



EMI Opts Out of Google Books Settlement, Respectfully Tells Google Et Al What They Can Do With Their Rules

By E.B. Boyd on Sep 15, 2009 02:23 PM

Interesting turn of events: Not only has music publisher EMI opted out of the Google Books Settlement. But while the settlement asks opter-outers to supply a list of each and every work they don't want included in the deal, EMI is saying, "Um, yeah, not going to happen."



"While we recognize that providing that information would make it more convenient for Google to determine what it should and should not attempt to infringe," reads a letter submitted to the court by EMI's attorney, "we do not believe a party choosing to opt out has any legal obligation to provide such information in order to enforce its rights, and EMI declines the invitation."

EMI's response essentially throws down a gauntlet, challenging the very foundations of the settlement, which has upended copyright law by asserting that Google has the right to use any work it has digitized unless a rights holder says otherwise. Current copyright law, however, states that publishers (like Google) actually must receive positive permission from rights holders in order to use their works. EMI's response asserts that right.

The response also calls into question a key assertion of the unusual terms of the settlement, which has hammered out a mechanism for Google to lawfully use, display, and sell the millions of books it scanned in as part of its Library Project. EMI says that the settlement's assertion that its requirements do not unduly burden rights holders is "disingenuous."

"Requiring EMI, a music publisher that owns or controls over **one million** [emphasis theirs] copyrights written by **thousands** of different songwriters and licensed for use in **thousands** of different publications, to endeavor to determine each and every publication that may include music or lyrics owned or controlled by EMI... just so that it may tell Google not to infringe on them... would be prohibitively burdensome and costly, and at odds with well-settled principles of copyright law."

The background, after the jump.

The background: Google scanned in millions of books as part of its project to digitize the contents of dozens of university libraries. Then it decided to index those works and display the index entries in Google Search results. Authors and publishers cried copyright violation. Google claimed fair use. The Authors Guild and the Association of American Publishers filed a class action suit on behalf of all the holders of rights to the works Google had digitized.

Google and the plaintiffs decided to put aside the question of fair use and instead figure out a way Google could lawfully use the works in a way that benefitted rights holders. The result is the Google Books Settlement, which architects a system in which rights holders may specify exactly how Google may use their works and in which Google shares revenues from ads displayed against the works and sales of the digitized works themselves with rights holders.

Members of the class may opt out, which means Google will not include their works in its Google Books service. However, the settlement asks opter-outers to supply Google with a list of the works they don't want included.

EMI's letter essentially says that trying to figure out which of their works is in Google's catalog, just so that Google can make sure it doesn't later violate a copyright, is, well, ridiculous.

The implications: This could prove problematic for Google. Books sometimes contain music lyrics—the permission to use which is usually negotiated directly with the lyrics rights holders and which usually specify the specific uses (eg: hardcover run of X, softcover run of Y). Few of those agreements are likely to include provisions for digital distribution.

(H/t The Laboratorium)