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SEP 01

September 2, 2009

JUDGE [unclear]

VIA FIRST CLASS MAIL

Google Book Search Settlement Administrator
c/o Rust Consulting
PO Box 9364
Minneapolis, MN 55440-9364

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VIA FEDERAL EXPRESS

Google Book Search Settlement Administrator
c/o Rust Consulting
625 Marquette Avenue, Suite 880
Minneapolis, Minnesota 55402

The Author's Guild et al. v. Google Inc. Re: *EMI Music Publishing's Opt Out of Google Books Settlement*

Doc. 470

Dear Settlement Administrator:

We represent EMI Music Publishing, and its affiliated music publishing entities, including those listed on the annexed Schedule A (collectively, "EMI"). We write to inform you, Google, Inc., and all other interested parties (including Class Counsel and the so-called "Book Rights Registry") that EMI is opting out of the settlement in *Authors Guild, Inc. et al. v. Google, Inc.*, 05 CV 8136 (DC) (the "Google Books Settlement" or the "Settlement"). We are authorized by EMI to submit this opt-out letter.

To be clear, by opting out, EMI is not waiving, and expressly reserves, all of its rights, including, without limitation, as set forth herein.

As a threshold matter, it remains unclear to EMI whether and to what extent the Settlement applies to music publishers and the copyrighted works that they own or control. First, it is not entirely clear whether EMI, which is a music publisher, qualifies as a member of the "Publisher Sub-Class," the "Author Sub-Class," neither, or both. Further, while we understand that the Settlement specifically excludes "sheet music and other works that are used primarily for the playing of music," both the definitions of "Book" and "Insert" include certain references to and definitions of music and lyrics that seem to, nevertheless, implicate the interests of music publishers such as EMI, and its songwriters. Notwithstanding that it is hereby opting out, EMI

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reserves the right to take the position, in any forum, that the Settlement does not apply to music publishers, songwriters and/or copyrighted music or lyrics.

EMI does not believe it was provided with proper notice of the Settlement. By opting out, EMI is not waiving any argument with respect to notice.

We understand that Google and Class Counsel would like rightsholders (including members of the so-called "Author Sub-Class" or "Publisher Sub-Class") that choose to opt out of the Settlement to use the opt out form provided by Google and Class Counsel, and available at http://www.googlebooksettlement.com/r/enter_opt_out (the "Opt Out Form"), or to otherwise send a notice that contains the information requested by the Opt Out Form. The Opt Out Form -- which is obviously designed with book publishers and authors in mind -- asks the entity opting out to list the title of each and every "imprint," "Book" or "Insert" that may contain copyrighted material owned or controlled by such entity. While we recognize that providing that information would make it more convenient for Google to determine what it should or should not attempt to infringe, we do not believe a party choosing to opt out has any legal obligation to provide such information in order to enforce its rights, and EMI declines the invitation. Requiring EMI, a music publisher that owns or controls over *one million* copyrights written by *thousands* of different songwriters and licensed for use in *thousands* of different publications, to endeavor to determine each and every publication that may include music or lyrics owned or controlled by EMI and that could arguably qualify as a "Book" or an "Insert"-- just so that it may tell Google not to infringe them -- would be prohibitively burdensome and costly, and at odds with well-settled principles of copyright law. It is disingenuous to state, as Google and other interested proponents of the Settlement have, that the Settlement does not burden or modify the rights of copyright owners or place them in any worse position because they "remain free to opt out," but then make it prohibitively burdensome and costly for them to do so. Nevertheless, to ensure that EMI and a reference to this letter is in the automated system of Google and/or the "Book Rights Registry," EMI has partially completed an Opt Out Form and has therein made specific reference to this letter. To be clear, and for the avoidance of doubt, EMI is, by this letter and by the Opt Out Form, opting out of the Settlement with respect to each and every copyrighted musical composition that it owns or controls in whole or in part, to the extent of its rights. Moreover, by opting out herein and by partially completing an Opt Out Form, EMI is not waiving any argument with respect to the applicability or propriety of the Opt Out Form, or any of the information requested by the Opt Out Form.

By opting out, EMI remains free to pursue Google in any forum, including for willful copyright infringement, should Google reproduce, distribute, perform, or otherwise exploit EMI's copyrighted music, including as embodied in any "Book" or "Insert" reproduced or "digitized" by Google, for any purpose without EMI's permission. In this regard, any use of EMI's copyrighted music by Google, for any purpose whatsoever, without EMI's prior written authorization, is strictly prohibited, including without limitation, those uses described in the

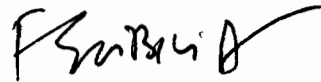
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notice of class action settlement (*e.g.*, “Display Uses,” “Non-Display Uses,” “Advertising Uses,” “Uses by Fully Participating Libraries,” or inclusion in the “Research Corpus,” each as defined in such notice), or any other uses.

Nothing herein shall be deemed a complete recitation of the claims, rights, or remedies of EMI and its songwriters, all of which are expressly reserved.

Very truly yours,



Frank P. Scibilia

cc: Hon. Denny Chin (by hand)
David C. Drummond, Senior Vice President, Corporate Development and Chief Legal Officer, Google, Inc. (via Federal Express and by fax)
Jeffrey P. Cunard, Debevoise & Plimpton LLP (by fax)
Michael Boni, Boni & Zack LLC (by fax)
Clark Miller, EMI Music Publishing (via e-mail)
Michael Abitbol, EMI Music Publishing (via e-mail)

Exhibit A

Australia	EMI Music Publishing Australia Pty Ltd
	EMI Belinda Music Australia Pty Ltd
	EMI Allans Music Australia Pty Ltd
	EMI Davis Music Australia Pty Ltd
	EMI Catalogue Partnership Australia Pty Ltd
	EMI Songs Australia Pty Ltd
	EMI Virgin Music Publishing Australia Pty Ltd
Belgium	EMI Music Publishing (Belgium) NV
	EMI Songs Belgium SA/NV
	Rover Music NV
	EMI Music Services Belgium NV
	Be's Songs NV
	A+S Productions BVBA
	EMI Virgin Music Publishing (Belgium) NV
Canada	EMI Blackwood Music (Canada) Ltd
	EMI April Music (Canada) Ltd
	Les Editions EMI Musique Limitee
Chile	EMI Music Publishing Chile SA
China	EMI Music Publishing China Ltd
Czech Republic	EMI Music Publishing Ceska Republika AS
	EMI Music Publishing Slovenska Republika, SRO
Denmark	EMI Music Publishing (Denmark) A/S
	EMI Casadida Music Publishing ApS
Finland	EMI Music Publishing Finland Oy
France	EMI Music Publishing France SA
	EMI Songs SARL
	EMI Catalogue Partnership France SA
	EMI Virgin Music Publishing France SA
	Delabel Editions SA
	Editions et Productions Sidonie SAS
	Call Me SARL
EMI Group France SAS	
Germany	EMI Music Publishing Germany GmbH
	EMI Quattro Musikverlag GmbH
	Edition Accord Musikverlag GmbH
	EMI General Music Musikverlag GmbH
	Selected Sound Musikverlag GmbH
	EMI Songs Musikverlag GmbH
	EMI Phoenix Musikverlag GmbH
	EMI Partnership Musikverlag GmbH
	EMI Nobile Musikverlag GmbH
	EMI Virgin Music Publishing Germany GmbH
	EMI Epos Musikverlag GmbH
	EMI Kick Musikverlag GmbH
	EMI MMC Musikverlag GmbH
	EMI Group Germany GmbH
EMI Group Beteiligungs GmbH	

Greece	EMI Music Publishing Greece LLC
	EMI Virgin Music Publishing Greece LLC
	EMI Songs Music Publishing Greece LLC
Hong Kong	EMI Music Publishing (S.E. Asia) Ltd
	EMI Group Hong Kong Ltd (MP Division)
Hungary	EMI Music Publishing Hungary KFT
Israel	EMI Music Publishing (Israel) Ltd
Italy	EMI Music Publishing Italia Srl
	EMI Virgin Music Publishing Italy SRL
	EMI General Music SRL
	EMI Songs Edizioni Musicali SRL
	EMI Catalogue Partnership Italy SRL
	Resolute Casa Editrice Musicali SRL
Japan	EMI Music Publishing Japan Ltd
	Virgin Music Japan Ltd
	Bee Natural Music inc
Malaysia	EMI Music Publishing Malaysia Sdn Bhd
Mexico	Beechwood de Mexico SA de CV
	EMI Musical SA de CV
Netherlands	EMI Music Publishing (Holland) BV
	EMI Virgin Music Publishing Holland BV
	EMI Music Services Holland BV
	AV Music Publishers BV
	Dutchy Publishing BV
	Dino Music Publishing BV
	EMI Catalogue Partnership Holland BV
	EMI Songs Holland BV
	EMI Music Publishing Netherlands Holdings BV
Norway	EMI Music Publishing Norway AS
	Frost Music AS
Poland	EMI Music Publishing Polska SP ZOO
Portugal	EMI Music Publishing Portugal Edicoes Musicais Lda
Romania	EMI Music Publishing Romania SRL
Singapore	EMI Music Publishing Singapore Pte Ltd
	EMI (Singapore) Pte Ltd
South Africa	EMI Music Publishing (South Africa) Pty Ltd
	EMI Industries (Pty) Ltd (MP Division)
South Korea	EMI Music Publishing Korea Ltd
Spain	EMI Music Publishing Spain SA
	EMI Songs Espana Srl
	Global Demelsa SL
	Music Contact International SL
	Ediciones Musicales Hispavox SA
	EMI Virgin Music Publishing Spain SA
Sweden	EMI Music Publishing Scandinavia AB
	EMI Songs Scandinavia AB
	EMI Catalogue Partnership Scandinavia AB
	EMI Mills Music Scandinavia AB

	EMI Housework AB
	EMI CMM Publishing AB
	EMI Virgin Music Publishing Scandinavia AB
UK	EMI Music Publishing Ltd
	B Feldman & Co Ltd
	Bardell Smith Publishing Ltd
	Peers Music Ltd
	Delabel Music Publishing (UK) Ltd
	And Son Music Ltd
	EMI Harmonies Ltd
	Themes International Ltd
	General Music UK Ltd
	EMI United Partnership Ltd
	Ardmore & Beechwood Ltd
	EMI Film & Theatre Music Ltd
	Francis Day & Hunter Ltd
	Music House (International) Ltd
	Acton Green Music Ltd
	Motor Music Ltd
	Hit and Run Music Publishing Ltd
	The Peter Maurice Music Co Ltd
	EMI 10 Music Ltd
	The Charisma Music Publishing Company Ltd
	Big Ben Music Ltd
	EMI Songs Ltd
	EMI Melodies Ltd
	Circa Music Ltd
	EMI Virgin Music Ltd
	Gloucester Place Music Ltd
	EMI Tunes Ltd
	Nisbet & Beck Music Ltd
	The Ded Good Music Library Ltd
	Arcadia 99 Ltd
	EMI Music Publishing Holdings (UK) Ltd
	EMI Music Publishing Finance (UK) Ltd
	EMI Music Publishing Holdings (France) Ltd
	WG&M Shelf Co 148 Ltd
	WG&M Shelf Co 149 Ltd
	EMI Music Publishing Holdings (Italy) Ltd
USA	EMI Blackwood Music Inc
	Beechwood Music Inc
	Colgems - EMI Music Inc
	Cruven Inc
	EMI April Music Inc
	EMI Combine Inc
	EMI Copyright Holdings Inc
	EMI Mogull Inc
	EMI Virgin Music Inc

EMI Virgin Songs Inc
Glenwood Music Corp
Screen Gems - EMI Music Inc
EMI Catalogue Partnership Inc
Jobete Music Company Inc
Stone Diamond Music Corp
1290 Music Inc.
1290 Songs Inc.
Bee Natural Music Inc.
Combine Music Corporation
EMI Affiliated Catalog Inc.
EMI Al Gallico Music Corp.
EMI Algee Music Corp.
EMI Belfast Music Inc.
EMI BMPC Corporation
EMI Brillig Music Inc.
EMI Duce Music Inc.
EMI Easy Listening Music Corp.
EMI Entertainment World Inc.
EMI Feist Catalog Inc.
EMI Funding Corp.
EMI GL Publications Inc.
EMI Gold Horizon Music Corp.
EMI Golden Torch Music Corp.
EMI Grove Park Music Inc.
EMI Hastings Catalog Inc.
EMI Intertrax Music Inc.
EMI Jemaxal Music Inc.
EMI Management Services Inc.
EMI Miller Catalog Inc.
EMI Mills International Sales Corporation
EMI Mills Music Inc.
EMI MSC Music Inc.
EMI Music Holdings 1 Inc.
EMI New Coconuts Music Inc.
EMI Norbud Music Inc.
EMI NTM Holdings Inc.
EMI PST Music Inc.
EMI Publishing Holdings Inc.
EMI Robbins Catalog Inc.
EMI RTF Music Inc.
EMI Slithy Songs Inc.
EMI Sosaha Music Inc.
EMI Strong LLC
EMI TSM Music Inc.
EMI U Catalog Inc.
EMI Unart Catalog Inc.
EMI USA Holdings Inc.

	EMI Variety Catalog Inc.
	EMI Vine Music Inc.
	EMI Waterford Music Inc.
	EMI Worldtrax Music Inc.
	Entertainment World Music Inc.
	Long Range Music Inc.
	Mocassin Music Corporation
	Music City Music Inc.
	Preference Music Inc.
	Priority Music Inc.
	Rising Sons Music Inc.
	Web Site Operations Inc.
	West End Music Inc.
	Windriva Music Inc.
	US MP LLC SPV
	EMI Group North America Inc
	EMI Music Acquisitions Inc
	Blackwood Holdings Inc