



Sept. 16, 2009

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Dear Mr. Attorney General and Associates:

I am writing to express concern about the latest developments in the Google Books Settlement as the Justice Department prepares to file its brief in the case with U.S. District Judge Denny Chin. As you may know, I was among eight witnesses testifying last week to the House Judiciary Committee about the proposed deal. In a clear move to quell criticism of the settlement's anticompetitive aspects, Google's General Counsel David Drummond announced at the hearing that the Internet giant would allow others to sell the out-of-print books that Google has digitized.

It is possible that this offer could help ease some anticompetitive concerns depending on how it is implemented and how the provisions would be enforced. Without such details and a formal means to enforce them, such as a consent decree, Drummond's much-ballyhooed announcement is little more than a public relations ploy. I am confident that Justice will focus on the merits of the case, not Google's PR effort.

As we pointed out last April, the Google Books settlement raises at least two antitrust issues: (1) The way it resolves the "orphan books" issue for Google and no one else and (2) The most-favored-nation clause assuring that no one will receive better terms with the Books Registry than Google.

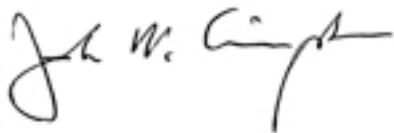
Consumer Watchdog has filed an *amicus* brief in opposition, citing the anticompetitive monopoly it would create. (Read the brief here: <http://www.consumerwatchdog.org/resources/Googleamicusbrief.pdf>) In addition, we pointed out that the settlement should be rejected because it exceeds the controversy before the court; is an unauthorized attempt to revise the rights of copyright law, which is a Congressional prerogative;

and conflicts with International Law. Consumer Watchdog is also troubled that the settlement has no binding guarantees to ensure users' privacy. Readers in the United States expect that their reading habits will remain private. Google will gather an unprecedented amount of data on users. So far there is no adequate guarantee that whatever "privacy policy" Google adopts will not be changed on a mere corporate whim whenever it suits Google's narrow agenda.

Google has demonstrated excellent access at the highest levels of government and easy access to policymakers. Several former executives have taken important roles in the Obama Administration. Google has built support in academia and the nonprofit world with generous contributions to projects that support its corporate ends. Substantial funding at institutions like Harvard's Berkman Center and Stanford's Center for the Internet and Society can mean that their programs become merely an extension campus of Google U, and serve as an echo chamber for the company's policies, rather than centers for unfettered academic exploration of issues vital to the public interest. Coupled with its recent charm offensive, such connections and efforts by Google to burnish its image may make it difficult for some to objectively evaluate Google's behavior.

Nonetheless Consumer Watchdog is confident that the Justice Department is assessing the Google Books Settlement based on the legal merits and will conclude that it has anticompetitive aspects that must be thwarted. If Google proposes ways to meet those objections, they must be incorporated into a binding agreement with the full force of law.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with a prominent loop at the end.

John M. Simpson
Consumer advocate