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October 9, 2012

Mr. Joseph F. Wayland
Acting Assistant Attorney General
Antitrust Division
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

by e-mail: antitrust.atr@usdoj.gov

Dear Mr. Wayland:

As national writers' organizations whose members include authors of books and articles included in books in library collections, we ask that you open or re-open your investigation of whether settlement negotiations in *McGraw-Hill et al. v. Google* have been used for collusion in restraint of trade in violation of federal antitrust law.

As you know, an earlier proposal for settlement of this and a related lawsuit (*Authors Guild et al. v. Google*) was rejected by the U.S. District Court on antitrust and other grounds. Your Division properly investigated and objected to that settlement proposal on antitrust grounds.

As objectors (ASJA and SFWA) and amicus curiae in support of objectors (NWU), our organizations supported your investigation and objections.

The publisher plaintiffs and Google have now announced that they have agreed to a new settlement and will move for dismissal of their case.

Settlement negotiations should not be allowed to serve as a cover for otherwise-impermissible collusion. This new agreement within the publishing oligopoly should not be immune from your scrutiny for possible antitrust violations merely because it was reached in the context of negotiations for the settlement of litigation.

If anything, investigation and review by your Division are more important because, unlike the previous proposals for settlements of this litigation, the latest agreement between the publisher parties and Google is confidential, not a class action, and not subject to review by the Court for fairness.

Our organizations stand ready and willing to assist your Division in understanding the antitrust implications of this new secret agreement between key members of the publishing oligopoly. We look forward to the results of your investigation.

Sincerely,

Minda Zetlin, President
American Society of Journalists and Authors

Larry Goldbetter, President
National Writers Union

Michael Capobianco, Past President
Science Fiction and Fantasy Writers of America