

Judge echoes Google critics in digital book ruling

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(AP) -- As Google Inc. evolved from being an endearing startup to an Internet empire, the company has become used to critics depicting it as a copyright scofflaw and pushy monopolist. It's different when the unflattering portrait is being drawn by a federal judge.

This week's [ruling from U.S. Circuit Judge Denny Chin](#) did more than complicate Google's efforts to make digital copies of the world's 130 million books and possibly sell them through an online book store that it opened last year. It also touched upon antitrust, copyright and privacy issues that are threatening to handcuff [Google](#) as it tries to build upon its dominance in Internet search to muscle into new markets.

"This opinion reads like a microcosm of all the big problems facing Google," said Gary Reback, a [Silicon Valley](#) lawyer who represented a group led by Google rivals Microsoft Corp. and Amazon.com Inc. to oppose the digital book settlement.

Google can only hope that some of the points that Chin raised don't become recurring themes as the company navigates legal hurdles in the months ahead.

The company is still trying to persuade the U.S. Justice Department to approve a \$700 million purchase of airline fare tracker ITA Software nearly nine months after it was announced. Regulators are focusing its inquiry into whether ITA would give Google the technological leverage to create an unfair advantage over other online travel services. Google

argues it will be able to provide more bargains and convenience for travelers if it's cleared to own ITA's technology.

In Europe and the state of Texas, [antitrust regulators](#) are looking into complaints about Google abusing its dominance of Internet search to unfairly promote its own services and drive up its advertising prices.

And Google is still trying fend off an appeal in another high-profile copyright case, one stemming from its 2006 acquisition of YouTube, the Internet's leading [video site](#). [Viacom](#) Inc. is seeking more than \$1 billion in damages after charging YouTube with misusing clips from Comedy Central, MTV and other Viacom channels. A federal judge sided with Google, saying YouTube had done enough to comply with digital copyright laws in its early days.

Viacom is trying to reverse that decision in the 2nd U.S. Circuit Court of Appeals in New York, where Chin now works after being promoted from U.S. District Court last year.

"Google has built a monopoly in search, and having a monopoly isn't necessarily illegal," said John Simpson, a frequent Google critic who has been following the company's business practices for the advocacy group Consumer Watchdog. "The question is once you are in a monopoly position, how do you use it? I think Google has repeatedly abused it, and that come out in this decision."

Google has been muted in its reaction to Chin's ruling so far. "This is clearly disappointing, but we'll review the court's decision and consider our options," Google managing counsel Hilary Ware said in a statement.

Tuesday's setback comes less than two weeks before Google co-founder Larry Page takes the reins as the company's CEO from Chairman Eric Schmidt.

Building a digital version of ancient Egypt's fabled Library of Alexandria has long been one of Page's pet projects. He and his partner, Google co-founder Sergey Brin, say they want to provide access to all the knowledge in the world's books to anyone with an Internet connection, an ambition that make an appeal or an attempt at a revised settlement more likely.

Although he applauded the digital book concept, Chin concluded Google has been approaching it the wrong way.

The judge chastised Google for "engaging in wholesale, blatant copying without first obtaining copyright permissions." The company instead negotiated with libraries to make electronic copies of the printed books on their shelves. The strategy has enabled Google to scan more than 15 million books since 2004, even as authors and publishers who thought their copyrights were violated protested in court. Google so far has only shown snippets of digital books that were scanned without the permission of copyright owners.

Chin's opinion about Google's disregard for copyrights echoes complaints that have long been made by some publishers, broadcasters and movie studios. They contend the company has profited from showing their copyright-protected content without explicit permission. Google maintains it has only shown excerpts allowed under the "fair use" provision of copyright law and promptly removes any material upon request of the copyright holder, as required under the law.

Viacom's lawsuit revolves around allegations that YouTube employees regularly allowed pirated videos to be remain online in an effort to attract more viewers, a practice that Google's executives knew about before buying the service. Since the acquisition, Google has created technology to block or quickly remove copyright-protected videos from YouTube.

The wording of Chin's decision may even be strong enough to prod Google into rethinking its approach to copyright law, said Jim Pitkow, CEO of Attributor, which makes tools for flagging online copyright violations.

"If Google were going to set out on this (book) project in 2011, I suspect they would have a different perspective than they did when they first started it all those years ago," he said.

Chin also concluded Google designed the proposed settlement to gain control over material that would have likely attracted even more traffic to its search engine, which serves as the hub of an Internet ad network that has raked in more than \$100 billion during the past six years. Google already processes about two out of three search requests, an advantage that critics say the company abuses by highlighting its own services, such as mapping and video, over its rivals.

The proposed settlement "would arguably give Google control over the search market," Chin wrote.

One of the main reasons that the ITA deal remains under review is because the Justice Department is looking into whether Google could combine its market power with ITA's technology to stifle competition in the online travel market.

Google maintains its huge lead in the Internet search could quickly erode with an even bigger company - Microsoft - spending billion to improve and promote its Bing search engine. Meanwhile, Facebook, the owner of the Web's most popular hangout, keeps developing products designed to more deeply immerse its site in people's online lives.

Meanwhile, Chin also was sympathetic to concerns that Google would be able to learn even more about its users than it already knows if it gained

control of such a vast library of digital books, as the company would have records on what people read.

Google already has been criticized around the world for collecting personal information sent over unprotected wireless networks while its cars photographed neighborhoods and streets in more than two dozen countries from 2007 to 2010. Just this week, France's privacy watchdog fined Google about \$141,000 for the intrusions in that country.

Although he said worries about data collection by themselves wouldn't have been enough for him to block the settlement, Chin emphasized: "The privacy concerns are real."

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