

DOJ releases fourth filing on Google Book Settlement

In early February, the United States Department of Justice (DOJ) released its fourth filing regarding the proposed Google Book Search settlement.

As in previous filings, the DOJ once again sent the settlement parties—Google, the Association of American Publishers (AAP), and the Authors Guild—back to the drawing board by recommended parties renegotiate the terms in the amended settlement agreement (ASA) due to continued concerns regarding the scope of the agreement.

Stating that the ASA “suffers from the same core problem as the original agreement,” the DOJ argues that the class settlement mechanism has been used by Google, AAP, and the Authors Guild to settle a dispute that goes well beyond the initial complaint—whether the scanning of books to provide an online searchable index is a fair use.

Instead, the agreement establishes a new business arrangement for the sale of books without providing sufficient notice to rights holders in a fashion that conveys to Google market dominance. The DOJ also expressed concern about the Books Rights Registry and its control over the “Unclaimed Works Fiduciary,” which would dictate pricing and terms of use for unclaimed works. The filing also includes a list of recommendations for the court should it decide to approve the ASA at the fairness hearing, which was held February 18. Updates on the Google Book Search settlement are available at wo.ala.org/gbs/.


Library associations support online software reseller in *Vernor v. Autodesk* infringement lawsuit

On February 11, ALA, ACRL, and the Association of Research Libraries (ARL) joined

a coalition of public interest and consumer groups in urging a federal appeals court to preserve consumers’ rights and the First Sale Doctrine (which allows libraries to lend books) in a battle over an Internet auction of used computer software.

An amicus curiae brief was filed with the U.S. Court of Appeals for the 9th Circuit, the Electronic Frontier Foundation—joined by the library associations, the Consumer Federation of America, U.S. Public Interest Research Group, and Public Knowledge—in support of plaintiff Timothy Vernor. Vernor is an online software reseller who tried to auction four authentic packages of Autodesk’s AutoCAD software on eBay. Autodesk sent takedown notices to block his auctions and threatened to sue him for copyright infringement, claiming that its software is only “licensed,” never sold.

At the heart of the case is the First Sale Doctrine—an important limitation under copyright law that gives copyright holders control over the *first* vending or sale of their work(s). The first sale doctrine steps in after an individual copy has been sold and puts further disposition of the copy beyond the reach of the copyright owner. The first sale doctrine is fundamental for libraries and other organizations, such as archives, used bookstores and online auctions, as it allows a “second life” for copyrighted works.

The brief argues, in part, that the first sale doctrine is well-established, serves critical economic and democratic values, and promotes access to knowledge, preservation of culture, and resistance to censorship. Libraries rely on provisions in the Copyright Act, such as first sale, to accept donations of special collections and to preserve these works. If Autodesk wins the case, software vendors would potentially be permitted to evade the first sale doctrine via contractual license agreements. Such a ruling could allow other copyright owners to follow suit with licenses on books, CDs, DVDs, and other media, with strong implications for libraries and our users. 

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