

Top US copyright cop opposes Google book deal

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(AP) -- The nation's top copyright official has joined the mounting opposition to a class-action settlement that would give Google Inc. the digital rights to millions of out-of-print books.

Her objections cast further doubt on whether the agreement will be allowed by a federal court, even as [Google](#) offered a concession Thursday aimed at smoothing the way for approval.

Parts of the settlement are "fundamentally at odds with the law," Marybeth Peters, head of the copyright office, testified in a House Judiciary Committee hearing Thursday that was webcast. She also expressed concerns that the settlement would undermine Congress' ability to govern copyrights and could have "serious international implications" for books published outside the United States.

Peters can't block Google's settlement with U.S. authors and [publishers](#). That decision rests with U.S. District Judge Denny Chin, who has scheduled an Oct. 7 hearing in New York to review the settlement.

But Peters' conclusions will likely be drawn upon as critics of the deal try to convince Chin that the settlement shouldn't be approved, said Peter Brantley, director of access for the Internet Archive. The archive has joined forces with Google rivals Microsoft Corp., Yahoo Inc. and Amazon.com Inc. to lead the charge against the book settlement.

It's unclear how the copyright office's opinion might influence the U.S.

Department of Justice, which is investigating whether the settlement would hurt competition in the growing market for digital books. The Justice Department is expected to share some of its findings with Chin in documents scheduled to be filed by Sept. 18.

At issue are Google's plans to scan millions of books, make them searchable online and sell subscriptions to libraries and individual copies to consumers. Google says this will revitalize works that might otherwise be long forgotten. But trade groups representing publishers and authors sued over the plan, alleging copyright infringement, before they settled with Google for \$125 million last year.

Google says it has made digital copies of more than 10 million books during the past five years, including about 2 million titles that are no longer covered by copyright and another 2 million titles that were indexed after copyright holders gave their explicit permission. The rest are out of print but still protected by copyrights.

In its testimony to the congressional committee, Google reiterated its claim that the settlement will make literature and research more widely available while promoting competition in the digital book market.

A long list of supporters, including major libraries, disabled rights activists, technology groups, economics professors and lawyers, are endorsing the settlement for similar reasons. Some of them testified at Thursday's hearing.

Google also tried to address the concerns that it will gain a stranglehold on the digital rights to millions of books. Hoping to ease this criticism, Google said Thursday it will allow Amazon and other online retailers to sell its digital copies of out-of-print books covered by the settlement.

Competitors drawing upon Google's digital library of books would be

allowed to keep most of the revenue left from the sales after authors and publishers get their shares.

"We believe strongly in an open and competitive market for digital books," said David Drummond, Google's chief legal officer.

But Brantley of the Internet Archive said Google's concession isn't much of a sacrifice. That's because Google would still be in control of the digital index, giving it access to potentially valuable data on how users interact with it. Google also would still be the only entity that could sell out-of-print books that aren't claimed by the copyright owners.

The control means Google would still be able to set the prices on millions of books, Brantley said.

"Google would still be a monopoly provider," Brantley said. "None of our objections have gone away."

Other opponents of the settlement fear it will make it easier to track the books people are reading. Google says it would address that by drawing up a separate privacy policy to govern the information it collects through its digital library.

Peters' misgivings about the settlement are focused on its definitions of what constitutes an out-of-print book. Google would have broad power to sell titles falling in this category without the explicit permission of a copyright holder, she said.

"The so-called settlement would create mechanisms by which Google could continue to scan with impunity, well into the future, and to our great surprise, create yet additional commercial products without the prior consent of rights holders," Peters wrote in a more comprehensive written statement submitted to the Judiciary Committee.

Peters was particularly troubled by provisions that would empower Google to make digital copies of all books published by Jan. 5, 2009, with no set deadline on completing the task. Google loses the digital rights to the books covered in the settlement only if a [copyright](#) holder opts out of the deal.

The open-ended nature of the settlement is "tantamount to creating a private compulsory license," Peters wrote, something she believes could circumvent the authority of Congress.

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