

Next chapter in digital book deal: Google vs. DOJ

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(AP) -- Determined to create the world's largest digital library, Google Inc. is betting it knows more about U.S. antitrust and copyright laws than the government regulators enforcing them.

The Internet search leader took an audacious step toward realizing its book ambitions late Thursday with a 67-page brief filed in New York federal court.

Among other things, the documents dismissed the legal concerns that the U.S. Department of Justice has raised about a class-action settlement proposing to give Google the digital rights to millions of hard-to-find books.

Google's stiff arm sets the stage for a showdown between the nation's top law enforcement agency and the most powerful company on the Internet.

They are scheduled to square off Thursday in a hearing before U.S. District Judge Denny Chin. The judge will listen to arguments from Google, the Justice Department and more than two dozen opponents and supporters of the settlement as he tries to decide whether the deal should be approved. A Justice Department spokeswoman declined to comment Friday.

Google contends the world will be a better place if its electronic library of books is unlocked so everyone with an Internet connection can peruse and potentially buy volumes to store on their computers and other digital

devices. The company has made digital copies of more than 12 million books and hopes to eventually scan everything that's still on printed paper - if it can gain legal rights to do so.

Most of the books in Google's digital database haven't been shown in their entirety because of a copyright dispute that triggered a class-action lawsuit filed in 2005 by groups representing authors and publishers. The \$125 million settlement would remove that barrier and put Google in charge of an electronic bookstore, with most of the revenue going to participating publishers and authors.

The Justice Department has left little doubt it believes the settlement would stifle competition in the book market and undermine copyright laws. The agency has made the points twice, first in September and then again last week, when it filed its opinion about changes that Google made with authors and publishers in November. Those changes were made in hopes of overcoming the Justice Department's opposition to the deal.

In its most recent filing, the Justice Department called the settlement "a bridge too far" and asserted Chin "lacked authority" to approve the agreement.

Google countered that "the Department of Justice and other objectors have failed to articulate a meaningful principle" for Chin to reject the agreement.

The settlement's opponents include consumer watchdog groups, state governments, foreign government and Google rivals Microsoft Corp., Yahoo Inc. and Amazon.com Inc.

Shouting down that chorus of criticism might be easier if the Justice Department hadn't chimed in, too.

Google retreated the last time that the Justice Department warned the company was pursuing a path that would break antitrust laws, which are designed to prevent businesses from gaining an unfair competitive advantage.

To avoid a Justice Department lawsuit alleging antitrust violations, Google called off a proposed plan to sell Internet search ads for Yahoo.

But Google didn't have much invested in the Yahoo deal, either financially or emotionally. Google agreed to the deal mainly to prevent Microsoft from teaming up with Yahoo. (Those two companies subsequently have gotten together in an alliance still awaiting regulatory approval.)

Google has spent the past five years scanning books at an "enormous" cost, according to its court filing. Creating a massive library has been a dream shared by Google co-founders Larry Page and Sergey Brin.

The Justice Department contends the settlement provides the framework for a literary cartel that could drive up book prices. The agency also warned the settlement could give Google an unfair advantage in the Internet search market that it already dominates by giving it a reservoir of human knowledge that its rivals wouldn't be able to easily duplicate.

Despite those red flags, the Justice Department endorsed the concept of Google's digital library. The agency also outlined ways Chin could dictate changes that would satisfy some of its concerns.

Chin himself is likely part of Google's calculations, because he might not be on the case much longer. He has been nominated by President Barack Obama to a position on a federal appeals court, with confirmation in the Senate expected to come soon. If Google tried to revise the settlement again, in hopes of satisfying the Justice Department, the company would

run the risk of further delays if a new judge had to spend time reviewing the volumes of documents in the case.

Google seems to want Chin to be the man making the decision, said John Simpson of Consumer Watchdog, one of the opponents scheduled to speak in court next week.

"Google has decided it's longer willing to negotiate with Justice on this one," Simpson said. "They want to negotiate with the judge instead."

Even if Google can persuade Chin to approve the settlement, the Justice Department could still try to block it, by filing its own lawsuit alleging the arrangement is illegal. But David Balto, a former policy director for the Federal Trade Commission who thinks Google is on solid legal ground, dismisses the prospect. "The Justice Department won't poke a federal judge in the eye like that," Balto said.

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