

## **COURT REJECTS \$125 MILLION SETTLEMENT IN GOOGLE DIGITAL BOOK SCANNING PROJECT**

by  
**Jennifer J. Hagan<sup>1</sup> & Peter Marcus<sup>2</sup>**

Citing unfairness to authors all over the world, U.S. Circuit Judge Denny Chin in Manhattan rejected a proposed amended settlement agreement ("ASA") in a class action lawsuit filed by authors and publishers against Google on Tuesday, March 22, 2011. In a 46-page opinion, Judge Chin wrote, "While the digitization of books and the creation of a universal digital library would benefit many, the ASA would simply go too far."

The ASA had been proposed in connection with the book scanning project which Google launched in 2004 concerning commercially available, out-of-print books still protected by U.S. copyright law. Google was sued in 2005 by authors and publishers who claimed massive copyright infringement against Google for digitizing and selling books without the permission of authors. Google raised the defense of fair use under section 107 of the Copyright Act. Settlement negotiations began in 2006 and at least two proposed settlement agreements have been preliminarily approved only to be met with hundreds of objections by class members. The most recent agreement, the ASA, was preliminarily approved in November, 2009.

The Court was troubled by the fact that the proposed ASA could potentially violate section 201(e) of the Copyright Act and reiterated that "[a] copyright owner's right to exclude others from using his property is fundamental and beyond dispute," and it found that, if it approved the settlement, the Court could potentially release the copyright interests of individual copyright owners who never consented to the transfer. The Court also addressed concerns about potential antitrust claims, privacy issues, and issues involving international law. In denying Google's motion to approve the ASA, the Court also wrote that its objections would be ameliorated if the settlement agreement were converted from an "opt-out" to an "opt-in" settlement, and it encouraged the parties to revise the settlement accordingly.

The case is *The Authors Guild et al. v. Google Inc.*, U.S. District Court for the Southern District of New York, Case No. 05 Civ. 8136. A link to the Court's March 22 Opinion can be found at: <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=115>.

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<sup>1</sup> **JENNIFER J. HAGAN** is a partner in the Hagan Law Firm in Palo Alto. She advises clients in connection with software and game licensing, trademark and copyright, and specializes in strategic intellectual transactions.

<sup>2</sup> **PETER MARCUS** is a partner with Berkes Crane Robinson & Seal LLP in Los Angeles. He manages the firm's intellectual property and entertainment department. He also maintains an intellectual property blog at [www.trademarcus.com](http://www.trademarcus.com).