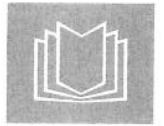


Börsenverein des Deutschen Buchhandels



Börsenverein des Deutschen Buchhandels e. V.
Großer Hirschgraben 17-21 60311 Frankfurt am Main

The Honorable John Conyers, Jr.
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lamar S. Smith
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Der Vorsteher

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By Facsimile and Hand Delivery

1 September 2009

Dear Chairman Conyers and Congressman Smith:

My name is Prof. Dr. Gottfried Honnefelder and I am President ("Vorsteher") of the Börsenverein des Deutschen Buchhandels (the German Publishers and Booksellers Association) located in Frankfurt, Germany. I write this letter in connection with the hearing you are holding on 10 September 2009 on the proposed settlement of the class-action copyright infringement litigation brought by the U.S. Authors Guild and others against Google's Book Search service.¹ I am providing this letter to you in English, for your convenience, and note that it was translated for us.

The Börsenverein represents approximately 6000 publishing companies, bookshops, antiquarian booksellers, intermediate book traders and publishing representatives doing business in Germany. Because several of our members own rights in books that are protected by U.S. copyright law, these members fall within the putative class defined in the proposed settlement. This means that the settlement, if approved, would give Google broad rights to copy, distribute, and commercialize our members' books without their consent—despite the fact that our members did not participate in any way in the underlying litigation, were not invited to participate in the negotiation of the proposed settlement, and are not represented by any of the named class members or their representatives. The only means our members have to avoid ceding their U.S. property rights to Google is to undertake the onerous task of "opting out" of the proposed settlement with respect to each of the hundreds or even thousands of their books covered by the proposed settlement.

This use of U.S. class action law to abrogate the exclusive rights of copyright owners located outside the United States, to the unilateral commercial benefit of a single U.S. company, violates fundamental principles of international copyright law—principles that the United States in other contexts has vigorously urged other countries to respect. This case also establishes a dangerous precedent, one that ultimately could harm the interests of the United States' own creative industries. In this regard, we respectfully urge you to consider whether it would be acceptable, in the Committee's view, for a foreign court to grant a non-U.S. entity the unilateral

¹ *The Authors Guild, Inc. et al v. Google Inc.*, Case No. 05 CV 8136 (S.D.N.Y.).

right to copy, distribute, or otherwise exploit works owned by U.S. copyright owners without their consent. We imagine that many U.S. copyright owners would object vigorously to such a scheme. If the proposed settlement with Google is approved, however, this will be precisely the situation that European and other non-U.S. copyright owners will face in the United States.

Based on these and other concerns, the Börsenverein, joined by several European publishers, has filed objections to the proposed settlement. Apart from the concerns described above, our principal objections to the settlement are as follows:

First, the Parties to the proposed settlement failed to provide legally adequate notice of the proposed settlement to non-U.S. class members. Specifically, the Parties' failure to translate the proposed settlement violated the rights of non-U.S. class members under Rule 23 of the Federal Rules of Civil Procedure and the Due Process clause of the U.S. Constitution, as well as the Court's own order in the case. Non-U.S. class members also did not receive adequate notice of the proposed settlement due to fundamental translation errors in the notice documents.

Second, the manner in which works owned by non-U.S. rights holders are affected by the proposed settlement conflicts with the United States' obligations under the Berne Convention and other international treaties. The settlement abrogates exclusive rights guaranteed under Berne to non-U.S. rights holders, imposes formalities on such rights holders that are unlawful under Berne, and also violates the United States' national treatment obligations under Berne because it treats non-U.S. rights holders less favorably than it treats U.S. rights holders.

Third, the proposed settlement fails to satisfy rule 23 of the Federal Rules of Civil Procedure because it is not fair, reasonable, or adequate, and because the named Plaintiffs, all of whom are U.S. entities or authors, do not adequately represent non-U.S. class members.

Thank you in advance for your consideration of this letter. Please do not hesitate to contact me if you have any questions regarding this letter or the Börsenverein's views on the proposed settlement.

Respectfully yours,



Prof. Dr. Gottfried Honnefelder

cc: Members of the Committee on the Judiciary, U.S. House of Representatives
Hon. Howard Berman, Chairman, Foreign Affairs Committee, U.S. House of Representatives
Hon. Ileana Ros-Lehtinen, Foreign Affairs Committee, U.S. House of Representatives
Secretary Hillary Rodham Clinton, U.S. Secretary of State
Secretary Gary Locke, U.S. Department of Commerce
Amb. Ron Kirk, United States Trade Representative
Hon. Marybeth Peters, Register of Copyrights, Library of Congress