

October 6, 2009

Daralyn J. Durie, Esq.
Joseph C. Gratz, Esq.
Durie Tangri Lemley Roberts & Kent LLP
332 Pine Street, Suite 200
San Francisco, CA 94104
Ddurie@durietangri.com
Jgratz@durietangri.com

Sent via Email and Postal Mail

Re: Privacy Concerns About to the Google Book Settlement

Dear Counsel:

We are a broad section of objectors, *amici* and supporters of the Google Book Search settlement. We write in light of the plaintiffs' September 22 continuance motion and the Court's subsequent continuance order of September 24, 2009, to urge Google to include enforceable privacy protections along with the amended settlement agreement that you are currently negotiating. While various signatories below have raised other concerns that are also critical to your ongoing negotiations, we write here together to express our shared concern that reader privacy be among the issues addressed in conjunction with the amended settlement.

As you know, the failure of the settlement to ensure that readers using the Google Book Search services will have their privacy protected as much as readers using physical books has been a key concern for many authors, libraries and the reading public. It is the basis for some objections to the settlement, but has also been raised as a concern by those who support the settlement. As author Jonathan Lethem put it, "now is the moment to make sure that Google Book Search is as private as the world of physical books. If future readers know that they are leaving a digital trail for others to follow, they may shy away from important but eccentric intellectual journeys."

While we appreciate the statements made in the privacy policy released in early September, that policy does not go far enough. We believe that it is vital that Google commit to additional privacy protections and that such commitments be enforceable by the court presiding over the settlement. The Electronic Frontier Foundation, the Center for Democracy & Technology, and the Electronic Privacy Information Center in their respective briefs have offered recommendations, many of which are quite similar, and would be happy to assist you in navigating any real or perceived differences between them.

As the plaintiffs' motion correctly notes, "depending on the contours of the amended settlement agreement, some objectors may no longer object and would choose not to travel to New York at all for the hearing." Providing real, enforceable privacy protections may help reduce the number of objections that the court must consider as the case moves forward.

Sincerely,

Privacy authors and publishers, represented by the Electronic Frontier Foundation, American Civil Liberties Union Foundation and the Samuelson Law, Technology & Public Policy Clinic:

Michael Chabon, Jonathan Lethem, Lawrence Ferlinghetti, Anthony D. Romero, Bruce Schneier, Ayelet Waldman, Cory Doctorow, Beverly Potter, David G. Post, Wendy Chapkis, Jon Evans, Carol Queen, Julian Dibbell, Richard Glen Boire, Jessamyn West, Zak A Greant, Chris Carlsson, Violet Blue, Debbie Nathan, Rachel Kramer Bussel, Daphne Gottlieb, Annalee Newitz, Lisa Hendrix, Shannon Okey, Kim Werker, Cleis Press, The American Civil Liberties Union, and The Electronic Frontier Foundation

The Center for Democracy & Technology

Library Associations:

American Library Association, the Association of Research Libraries and the Association of College and Research Libraries

Electronic Privacy Information Center

Professor James Grimmelmann

Software Freedom Law Center

Estate of Richard Wright

Thomas Steinbeck

Catherine Ryan Hyde

Cc:

Michael J. Boni, Esq.
Joanne Zack, Esq.
Boni & Zack
15 St. Asaphs Road
Bala Cynwyd, PA 19004
mboni@bonizack.com
jzack@bonizack.com

Bruce P. Keller, Esq.
Debevoise and Plimpton
919 Third Avenue
New York, NY 10022
bpkeller@debevoise.com