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Pryor Cashman Client EMI Opts Out Of Google Books Settlement

The September 15, 2009 issue of *Baynewser* features an article entitled “EMI Opts Out of Google Books Settlement, Respectfully Tells Google Et Al What They Can Do With Their Rules,” which quotes liberally from a letter sent by Pryor Cashman to the Court on behalf of its client, music publisher EMI.

The Google Books Settlement arose out of the settlement of a class action copyright litigation brought against Google by the Authors Guild and the Association of American Publishers to stop Google from scanning millions of books, indexing them and displaying the entries in Google Search results. The settlement creates 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.

The Google Books Settlement asserted that Google has the right to use any work it has digitized unless a member of the class rights holder opts out and says that they do not want their works included. For those not interested in becoming part of the settlement, however, Google asked such companies to supply a list of each and every work that they did not want to be a part of the settlement.

EMI refused to provide such a list because, as set forth in the letter sent by Pryor Cashman to the Court: “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, 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 was in accord with current copyright law, which provides that publishers actually must receive positive permission from rights holders in order to use their works.

The letter also states that the assertion in the settlement that its requirements do not unduly burden rights holders is “disingenuous” because “[r]equiring EMI, a music publisher that owns or controls over one million 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.”

Pryor Cashman partners Frank Scibilia and Donald Zakarin are representing both EMI Music Publishing and Sony/ATV Music Publishing in connection with the Google Books proceedings.

To read the entire article from *Baynewsier*, please [click here](#).