

SETTLEMENT AGREEMENT BETWEEN PUBLISHERS AND GOOGLE

This Settlement Agreement (the “Agreement”) is made as of November 13, 2009 by and among plaintiffs The McGraw-Hill Companies, Inc., Pearson Education, Inc., Penguin Group (USA) Inc., Simon & Schuster, Inc., and John Wiley & Sons, Inc. (collectively, the “Publishers”) and defendant Google Inc. (“Google”) (each, a “Party” and, collectively, the “Parties”).

WHEREAS, on or about October 19, 2005, the Publishers filed a complaint against Google for copyright infringement in the United States District Court for the Southern District of New York captioned *The McGraw-Hill Companies, Inc. v. Google Inc.*, 05 Civ. 8881 (JES) (the “Action”) arising out of, *inter alia*, Google’s unauthorized reproduction of books in which the Publishers own copyright interests; and

WHEREAS, Google raised various defenses and denials in response to the allegations in the Action; and

WHEREAS, the Publishers also are named as representative plaintiffs in an amended class action complaint against Google for copyright infringement that is being filed contemporaneously herewith in the United States District Court for the Southern District of New York captioned *The Authors Guild v. Google Inc.*, 05 Civ 8136 (DC) (the “Class Action”) and is brought on behalf of copyright owners in books reproduced by Google without authorization; and

WHEREAS, Google raised various defenses and denials in response to the allegations in the Class Action; and

WHEREAS, the Parties, and other plaintiffs in the Class Action, entered into a settlement agreement (the “Class Action Settlement”), which was filed in the United States District Court for the Southern District of New York on October 28, 2008, to settle the claims asserted in the Class Action; and

WHEREAS, the Parties filed an amended settlement agreement on November 13, 2009 (“Amended Settlement Agreement”), which is being filed contemporaneously herewith in the United States District Court for the Southern District of New York, to settle the claims asserted in the Class Action; and

WHEREAS, in order to avoid the costs and uncertainties of litigation, the Parties desire to settle all claims asserted in the Action;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows:

1. Google shall make a settlement payment to the Association of American Publishers, Inc. (the “AAP”) in the total amount of fifteen million five hundred thousand United States dollars (U.S. \$15,500,000) (the “AAP Payment”), to settle the claims in the Action, to reimburse the AAP for attorneys’ fees and costs and to establish a fund to serve the interests of both publishers and authors. Within ten (10) business days after the Effective Date (as defined in the Amended Settlement Agreement), Google shall make the AAP Payment by wire transfer to the AAP, as the AAP shall direct.

2. None of the Publishers are entitled to any part of the AAP Payment and the AAP shall pay no part of the AAP Payment to any of the Publishers.

3. The Publishers' releases, as set forth in the Amended Settlement Agreement, shall be effective on the Effective Date, provided that Google pays, and the AAP receives, the AAP Payment in accordance with the terms herein.

4. Notwithstanding anything in this Agreement, the Publishers have and retain all rights that they have under the Amended Settlement Agreement.

5. The Parties shall file with the Court, within five (5) business days after the AAP's receipt of the AAP Payment, a Stipulation and Order of Dismissal with Prejudice in the form attached hereto as Exhibit A.

6. The Parties agree to keep confidential all information received by one Party from any other Party during the course of discovery in the Action, and shall make no disclosure thereof to any third party except as provided in this Agreement.

7. This Agreement supersedes all previous arrangements or understandings, whether written or oral, and contains the entire agreement of the Parties with respect to the manner in which the Action will be dismissed.

8. This Agreement may be modified, varied or otherwise amended only by a writing, of even or subsequent date hereto, signed by the Parties.

9. This Agreement and the settlement incorporated herein is not and shall not be construed as an admission of liability by any Party.

10. This Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against any Party.

11. Each individual signing this Agreement warrants and represents that s/he is duly authorized to execute this Agreement on behalf of the Party for which s/he signs.

12. The Parties agree that the Court shall retain jurisdiction over any dispute arising from or relating to this Agreement.

13. This Agreement shall be governed by the laws of the State of New York, exclusive of its conflict of laws principles.

14. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

15. Executed originals of this Agreement may be delivered by facsimile or by email. Faxed signatures or signatures transmitted by email shall be considered originals.

AWAITING
COURT
APPROVAL

IN WITNESS WHEREOF, the Parties hereto have each caused this Agreement to be duly executed by an authorized representative as of the first date written above.

THE MCGRAW-HILL COMPANIES, INC.,
PEARSON EDUCATION, INC.,
PENGUIN GROUP (USA) INC.,
SIMON & SCHUSTER, INC., and
JOHN WILEY & SONS, INC.

By their attorneys,

By: Jeffrey P. Curfard
Jeffrey P. Curfard
DEBEVOISE & PLIMPTON LLP

GOOGLE INC.

By: David Drummond
David Drummond
Senior Vice President, Corporate Development and Chief Legal Officer

1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 253-0000 (phone)
(650) 253-0001 (fax)

1. Any and all claims asserted herein by the Publishers shall be dismissed with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.
2. This dismissal shall be without costs or fees.
3. This stipulation may be filed without further notice with the Clerk of the Court.
4. The Court shall retain jurisdiction over any disputes relating to the resolution of this matter.

SO ORDERED, this _____ day of _____, 20__.

Denny Chin
United States District Judge

STIPULATED TO BY:

THE MCGRAW-HILL COMPANIES, INC., GOOGLE INC.
PEARSON EDUCATION, INC., PENGUIN
GROUP (USA) INC., SIMON & SCHUSTER,
INC., and JOHN WILEY & SONS, INC.

By their attorneys,

By its attorneys,

Bruce P. Keller
Jeffrey P. Cunard
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000 (phone)
(212) 909-6836 (fax)
bpkeller@debevoise.com
jpcunard@debevoise.com

Daralyn J. Durie, Esq.
Joseph C. Gratz, Esq.
DURIE TANGRI LLP
332 Pine Street, Suite 200
San Francisco, CA 94104
(415) 362-6666 (phone)
(415) 236-6300 (fax)
ddurie@durietangri.com
jgratz@durietangri.com