

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
The Authors Guild, Inc., Association of American Publishers, Inc., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 05 CV 8136 (DC)
	:	
Google Inc.,	:	
	:	
Defendant.	:	
-----X		

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF AMENDED SETTLEMENT AGREEMENT**

This matter is before the Court pursuant to the motion of Plaintiffs in the above-captioned class action (the “Action”) for preliminary approval of an Amended Settlement Agreement among Plaintiffs and defendant Google Inc. (“Google”). Having read and considered the Amended Settlement Agreement, and based upon familiarity with the files and proceedings in this matter, the Court finds that:

1. Plaintiffs filed an initial complaint, and subsequent amended complaints, in the Action alleging, on behalf of themselves and a putative class of others similarly situated, that defendant violated the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.*;
2. Defendant has vigorously contested the allegations;
3. The parties entered into a Settlement Agreement that was filed with the Clerk of the United States District Court for the Southern District of New York on October 28, 2008 and preliminarily approved by the Court on November 14, 2008;
4. In an order dated December 23, 2008, the Court approved the form and content of the paper Claim Form and the online Claim Form;

5. After the conclusion of the notice and opt-out period for the Settlement Agreement, the parties advised the Court that they would not be seeking final approval of the Settlement Agreement, and would instead seek preliminary approval of an Amended Settlement Agreement;

6. The parties have now filed the instant motion seeking preliminary approval of the Amended Settlement Agreement;

7. The Court has reviewed the Amended Settlement Agreement and determined it to be within the range of possible approval; and

8. The Court has reviewed the notice provisions of Article XII of the Amended Settlement Agreement, and the form of Supplemental Notice attached to the Amended Settlement Agreement as Attachment N, and the Court has determined that the form, content and manner of dissemination of the Supplemental Notice constitutes the best notice practicable under the circumstances.

Accordingly, it is hereby **ORDERED** as follows:

9. The motion is GRANTED. The Amended Settlement Agreement is hereby preliminarily approved. Unless otherwise specified, all capitalized terms herein shall have the same meaning as in the Amended Settlement Agreement.

10. The following Amended Settlement Class and two Sub-Classes are provisionally certified for settlement purposes only:

Amended Settlement Class

All Persons that, as of January 5, 2009, have a Copyright Interest in one or more Books or Inserts. All Amended Settlement Class members are either members of the Author Sub-Class or the Publisher Sub-Class, or both. Excluded from the Amended Settlement Class are Google, the members of Google's Board of Directors and its executive officers, and the departments, agencies and instrumentalities of the United States Government, and the Court.

Author Sub-Class

Members of the Amended Settlement Class who are authors, and their heirs, successors and assigns, and any other members of the Amended Settlement Class who are not members of the Publisher Sub-Class.

Publisher Sub-Class

Members of the Amended Settlement Class that are (a) companies that publish books, and their exclusive licensees, successors and assignees, and (b) companies that publish Periodicals and have a Copyright Interest in one or more Inserts, and their exclusive licensees, successors, and assignees.

11. Plaintiffs Paul Dickson, Joseph Goulden, Daniel Hoffman, Betty Miles, Herbert Mitgang, Maureen Duffy, Daniel Jay Baum, Margaret Drabble and Robert Pullan are designated as Representative Plaintiffs for the Author Sub-Class. Plaintiffs The McGraw-Hill Companies, Inc., Pearson Education, Inc., Penguin Group (USA) Inc., Simon & Schuster, Inc., John Wiley & Sons, Inc, Macmillan Publishers Limited, Harlequin Enterprises Limited, Melbourne University Publishing Limited and The Text Publishing Company are designated as Representative Plaintiffs for the Publisher Sub-Class.

12. The Court appoints the following law firms as Class Counsel: the firms of Boni & Zack LLC, Milberg LLP, and Kohn, Swift & Graf, PC for the Author Sub-Class (“Author Sub-Class Counsel”), and the firm of Debevoise & Plimpton LLP for the Publisher Sub-Class (“Publisher Sub-Class Counsel”). Author Sub-Class Counsel and Publisher Sub-Class Counsel shall be referred to collectively herein as “Class Counsel.”

13. A final settlement/fairness hearing shall be held on _____, 2010, at __: __ (the “Hearing”) before the undersigned in Courtroom 11A, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007. The purpose of the Hearing shall be to determine: (a) whether the

terms and conditions of the Amended Settlement Agreement are fair, reasonable, and adequate; (b) whether to certify the Amended Settlement Class and the Sub-Classes for purposes of the settlement; and (c) whether the Amended Settlement Agreement should be approved by the Court and judgment entered thereon. At the Hearing, or such adjourned date as the Court deems appropriate, Class Counsel and any interested person shall be heard on the fairness, reasonableness, and adequacy of the terms of the Amended Settlement Agreement and on Author Sub-Class Counsel's application for an award of attorneys' fees and reimbursement of expenses as set forth in the Amended Settlement Agreement.

14. The Court preliminarily approves the Amended Settlement Agreement, including the procedures for establishing and administering the settlement funds and procedures for notice, opting out, opting in and objecting as described therein, as fair, reasonable, and in the best interests of the Amended Settlement Class and the Sub-Classes.

15. The Court reserves the right to adjourn the Hearing or order any adjournment without further notice other than an oral announcement at or prior to the Hearing. The Court also reserves the right to approve the Amended Settlement Agreement at or after the Hearing with or without modification as consented to by the parties to the Amended Settlement Agreement and without further notice to members of the Amended Settlement Class. The Court shall retain jurisdiction to consider all applications arising out of or connected with the Amended Settlement Agreement.

16. The Court approves as to form, content, and method of dissemination the Supplemental Notice of Class Action Settlement ("Supplemental Notice") substantially in the form attached to the Amended Settlement Agreement as Attachment N.

17. The Supplemental Notice Commencement Date shall be _____, 2009. The Supplemental Opt-Out, Opt-in and Objection Deadline shall be _____, 2010.

18. Unless withdrawn, all objections timely filed by members of the Amended Settlement Class in connection with the Settlement Agreement will be considered in connection with the Amended Settlement Agreement and should not be refiled. Objections to the terms of the Amended Settlement Agreement shall be limited to the provisions amended from the Settlement Agreement.

19. Class Counsel shall assist the Clerk of the Court to assure that the electronic docketing of objections will be conducted in an efficient manner.

20. Beginning on _____, 2009, Class Counsel shall cause the Supplemental Notice to be emailed or sent by postal mail to all persons who provided contact information on the official settlement website or on a Claim Form, who opted out of the original Settlement Agreement, or who filed an objection, amicus position or other statement with the Court.

21. Beginning on _____, 2009, Class Counsel shall cause the Supplemental Notice to be posted on the official Settlement website, www.googlebooksettlement.com.

22. On _____, 2010, Class Counsel shall certify compliance with the Notice programs for the Settlement Agreement and the Amended Settlement Agreement by declaration, and shall file with the Court Plaintiffs' Motion for Final Settlement Approval and supporting papers, and Motion for Approval of Plaintiffs' Attorneys' Fees and Reimbursement of Expenses and supporting papers.

23. The form and method of Supplemental Notice specified in the Amended Settlement Agreement are hereby approved and determined to be the best notice practicable under the

circumstances, and the Court finds that the Supplemental Notice complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and with applicable standards of due process.

24. Members of the Amended Settlement Class who timely opted out of the original Settlement Agreement will be considered to have opted out of the Settlement, unless they opt in by the deadline established in paragraph 17 of this Order. Members of the Amended Settlement Class and Sub-Classes will be excluded from the Amended Settlement only if they have complied with the opt-out procedures set forth in the original Notice and original Settlement Agreement, or the opt-out procedures set forth in the Supplemental Notice and Amended Settlement Agreement, which procedures are hereby approved as fair and reasonable. Unless they have so excluded themselves, members of the Amended Settlement Class and Sub-Classes shall be bound by all determinations and judgments in this case relating to the Settlement, whether favorable or unfavorable, including the dismissal of the Action with prejudice and the release of Google Releasees, Fully Participating Library Releasees, Cooperating Library Releasees, Public Domain Library Releasees and Other Library Releasees from liability to members of the Amended Settlement Class. Persons who timely exclude themselves from the Amended Settlement Class will not be bound by any orders or judgments entered in the Action related to the proposed settlement, and shall not receive any benefits provided for in the proposed Amended Settlement Agreement in the event it is approved by the Court.

25. Persons who are members of the Amended Settlement Class and do not exclude themselves may enter an appearance on their own behalf or through counsel of their own choice at their own expense. If they do not enter an appearance, they will be represented by Class Counsel.

Any member of the Amended Settlement Class who does not exclude himself or herself but objects to: (i) the Amended Settlement Agreement; (ii) certification of the Amended Settlement Class or one or both of the Sub-Classes for purposes of the Settlement; (iii) dismissal of the Action or the judgment and releases to be entered with respect thereto; and/or (iv) Author Sub-Class Counsel's application for attorneys' fees and reimbursement of expenses in the Action; or who otherwise wishes to be heard, may appear in person or through his or her own attorney at the hearing and present evidence or argument that may be proper and relevant; provided, however, that no Person other than Class Counsel and Google in the Action shall be heard and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), unless, (1) not later than , 2010, such Person has filed a statement of the objection and the grounds for the objection (objections filed to the Settlement Agreement need not and should not be refiled), together with any supporting papers or briefs, with the Court at the address listed below and served copies of such papers by email or first class mail on the attorneys listed below; and (2) if wishing to appear, not later than , 2010, such Person has filed a Notice of Intent to Appear, including the Person's name, address, telephone number and signature, as well as the name and address of counsel, if any, with the Court at the address listed below and served copies of such papers by email or first class mail on the attorneys listed below:

The District Court

Office of the Clerk
J. Michael McMahon
U.S. District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Author Sub-Class Counsel

Michael J. Boni, Esquire
Joanne Zack, Esquire
Boni & Zack LLC
15 Saint Asaphs Road
Bala Cynwyd, PA 19004
Bookclaims@bonizack.com

Publisher Sub-Class Counsel

Jeffrey P. Cunard, Esquire
Bruce P. Keller, Esquire
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Bookclaims@debevoise.com

Google Counsel

Daralyn J. Durie, Esquire
Joseph C. Gratz, Esquire
Durie Tangri LLP
332 Pine Street, Suite 200
San Francisco, CA 94104
Bookclaims@durietangri.com

26. Any Amended Settlement Class member who retains an attorney to make objections to the proposed Settlement on behalf of the Amended Settlement Class member or otherwise to represent the Amended Settlement Class member in this litigation does so at the Amended Settlement Class member's own expense. Any such attorney must file a notice of appearance in this litigation with the Clerk of this Court and serve copies of the notice on the

attorneys listed in paragraph 25 above, no later than _____, 2010. Any objection not timely made and in the manner provided herein shall be deemed waived and forever barred.

27. Pending final determination of whether the Amended Settlement Agreement should be approved, Plaintiffs and all members of the Amended Settlement Class, either individually, directly, representatively, derivatively, or in any other capacity, are barred and enjoined from commencing or prosecuting any action or proceeding asserting any claims whatever on behalf of themselves or the Amended Settlement Class against Google that were brought or could have been brought in the Third Amended Class Action Complaint, and that relate to or arise out of the claims as described in that complaint.

28. If the Court does not grant final approval of the Amended Settlement Agreement, or if the settlement does not become effective for any reason whatever, the Amended Settlement Agreement (including any modification thereof made with the consent of the parties as provided therein), any class certification herein and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force and effect, except as provided in the Amended Settlement Agreement.

29. The Settlement Agreement and the Amended Settlement Agreement and any proceedings taken pursuant thereto are not, and should not in any event be: (a) offered or received as evidence of a presumption, concession or admission on the part of any of Plaintiffs, Google, Fully Participating Libraries, Cooperating Libraries, Public Domain Libraries, Other Libraries, any member of the Amended Settlement Class, or any other person; or (b) offered or received as evidence of a presumption, concession or admission by any person of any liability, fault, wrongdoing or other dereliction of duty.

30. The Court reserves jurisdiction over the subject matter and as to each party to the Amended Settlement Agreement with respect to the interpretation, effectuation, and implementation of the Amended Settlement Agreement in accordance with the terms thereof for all purposes, including enforcement of any of the terms thereof at the instance of any party and resolution of any disputes that may arise.

DATED this _____ day of _____, 2009.

Honorable Denny Chin,
United States District Judge

**AWAITING
COURT
APPROVAL**