

NEWS RELEASE**AUTHORS GUILD PETITIONS SUPREME COURT TO RULE ON GOOGLE
COPYING MILLIONS OF BOOKS WITHOUT PERMISSION**

WASHINGTON, DC, December 31, 2015 — Today, the Authors Guild, the nation’s largest and oldest society of professional writers, filed a petition with the Supreme Court of the United States requesting that it review a lower court ruling that allowed Google, Inc. to copy millions of copyright-protected books without asking for authors’ permission or paying them. At stake, the Guild claims, is the right of authors to determine what becomes of their works in the digital age.

In petitioning the Supreme Court, the Guild seeks to correct what it views as a flawed decision by the Second Circuit court of appeals in New York—and, specifically, what it contends is that court’s crucial misinterpretation of copyright law’s fair use doctrine. The Guild believes that this is an important case for Supreme Court review: there are circuit splits in several areas of fair use law and others need clarification. The Supreme Court has not heard a fair use case in over 20 years, and the fair use law has transformed greatly in that time.

“Google copied books illegally—without permission, and because it could. It was inconvenient for it to seek permission, so it’s that simple,” said Mary Rasenberger, Executive Director of the Authors Guild and a copyright attorney. “Its actions cannot be justified after the fact just because Google Books uses the books to provide a research service in addition to the many other uses it has made for profit.”

“Even so,” she added, “we’re not asking for Google Books to be shut down. All we’re asking is for authors to be compensated, if they wish, for the value their works bring to Google. We want to make that very clear. Our members are some of the biggest users of Google Books.”

“It is crucial to set proper boundaries for fair use,” Rasenberger continued. “If the Second Circuit’s expansive view of fair use is not checked, the exception will swallow the rule in no time. We have become spoiled by the riches of a well-functioning copyright system, and so we take it for granted. Let’s not now create a society that favors only sponsored or independently wealthy writers.”

The decade-long copyright infringement case challenged Google for its mass digitization of millions of books, which it used, among other things to create a search engine “Google Books.” The Guild has argued that Google’s scanning and mass copying project was not fair because Google simply sought to profit from use of authors’ books, using the books to enrich its search capabilities and competitive edge, and ultimately its corporate value. Like any corporate use that merely reproduces entire works without any new copyright creation, Google should have sought permission first.

“Authors effectively taught Google how to read,” said Roxana Robinson, President of the Authors Guild and an award-winning novelist whose books were scanned without her permission. “Our books helped Google better recognize and respond to natural language, which is essential to the success of its search function. Google has undoubtedly profited handsomely off of our books just from its internal uses of them, and it didn’t have the decency to pay authors a cent—or even to ask permission.”

The Authors Guild is concerned that, if the lower court decision is not overturned, it will water down the incentives to authorship that are the heart of copyright law. “The fact that Google Books is a useful research tool for the public does not justify Google’s unauthorized profiting from the books any more than the mass copying and selling of educational books is a justified infringement. In either case, the immediate social benefit comes at a huge cost—a weakening of the foundations of copyright law,” said Rasenberger.

“Copyright protection is a linchpin of free expression and democracy; without it, professional writers must be independently wealthy or depend on some sort of patronage. A finding of fair use for an infringement as big as Google Books threatens to undermine the entire framework. As the brief contends, ‘such a radical rewrite of copyright law’ should not be allowed to stand without Supreme Court consideration.”

The brief filed today was principally authored by Paul Smith of Jenner & Block in Washington, a veteran of numerous Supreme Court arguments. It explains how the Second Circuit has misinterpreted and misapplied the transformative use doctrine, allowing courts to decide for themselves whether a use is socially beneficial and transformative, and then applying a fair use analysis that overrides the statutory four-factor test and automatically makes these so-called “transformative” uses fair ones.

“Authors deserve to control and determine what uses are made of their work,” said Smith. “The Second Circuit decision completely ignores nascent markets for digital uses in which authors may wish to take part in the future, effectively cutting them out of their own enterprise—their written work. If companies want to make digital use of books, they should pay authors. There are innumerable collective rights organizations around the world who do this all the time—without much difficulty, and with a lot less money than Google.”

#

ABOUT THE AUTHORS GUILD

The Authors Guild has served as the collective voice of American authors since its beginnings in 1912. Its over 9,000 members include novelists, historians, journalists, and poets—traditionally and independently published—as well as literary agents and representatives of writers’ estates. The Guild is dedicated to creating a community for authors while advocating for them on issues of copyright, fair contracts, free speech, and tax fairness. Please visit www.authorsguild.org.

MEDIA CONTACT

Sandy Long
Chief Operating Officer
The Authors Guild
slong@authorsguild.org
Phone: (212) 563-5904
Cell: (917) 488-9926

Or

Eric Kuhn
Phone: (631) 238-5526
Cell: (631) 324-0092