



28 January 2010

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

Dear Judge Chin,

**The Authors Guild, Inc., Association of American Publishers, Inc., et al. v. Google Inc.,
No. 05 CV 8136 (DC)**

1. Background

The APA and its members

The Australian Publishers Association ("APA") is the peak industry body for Australia's book, journal and electronic publishers. Its role is to protect and promote the interests of and act as an advocate for Australian publishers. The APA acts for all classes of Australian publishers: large and small; commercial and not-for-profit; academic and popular; locally and overseas owned.

The APA has over 210 members (including all major Australian book publishers) representing over 90% of the Australian book publishing industry. Most of those major Australian book publishers also perform the role of book distributors. It is estimated that there are approximately 3,500 publishers (including many self-publishers) in Australia. Those publishers directly employ approximately 5,000 people.

Book Sales and Availability in Australia

In each year approximately 300,000 titles are available for purchase in bookshops throughout Australia. Approximately 14,000 – 15,000 of those are new titles. Currently, the APA's 'Price and Availability' book database service, lists over 1 million titles for sale in Australia. Since 2004, an average of almost 130 million books has been sold each year. 60% of such sales have been sales of Australian-originated titles.

The Australian Publishing Market

Australia's book publishing market value is currently over AUS\$2.5 billion. The market has continued to grow at an average rate of approximately 6-8% per annum from 2004. Australia's export of intellectual property is currently valued at approximately AUS\$500 million. The exportation of intellectual property embodied in the form of books makes a significant portion of that figure.

2. APA's Support of the Amended Settlement

The APA supports the inclusion of its members' books in the Amended Settlement. The key reasons for the APA's support of the Amended Settlement are as follows:

- 2.1 The Amended Settlement enables Australian publishers, as Rightsholders, to maintain significant control over the use of their books. Importantly, such control can be exercised at any time.
- 2.2 The Amended Settlement gives Australian publishers the right to stop Google from scanning their books and the right to demand Google to remove scans of their books. If not for this settlement, Australian publishers might otherwise have to bring legal action against Google in the U.S. Not only would that be a resource-intensive exercise for Australian publishers, there

are additional expenses for foreign publishers attempting to bring such actions. Many of the APA's members could not afford to bring such action on an individual basis.

- 2.3 Australian publishers are interested in developing new channels for marketing, promoting, distributing and selling their books in a manner which will provide appropriate commercial rewards. The Amended Settlement enables Australian book publishers to access the developing online market in one of the most important and valuable markets in the world, the U.S. market. Again, many of the APA's members may not have the resources to otherwise pursue such opportunities.
- 2.4 The settlement of this matter, through the Amended Settlement, avoids a definitive judicial resolution on the legal questions of whether Google's scanning is a fair use, where an adverse outcome (from the Rightsholders' standpoint) would be detrimental to the interests of Rightsholders.
- 2.5 The Amended Settlement appropriately recognises rights of authors and publishers with respect to scanning and digital uses.

3. Changes to the Amended Settlement

The APA is satisfied with the changes made to the Amended Settlement for the following reasons:

- 3.1 The amended approach to determining whether books are 'Commercially Available' or not, now properly recognises Australian publishers' interest in the settlement of this matter.
- 3.2 The inclusion of two Australian publishers among the representative plaintiffs will help ensure appropriate and adequate representation of the Australian market and Australian publishers.
- 3.3 The commitment to include on the Registry's Board at least one director from an Australian publisher appropriately recognises Australian publishers' ongoing interest in the settlement and practical governance of the settlement.
- 3.4 The Registry's undertaking to monitor uses in the U.S. for non-U.S.-based Rightsholders was an important and significant amendment to protect Australian publishers' interests in their books.
- 3.5 Australian literary charities have now been included as beneficiaries of undistributed funds.

4. Approval of the Amended Settlement

As the advocate and representative of a significant number of Australian publishers who represent 90% of the Australian book publishing market, for the reasons provided above, together with an overwhelming general support by Australian Publishers for the settlement to take place, the APA asks the court to accept and approve the Amended Settlement in the form in which it currently appears.

Yours sincerely,



Maree McCaskill
Chief Executive Officer
Australian Publishers Association