light on many troubling aspects of the proposed settlement. While the ASJA and other stakeholders await a decision from Judge Chin, we hoped to take this opportunity to review with you the most unsettling facets of the proposed settlement.

The U.S. Copyright Act grants authors and other copyright owners exclusive rights in their works. The proposed settlement turns this principle on its head. It would permit Google to exploit the copyrighted works of millions of authors and publishers unless the owners of those works expressly “opt out.” The settlement thus deprives copyright owners of the fundamental protections of copyright law.

We also are alarmed by yet another risk the settlement poses to competition. Though most users know Google as a provider of online search, the company profits enormously from advertising that appears alongside search results. By incorporating the works of ASJA members and other authors to its vast databases -- without first seeking or obtaining their permission -- Google is further entrenching its dominance in search, increasing the scale of its advantage over rivals, and adding to its profits, all at the expense of authors. *With exclusive access to this digital material, Google would effectively obtain a monopoly in the supply of online access to books, while its existing dominant positions in online search and search advertising might well become insurmountable.*

The Department of Justice has already expressed the view, in a brief filed with the Southern District of New York, that the proposed settlement raises serious competition concerns. We fear, however, that the Department may feel that there is little else to do should Judge Chin reject the settlement, despite indications that Google intends to continue its practices even if the settlement is not approved. As these issues are critical to the preservation of the competitive marketplace that has defined commerce over the Internet since its inception, we respectfully urge you to raise the issue at the upcoming hearing.

ASJA is grateful for your consideration of our concerns. You have been kind enough to meet with us in the past. If you have any questions, I would be happy to speak with you and other members of the Subcommittee, or with staff members.

Sincerely,

/s/

Salley Shannon  
President  
American Society of Journalists and Authors, Inc.

cc: The Honorable Charles Gonzalez

Alexandra Owens • Executive Director • [director@asja.org](mailto:director@asja.org)

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