



September 4, 2009

The Honorable John Conyers, Jr.
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar Smith
United States House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

Re: Hearing on Competition and Commerce in Digital Books

Dear Chairman Conyers and Ranking Member Smith:

The American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries (the Library Associations) are grateful for this opportunity to provide our views on the market for digital books, in particular the proposed settlement of the litigation concerning the Google Book Search service. The Library Associations provided the court presiding over the proposed settlement with detailed comments on May 4, 2009, and September 2, 2009. Our comments are attached to this letter. Additionally, on May 29, 2009, the Library Associations met with staff members of the Antitrust Division of the U.S. Department of Justice. Also attached is the letter the Library Associations sent to the Antitrust Division after that meeting.

The Library Associations recognize that the settlement has the potential to provide unprecedented public access to a digital collection of millions of books and could advance the core mission of the Library Associations and their members: providing patrons with increased access to information in all forms, including books.

At the same time, and just as importantly, the Library Associations recognize that the digital product enabled by the settlement would be under the control of Google and the Book Rights Registry. The cost of creating such a service and Google's significant lead time advantage suggest that no other entity could create a competing digital collection in the foreseeable future. In the absence of competition for the services it will enable, the settlement could compromise fundamental library values such as equity of access to information, patron privacy, intellectual freedom and fair use. Specifically, the libraries are concerned about equal access for all users to the service, monopoly pricing and reader privacy.

In order to mitigate the possible negative effects the settlement may have on libraries and the public at large, the Library Associations requested the court to exercise its jurisdiction

vigorously over the interpretation and implementation of the settlement. In the settlement agreement itself, the parties acknowledged the court's authority to regulate their conduct under the settlement.

In addition, the Library Associations requested the Antitrust Division to treat the settlement, if approved, as a consent decree to an antitrust action it brought. The Division should monitor the parties' compliance with the settlement's provisions as it would monitor the conduct of parties under an antitrust consent decree, and it should request the court take action when it concludes that the parties have not met their obligations under the settlement.

The likely demand among academic libraries for an institutional subscription allowed under the settlement is high; faculty and students performing serious research will insist on the ability to search and read the full text of out-of-print books. This means that libraries and their users will be among the primary fee-paying users of the services enabled by the Settlement. Accordingly, the Subcommittee should pay special attention to the perspectives of libraries on the settlement.

Please contact us if you have any questions concerning the Library Associations' position on the settlement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary Ellen K. Davis". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Attachments (3)