

Court lets Google appeal digital books class status

Jonathan Stempel, Reuters

(Reuters) - Google Inc has won the right to appeal the granting of class status to thousands of authors suing the search engine company over its ambitious plan to create the world's largest digital books library.

In a brief order, the 2nd U.S. Circuit Court of Appeals in New York granted Google permission to challenge a May 31 decision by U.S. Circuit Judge Denny Chin letting authors sue as a group rather than individually.

Billions of dollars are at stake in the seven-year-old lawsuit. Google has already scanned more than 20 million books, and the Authors Guild, a group representing authors, has said Google should pay \$750 for each book copied.

It is unclear when the 2nd Circuit will hear the appeal. Decertifying the class could make it harder for authors to win a large award against Google, either at trial or in a settlement.

Chin had said it would be unjust to force Authors Guild members to sue individually, likely resulting in disparate results and much higher legal costs, "given the sweeping and indiscriminating nature of Google's unauthorized copying."

But Google countered in a court filing that many class members, perhaps even a majority, benefited economically, and that case-by-case determinations were needed to show whether it was making "fair use" of the plaintiffs' works.

Citing a 2011 U.S. Supreme Court decision favoring Wal-Mart Stores Inc that made it harder to pursue class-action cases, Google said that even if "droves" of authors raised common issues, there was no "common answer" to address them.

"Plaintiffs seek to shut down a significant part of Google Books and to recover potentially billions of dollars," Google said. "With so much at stake, Google should not be forced to litigate without the full benefit of its principal defense."

Michael Boni, a lawyer for the Authors Guild, was not immediately available for comment. That group has argued that there is enough in common among the claims to let the class-action to go ahead and defeat the fair use defense.

\$125 MILLION SETTLEMENT REJECTED

Google began creating the library after the Mountain View, California-based company agreed in 2004 with several major research libraries to digitize current and out-of-print works.

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Libraries whose works have been scanned include Harvard University, Oxford University, Stanford University, the University of California, the University of Michigan and the New York Public Library.

In March 2011, Chin rejected a \$125 million settlement of the case, saying it gave Google a "de facto monopoly" to copy books en masse without permission.

Among the individual plaintiffs in the case is former New York Yankees baseball pitcher Jim Bouton, the author of "Ball Four." Groups of photographers and graphic artists are also suing Google over its digitization of the works.

Chin began handling the case as a trial judge and kept jurisdiction after he was elevated to the 2nd Circuit. Tuesday's order was issued by a two-judge panel of the appeals court.

The case is Google Inc v. Authors Guild Inc et al, 2nd U.S. Circuit Court of Appeals, No. 12-2402.

(Reporting by Jonathan Stempel in New York; Editing by Gerald E. McCormick and [Matthew Lewis](#) [1])

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