

Feds still troubled by Google's digital book deal

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The U.S. Justice Department still thinks a proposal to give Google the digital rights to millions of hard-to-find books threatens to stifle competition and undermine copyright laws, despite revisions aimed at easing those concerns.

The opinion filed Thursday in New York federal court is a significant setback in Google's effort to win approval of a 15-month-old legal settlement that would put the Internet search leader in charge of a vast electronic library and store.

A diverse mix of Google rivals, consumer watchdogs, academic experts, literary agents, state governments and even foreign governments have already urged U.S. District Judge Denny Chin to reject the agreement.

The Justice Department's perspective presumably will carry more weight with Chin, given its position as the chief U.S. law enforcement agency.

In its 26-page brief, the Justice Department praised the revised settlement for making "substantial progress" since it objected to the original agreement in September.

But the government advised Chin that the agreement still oversteps the legal boundaries of a class-action settlement, describing the proposal as "a bridge too far." The Justice Department also raised concerns that Google's partnership with the participating U.S. publishers could turn into a literary cartel that would wield too much power over book prices.

"The United States believes that the court lacks authority to approve" the settlement in its current form, the government's lawyers wrote.

The filing also asserted that the modified agreement doesn't adequately protect the copyrights and financial interests of "orphan works" — out-of-print books whose writers' whereabouts are unknown.

Despite its misgivings, the Justice Department urged the parties to take another stab at making changes that would eliminate its legal concerns. The department provided a list of recommendations on how to achieve that.

In a statement, Google spokesman Gabriel Stricker gave no indication whether the company and other settling parties are willing to amend the agreement again.

"The Department of Justice's filing recognizes the progress made with the revised settlement, and it once again reinforces the value the agreement can provide in unlocking access to millions of books in the U.S.," Stricker said.

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Chin has scheduled a Feb. 18 hearing to consider approving the class-action settlement.

Consumer Watchdog, one of the groups fighting the settlement, applauded the Justice Department for taking a stand against a deal "that unfairly benefits the narrow agenda of one company."

But a former policy director for the Federal Trade Commission lashed out at the Justice Department and predicted Chin would approve the settlement.

"The DOJ's view is clouded by taking a microscopic and static view of an incredibly dynamic marketplace," said David Balto, now a senior fellow at the Center for American Progress, a think tank.

The government's antitrust concerns extend beyond the settlement's potential for driving up book prices. Thursday's filings also pointed out that the deal could make Google's search engine even more dominant by giving it a digital database of books built up largely by ignoring copyright laws.

"Content that can be discovered by only one search engine offers that search engine some protection from competition," the Justice Department wrote. "This outcome has not been achieved by a technological advance in search or by operation of normal market forces; rather, it is the direct product of scanning millions of books without the copyright holders' consent."

Google already processes about two-thirds of the search requests in the United States, an advantage that led the company to rake in \$79 billion in revenue during the past five years — mostly from short ads posted alongside search results and other Web content.

That success has emboldened Google to make digital copies of more than 12 million books during the past five years, it has shown only snippets from most of them while trying to revolve a class-action lawsuit filed in 2005 by groups representing U.S. authors and publishers. The suit alleged Google's book-scanning project trampled their intellectual rights.

A \$125 million truce reached in October 2008 has remained in a holding pattern while Google tried to notify the affected parties and overcome staunch resistance to the deal. Some of the most strident opponents have been Google rivals, including Microsoft Corp., Amazon.com Inc. and Yahoo Inc.

The agreement also has prominent supporters, including college libraries, publishing groups and Sony Corp., which wants to tap into Google's digital book index to feed its own electronic reader, which is competing against Amazon.com's Kindle.

Tweaks made to the settlement in November were supposed to end the bickering.

Among other things, the revisions provide more flexibility to offer discounts on

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electronic books and promise to make it easier for others to resell access to the electronic library.

The changes also narrowed the settlement's scope so it would only apply to books registered with the U.S. copyright office or published in Canada, the United Kingdom or Australia.

Nevertheless, the French and German governments still maintain the deal will infringe on the rights of writers in their countries. And groups representing authors in Japan, New Zealand, Germany, Austria, Switzerland and Italy remain opposed.

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