



September 15, 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,

I write on behalf of the National Writers Union (NWU/UAW Local 1981) regarding the hearing on *Competition in the Evolving Digital Marketplace* that the House Subcommittee on Courts and Competition will hold tomorrow. As Chairman, you know one of the most important issues facing digital competition today is a proposed settlement of class-action litigation against Google's Book Search program. We urge you to use this hearing to emphasize the risks to competition posed by this settlement and to discuss what steps the Department of Justice might consider in order to safeguard competition and the rights of authors in these important markets.

Your thoughtful questions and skepticism about certain aspects of the proposed settlement in a hearing last September were accurate and appreciated. While the many objectors await a decision from the U.S. District Court, we wanted to review why this deal is flawed.

The NWU opposes the settlement because it acts as a forced license, one that will permit Google to copy writers' works with impunity unless the writer specifically instructs Google to "remove" his or her book using a deeply flawed registry owned and operated by Google. Under the Copyright Act, writers own exclusive rights in their works. By forcing writers to opt-out of Google Books, the settlement allows Google to profit from others' private property without their permission. This is flatly contrary to U.S. law and to the fundamental American commitment to the protection of property rights.

The proposed settlement also would grant Google a monopoly over online access to valuable digital content that is highly sought after by users. This monopoly will allow Google to prevent rivals from competing with Google in the supply of online access to books. Moreover, as the DOJ Antitrust Division recognized in its brief in opposition to the proposed settlement, it will further entrench Google's already dominant position in online search. In short, the settlement is rife with competition problems. If allowed to stand, it will harm consumers, deprive writers of new commercial opportunities, and dampen innovation and growth in a market that is vitally important to American writers and the future of American publishing.

While we welcome the Antitrust Division's attention to these matters, we worry that they might feel their job is done if the court rejects the settlement. Yet Google has given every indication that it will continue to copy and profit from our books even if the settlement is rejected. If so, many of the problems noted above, including the competition concerns, will remain unresolved.

Accordingly, we urge you to use this hearing to discuss what measures antitrust regulators need to consider to preserve competition in the supply of online access to books, search, and related markets in the event the settlement is rejected. We also urge you to discuss with the witnesses the importance of ensuring that opportunities for competition are preserved in these sectors, whatever the outcome of the Google Book Search litigation.

We thank you in advance for your support of writers' rights and your attention to these important matters. We are available at your convenience to discuss any of these issues should you need further information.

Sincerely,

Larry Goldbetter, President
National Writers Union