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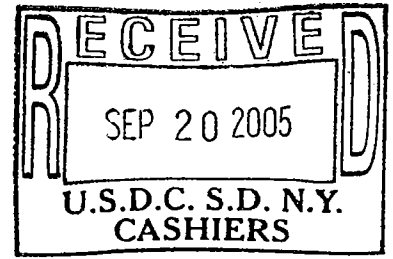
JUDGE SPRIZZO

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05 CV 8136

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



The Author's Guild, Associational Plaintiff, :
Herbert Mitgang, Betty Miles and Daniel Hoffman, :
Individually And On Behalf Of All Others Similarly :
Situating, :
Plaintiffs, :
v. :
Google Inc., :
Defendant. :

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, by their attorneys, allege as follows:

NATURE OF THE ACTION

1. Plaintiffs are published authors and The Authors Guild, the nation's largest organization of book authors, which has as its primary purpose to advocate for and support the copyright and contractual interests of published writers. The authors' works are contained in certain public and university libraries, and have not been licensed for commercial use.
2. Defendant Google Inc. ("Google") owns and operates a major Internet search engine that, among other things, provides access to commercial and other sites on the Internet. Google has contracted with several public and university libraries to create digital "archives" of the libraries' collections of books, including that of the University of Michigan library. As part of the consideration for creating digital copies of these collections, the agreement entitles Google to reproduce and retain for its own commercial use a digital copy of the libraries' archives.
3. By reproducing for itself a copy of those works that are not in the public domain (the "Works"), Google is engaging in massive copyright infringement. It has infringed, and continues to infringe, the electronic rights of the copyright holders of those works.
4. Google has announced plans to reproduce the Works for use on its website in order to attract visitors to its web site and generate advertising revenue thereby.
5. Google knew or should have known that the Copyright Act, 17 U.S.C. § 101 *et seq.* ("the Act") required it to obtain authorization from the holders of the copyrights in these literary works before creating and reproducing digital copies of the Works for its own

commercial use and for the use of others. Despite this knowledge, Google has unlawfully reproduced the Works and has announced plans to reproduce and display the Works without the copyright holders' authorization. Google intends to derive revenue from this program by attracting more viewers and advertisers to its site.

6. By this action, plaintiffs, on behalf of themselves and all others similarly situated, seek damages, injunctive and declaratory relief with respect to Google's present infringement, and declaratory and injunctive relief with respect to Google's planned unauthorized commercial use of the Works.

JURISDICTION AND VENUE

7. This copyright infringement action arises under 17 U.S.C. § 101 et seq. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338 (acts of Congress related to copyright).

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because one of the named plaintiffs resides in this district and because defendant conducts business in this district.

PARTIES

THE NAMED PLAINTIFFS

9. The individual plaintiffs ("Named Plaintiffs") are published, professional authors who created literary works for which the copyrights have been registered with the United States Copyright Office.

10. Plaintiff Herbert Mitgang ("Mitgang") is a published author of numerous nonfiction books, novels and plays. Mr. Mitgang resides in New York, New York. He is the

