

EUROPE CALLS GOOGLE ON THE CARPET FOR RIGGING “EVERYTHING”!

Europe's legal showdown with Google could start at any moment

- [Reuters](#) and [Rob Price](#)



REUTERS/Beck DiefenbachEric Schmidt

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It sounds like Europe is preparing for an epic legal showdown with Google.

Europe's antitrust chief said on Monday that she was looking closely at Google's deals with phone makers and operators, concerned that conditions related to its popular Android mobile operating system may be restricting competition. And that investigation is expected to kick off at some point this week.

The comments by European Competition Commissioner Margrethe Vestager come amid signs that she could charge Google with anti-competitive behavior, a year after she accused the company of favoring its shopping service in delivering search results at the expense of rivals.

[Big companies should not try to protect themselves by holding back innovation](#), Vestager said.

"That's why we're looking closely at Google's contracts with phone makers and operators which use the Android operating system," she said at a conference organized by the Dutch competition authority.

"Our concern is that, by requiring phone makers and operators to pre-load a set of Google apps, rather than letting them decide for themselves which apps to load, Google might have cut off one of the main ways that new apps can reach customers."

[In April 2015](#), the European Commission opened an antitrust investigation into Google's Android. Android dominates the market in Europe, and there are concerns that Google is abusing that promote its own apps at the expense of competitors, which the company vehemently denies. (There's also a separate investigation into the Google search engine.)

[Politico](#) and [The Financial Times](#) are both reporting that the Commission is [reaching out to Google's rivals](#) regarding evidence — indicating charges may be being finalized.

(Reporting By Foo Yun Chee; editing by Philip Blenkinsop)

Authors Guild v. Google: BOYCOTT GOOGLE FOR DIGITAL ABUSE OF THE PUBLIC AND CREATIVE TALENT!

Questions and Answers

Though *Authors Guild v. Google* has been going on for over ten years, many authors and observers still have questions about the case and what's at stake. [Here—to coincide with our filing a petition asking for Supreme Court review—we provide some answers.](#)

A Brief History

On October 16, 2015, the United States Court of Appeals for the Second Circuit reached a decision in our copyright infringement lawsuit *Authors Guild v. Google*. In holding that Google’s wholesale copying of millions of copyrighted books to develop its profitable Google Books program was fair use, the court failed to see the damaging effect that uses such as Google can have on copyright incentives and on authors’ potential income. We trust that the Supreme Court will see fit to correct the Second Circuit’s reductive understanding of fair use, and to recognize Google’s seizure of property as a serious threat to writers and their livelihoods, one which will affect the depth, resilience, and vitality of our intellectual culture.

Background

On December 14, 2004, Google stunned the library, literary, technology, and copyright worlds, announcing it would start scanning millions of books from the collections of leading research libraries to create a comprehensive database of books that would be searchable online. At first, most of the libraries, including the New York Public Library and Harvard University, limited their cooperation to books in the public domain. But the University of Michigan and then some other libraries agreed also to turn over copyrighted books to the program, which was then called Google Print.

Google’s goal was to amass an unrivaled digital library, using these books to draw users to its website, strengthen its dominance of the search-engine market, and increase its advertising. The libraries, in turn, wanted to digitize their collections, which they legally would not have been able to do themselves, other than in certain circumscribed circumstances. Libraries buy books, preserve them, and lend them to readers, but when the books are in copyright, they may not make copies unless an exception to copyright applies. Nor may a private company, like Google. As the nation’s largest society of published authors and the leading writers’ advocate for fair compensation and effective copyright protection, the Authors Guild felt compelled to act.

So in September 2005, the Authors Guild and a group of individual writers sued Google for copyright infringement. The following month, the Association of American Publishers (AAP) launched a lawsuit of its own.

The Proposed Settlement Agreement

Google argued, and still argues, that its book-search program (now called Google Books) offers great public benefits and therefore the copying should be protected under the legal doctrine of “fair use.” We do not believe that private companies should be able to make full digital copies of copyrighted books en masse for commercial purposes under the fair use doctrine—that is, without compensating the rightsholders. So the authors, publishers, and Google sat down to reach a compromise. A proper solution, we believed, would allow readers to benefit while also making sure that authors and publishers got paid for Google’s use of their work.

After 30 months of talks, we reached an agreement in October 2008: Google would pay out \$125 million. Some would go to the owners of the books that were scanned without permission; the rest would fund the Book Rights Registry, an organization that would track down and distribute fees to authors. Google would be able to display out-of-print books to users and charge licensing fees for copyrighted works. Also, the settlement required Google to provide portals in every public library and

more than 4,000 colleges and universities in the U.S., allowing widespread access.

The settlement agreement, we thought, was a win for everyone. Authors and publishers would get paid. Readers and researchers in even the remotest rural town would have access to books in the country's great research libraries. And Google could continue its scanning project as long as it stuck to the security standards it promised to implement.

But to become effective, the settlement agreement needed court approval, and many people raised objections. Some opposed the settlement because they thought Google's copying should be protected; others, including the Justice Department, because they feared that Google would gain a monopoly over digitized books. In March 2011, the court rejected it. Judge Denny Chin accepted the latter argument, agreeing that "the creation of a universal digital library would benefit many" but that it would also grant Google a "de facto monopoly." An arrangement between private parties that would affect the status of so many books, he observed, would be more properly made by Congress.

The District Court Ruling

With a settlement apparently out of the picture, the parties set about working on their cases. Google continues to argue that its copying is "fair use" because it serves a useful public purpose, and also argues that it does not harm the market for the books. We argue that, because Google is using authors' copyrighted works for commercial benefit, and because Google Books will indeed harm the market for books, Google ought to have to pay for its use of those works. Google Books will create a very real negative economic impact on the books it has digitized for two principal reasons. Rather than drive researchers to buy books, readers for many books can find all they need on Google Books. Further, if Google's doing so is fair use, then it sets a precedent allowing anyone to digitize books for similar purposes, which inevitably will lead to widespread, free, and unrestricted availability of books online.

Judge Chin was persuaded by the argument that Google Books provides great public utility, and in November 2013 he ruled in favor of Google. He declared the program to be fair use because, he found, Google's use was "transformative"—"words in books are being used in a way they have not been used before." He added, "Even assuming Google's principal motivation is profit, the fact is that Google Books serves several important educational purposes." Judge Chin also found that rightsholders are not harmed by Google Books, but he failed to look at the long-term harm from widespread, unrestricted similar uses by others, as instructed by the Supreme Court.

Looking Forward

It's unfortunate that a court as well-respected as the Second Circuit failed to reverse the District Court's faulty interpretation of the fair use doctrine. America owes its thriving literary culture to copyright protection, and the diminishment of that protection has a damaging effect on authors' potential income.

Google has now scanned some 20 million books, and it displays what it calls "snippets"—short passages—from 4 million that are still in copyright. It has given digital copies to libraries as well, for their own use, in payment for their cooperation.

Some people think we're trying to shut down Google's book search program, and they don't understand why we would do that. That's not the case. We agree that Google Books is a good thing, but one for

which authors should be compensated, like other search databases such as J-Stor, Westlaw, and Lexis/Nexis.

The Authors Guild remains committed to the notion that the digital revolution cannot come at the cost of authors' rights to preserve writing as a livelihood. Copyright protection is one of the main reasons this country has built such thriving cultural industries over the course of its existence; we need to ensure that the next generation of writers and other creators have the same opportunities as those who came before them.

Court Documents

03.15.16

[Authors Guild Reply to Google's Opposition Brief in the Supreme Court of the United States \[pdf\]](#)

03.01.16

[Google's Brief in Opposition to the Guild's Petition for a Writ of Certiorari \[pdf\]](#)

12.31.15

[Authors Guild Petition for a Writ of Certiorari in the Supreme Court of the United States \[pdf\]](#)

07.24.14

[Authors Guild Reply Brief to the Second Circuit Court of Appeals \[pdf\]](#)

07.03.14

[Google's Brief to the Second Circuit Court of Appeals \[pdf\]](#)

04.07.14

[Authors Guild Appellate Brief to Second Circuit Court of Appeals \[pdf\]](#)

11.14.13

[SDNY Opinion in Favor of Google's Motion for Summary Judgment \[pdf\]](#)

08.03.12

[Authors' Brief in Support of Its Motion for Summary Judgment \[pdf\]](#)

07.27.12

[Google's Brief In Support of Its Motion for Summary Judgment \[pdf\]](#)

05.31.12

[Opinion Granting Class Certification \[pdf\]](#)

04.03.12

[Authors' Reply Brief in Support of Class Certification \[pdf\]](#)

02.08.12

[Google's Brief in Opposition to Class Certification \[pdf\]](#)

12.12.11

[Authors' Motion for Class Certification \[pdf\]](#)

03.22.11

[Amended Settlement Agreement Rejected \[pdf\]](#)

11.13.09

[Amended Settlement Agreement \[pdf\]](#)

11.13.09

[Supplementary Settlement Agreement \[pdf\]](#)

10.28.08

[Initial Settlement Agreement \[pdf\]](#)

10.28.08

[Official Summary Notice of Settlement \[pdf\]](#)

10.28.08

[Official Notice of Settlement \(more detailed\) \[pdf\]](#)

11.30.05

[Google's Answer to Authors \[pdf\]](#)

11.08.05

[Google's Answer to Publishers \[pdf\]](#)

10.19.05

[Publishers' Complaint \[pdf\]](#)

09.20.05

[Authors' Initial Complaint \[pdf\]](#)