



CANADIAN PUBLISHERS' COUNCIL

Representing Canadian publishing since 1910

250 Merton Street, Suite 203, Toronto, Canada M4S 1B1

Office of the Clerk
J. Michael McMahon
U.S. District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Dear Judge Chin:

Re: The Authors Guild, Inc., Association of American Publishers, Inc., et al. v. Google Inc., No. 05 CV 8136 (DC)

The Canadian Publishers' Council (hereafter known as "the Council") is pleased to declare its support for the Amended Settlement Agreement in the matter of Google Inc. and The Authors Guild, Inc., the Association of American Publishers, Inc., et al., in the United States District Court – Southern District of New York.

The Council is a national trade association representing the intellectual property interests of Canadian publishers; it was founded in 1910 and thus celebrates its centenary in 2010. Members of the Council include both wholly Canadian-owned organizations and subsidiaries of international publishing companies. The members of the Council include educational publishers in the elementary and high-school, college, university, and post-graduate sectors such as Nelson Education Limited, Pearson Education Canada, McGraw-Hill Ryerson Limited, John Wiley & Sons Canada Limited, Elsevier Canada, and Scholastic Canada Limited. These members and others publish textbooks, other educational and academic works, works of reference, computer software and journals. Members also include publishers of general interest fiction and non-fiction for adults and children, such as Thomas Allen & Son Limited, H. B. Fenn and Company Limited, Harlequin Enterprises Ltd., HarperCollins Canada Limited, Penguin Books of Canada, Random House of Canada Limited, and Simon & Schuster Canada. Affiliate members who participate in the Council's intellectual property program include Canada Law Book, CCH Canadian Limited, Carswell, and LexisNexis Canada.

As well as publishing and selling original Canadian-written books and other publications, the Council's members also represent on an exclusive basis the publishing programs of companies in other countries that have no Canadian corporate presence. Council members employ more than 2,000 Canadians and collectively account for three-quarters of annual domestic sales of English-language books in Canada. Members spend more than \$45 million annually with Canadian-based book manufacturers and pay more than \$25 million in royalties to Canada's writers each year.

Titles published by Council's members were included in the original Settlement proposal and are now specifically earmarked for inclusion in the Amended Settlement in respect of the "published in Canada" element within the definition of "Book". The Council wanted its members' titles to be a part of the Amended Settlement and were supportive of Canadian works being included in the revised settlement language for the class.

The Council's members are supportive of the Amended Settlement and unanimously voted so at a meeting of member CEOs in December, 2009. The members view the ability to retain control of their copyrights and all uses of their published works as paramount. The Amended Settlement affords them the necessary flexibility to manage their Works. The Amended Settlement acknowledges rights holders' authority over digital uses of their works. The Amended Settlement satisfactorily addresses members' concerns about the meaning of the term "commercially available".

Member publishers also have the right to prohibit Google from including and making available works previously scanned or scanned in the future – and published before January, 2009. A running bibliography of scans will be deposited with the Book Registry; rights holders will have time to decide whether they will permit those works to be made available through the active database – or not. Again, through the Amended Settlement the Council's members retain the rights and flexibility they require.

Additionally, member rights holders are always targeting new channels for the marketing and sale of their titles. The Amended Settlement does not constrain the members from pursuing those opportunities. In fact, the Amended Settlement has the potential to open new markets for Canadian Works.

Because of these foregoing facts, the members of the Council have expressed their satisfaction with the amendments and have voted in favour of them. It is important to note that a Canadian-owned Council member publisher (Harlequin Enterprises Ltd.) is counted among the plaintiffs. It is also worthy of comment that the Book Rights Registry will include at least one Director from the Canadian publishing industry; the Registry will monitor use of Canadian works outside Canada and will ensure that funds allocated to Canadian rights holders are distributed accordingly.

The Canadian Publishers' Council respectfully asks that the Court approve the Amended Google Book Settlement as proposed.



Jacqueline C. Hushion

Executive Director

Canadian Publishers' Council

(also for Council President, David Swail, Pres. & CEO, McGraw-Hill Ryerson Limited and on behalf of the Council's members)