

NY judge hearing Google book case grows impatient

July 19 2011, By LARRY NEUMEISTER , Associated Press

A judge warned lawyers for authors and publishers and Google Tuesday that he will decide whether snippets of books can be sold online without the permission of copyright holders if the sides do not settle their 6-year-old case soon with an agreement to create a massive online library.

"It's been a long time," [Federal Judge](#) Denny Chin told the lawyers in Manhattan as they updated him on the status of negotiations aimed at reaching a new deal after the [judge](#) in March rejected an earlier settlement, citing antitrust concerns. That \$125 million deal had drawn hundreds of objections from Google rivals, consumer watchdogs, academic experts, literary agents and even foreign governments.

In March, Chin wrote that many objectors would drop their complaints if [Mountain View](#), Calif.-based Google Inc. allowed book owners to choose to join the library rather than being required to quit it. The judge expressed [pessimism](#) Tuesday that a new deal could be reached, noting that Google had once said it would never agree to an opt-in settlement. Still, he gave both sides until Sept. 15 to report back to him.

He said another unsuccessful set of negotiations would set the case on a trial path and leave him to decide whether [snippets](#) of [books](#) can be considered "fair use" of published materials. A "fair use" argument would rely on a provision of [copyright law](#) that sometimes allows original content to be used by others, in part for educational purposes.

Michael J. Boni, a lawyer for The [Authors Guild](#), said a deal with

Google that would rely on an opt-in format was the "precise settlement we have been aiming for."

He said both sides were well aware that Chin had made clear in his rejection of the earlier deal that an opt-in library was the easiest way to clear legal obstacles to what Chin has acknowledged would be a benefit to many people.

The judge has said that such a digital universe for books would let libraries, schools, researchers and disadvantaged populations gain access to far more books, would help authors and publishers find new audiences and new sources of income and would allow older books - particularly those out of print - to be preserved and be given new life.

In asking for more time to negotiate, Boni said both sides had been working diligently with phone conference calls and in person meetings.

"We are not there yet your honor," he said. "These are very complicated, complex issues that require us to delve into the dog days of summer."

Google attorney Daralyn Durie let Boni describe the status of negotiations. She only commented when Chin offered the services of a magistrate judge or a senior judge to help the talks.

She said there were "business issues in addition to legal issues we're trying to work through."

After the hearing, she declined to comment, pointing toward a Google spokesman, Gabriel Stricker. He said Google had been "working closely" with the authors and publishers to explore options after the judge rejected the previous settlement. "Regardless of the outcome, we'll continue to make books more discoverable and useful through Google Books and Google eBooks."

Google Books is a searchable index of literary works while Google eBooks allows readers to access books wirelessly on digital devices.

Google already has scanned more than 15 million books for the project. Under the original agreement, Google had planned to put about 130 million titles into its digital library.

The lawsuit was first brought in 2005 by authors and publishers after [Google](#) failed to obtain copyright permission to scan the books. A deal was first reached in 2008 and was tentatively approved by the judge in November 2009. The Department of Justice in 2009 concluded that the agreement probably violated antitrust law and could decrease competition among U.S. publishers and drive up prices for consumers.

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