

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

The Authors Guild, Inc., Association of)	
American Publishers, Inc., et al.,)	
)	Case No. 05 CV 8136-DC
Plaintiffs,)	
)	
v.)	
)	
Google, Inc.,)	
)	
Defendants)	

**COMMENTS OF DISABILITY ORGANIZATIONS OF OR FOR PRINT-DISABLED
PERSONS IN SUPPORT OF THE PROPOSED SETTLEMENT**

I. Introduction

The National Federation of the Blind, the American Foundation for the Blind, the Xavier Society for the Blind, the DAISY Consortium, the Bazelon Center for Mental Health Law, the National Spinal Cord Injury Association, the Burton Blatt Institute at Syracuse University, and the World Blind Union ask the Court to approve the proposed settlement in this case. These six organizations represent some of the more than 30 million Americans who, because they are blind or print disabled, cannot read print. If the Court approves the settlement, the 20 million volumes expected to be covered by the agreement will be accessible for the first time to this significant community that has previously been shut out of mainstream access to print information.

II. Description of Organizations

The National Federation of the Blind (“NFB”) is a national advocacy organization. The NFB, the oldest and largest national organization of blind persons, is a non-profit corporation duly organized under the laws of the District of Columbia with its principal place of business in Baltimore, Maryland. It has affiliates in all 50 states (including California) as well as

Washington, D.C. and Puerto Rico. The vast majority of the approximately 50,000 members are blind persons. The NFB is widely recognized by the public, Congress, executive agencies of government and the courts as a collective and representative voice on behalf of blind Americans and their families. The purpose of the NFB is to promote the general welfare of the blind by (1) assisting the blind in their efforts to integrate themselves into society on terms of equality and (2) removing barriers and changing social attitudes, stereotypes and mistaken beliefs that sighted and blind persons hold concerning the limitations created by blindness resulting in the denial of opportunity to blind persons in virtually every sphere of life. The NFB and many of its members have long been actively involved in promoting adaptive technology and ensuring the accessibility of information for the blind, so that blind persons can live and work independently in today's technology-dependent world. In recent years, recognizing the potential digital books have to offer the blind, the NFB has focused significant attention and resources to ensuring that digital materials are accessible to the blind. Because the terms of the proposed settlement require all books under the agreement be accessible to the blind, if this Court approves the settlement, the NFB and its members will benefit from unprecedented access to information.

Founded in 1921 and recognized as Helen Keller's cause in the United States, the American Foundation for the Blind ("AFB") is a national nonprofit working to expand possibilities for all individuals living with vision loss. AFB pioneered the development of talking books for the blind in the 1930s, resulting in the availability of high-quality audio recordings of popular and other material, both fiction and nonfiction, to millions of Americans over the decades who would otherwise have had no access to the printed word. AFB has been a leading advocate for literacy, information access, and technology usability for people with vision loss and all disabilities. As the leading publisher of academic, practitioner, parent and consumer

oriented books and other materials concerning the needs, rights and capabilities of people who are blind or visually impaired, AFB is keenly aware of the intellectual property interests common to all publishers of copyrighted works, and AFB consistently strives to make all of its content offerings accessible to its many and diverse audiences regardless of disability.

The Xavier Society for the Blind has been providing material for the blind and visually-impaired since 1900. Our materials are available at no charge to our approximately 10,000 clients throughout the United States, and most of our offerings are available in Braille, large-print and audio versions. We provide periodicals and a large lending library, and are often requested to provide specific materials or editions. The availability of the material covered in the agreement between the Authors Guild and Google would significantly enlarge the materials available, and would enable agencies like ours to focus our limited resources on books not covered. We dream of a day when most of our specialized services are no longer needed because everyone will have mainstream access to all books and all materials that have traditionally only been available in a printed format. The technology exists today for that dream to come true; all that is lacking is the human will to make it happen. This settlement would be one great step in that direction, and the Xavier Society for the Blind strongly encourages the court to approve that settlement.

The DAISY Consortium is composed of non-profit libraries and organizations from around the world that provide accessible versions of books to their patrons who are blind or who have other print disabilities. Through the DAISY Consortium, libraries serving persons with disabilities participate in the development of standards and implementation strategies that lead to greater access to information. The major libraries and service organizations in the United States belong to the DAISY Consortium. The DAISY Consortium envisions a world where people with

print disabilities have equal access to information and knowledge without delay or additional expense. The DAISY Consortium supports the proposed settlement with Google. In particular, the terms that require that the materials be accessible to persons with disabilities are perfectly in alignment with the Mission and the Vision of the DAISY Consortium. No other effort has promised so much to so many persons with disabilities. The DAISY Consortium hopes this will be approved and the DAISY Consortium commits to assisting in the development of the technical techniques that will lead to the success of the effort to make information accessible to persons with disabilities.

The Bazelon Center for Mental Health Law is a national public interest organization founded in 1972 to advocate for the rights of individuals with mental disabilities. The Bazelon Center engages in litigation, administrative advocacy, and public education to promote equal opportunities for people with mental disabilities. The ability to access digital books is a tremendously important tool that will make print materials accessible for the first time to many people whose mental disabilities have prevented such access, facilitate their opportunities to participate in educational, employment, social and cultural activities, and promote their integration into mainstream society.

Founded in 1948, the National Spinal Cord Injury Association is the nation's oldest and largest civilian organization dedicated to improving the quality of life for an estimated 1.3 Americans living with the results of spinal cord injury, and as many as 4 million living with paralysis from disease or disorders, and their families. Many of these individuals have some form of reading disability. As we educate and empower survivors of spinal cord injury and disease to achieve and maintain the highest levels of independence, health and personal fulfillment we see first-hand the importance of free and equal access to information and entertainment for those

individuals, and it is our belief that all Americans share the same right of access to these materials, regardless of disability.

The Burton Blatt Institute at Syracuse University is a research, advocacy and community development organization dedicated to advancing the civic, economic and social participation of people with disabilities worldwide. BBI focuses on developing innovative programs in employment, entrepreneurship, economic empowerment, civil rights and community participation for people with disabilities.

The World Blind Union represents the Rights of 314 million visually impaired persons living in over 160 countries where the Union is represented by its National Member Organizations. We are committed to work towards a world in which knowledge and information are equally available to all: a world in which blind, partially sighted and other print-disabled people can read the same books, newspapers and magazines as their fellow citizens, at the same time and at no additional cost - in the format that best suits them. These Rights are enshrined in the UN Convention on the Rights of Persons with Disabilities (Articles 9, 21 & 30), which was recently signed by President Obama, and in the Universal Declaration of Human Rights (Articles 19 & 27). The WBU fully supports the position of our US National member organizations, including the American Foundation of the Blind, the National Federation of the Blind, and the DAISY Consortium, which have addressed the transformative impact approval of the settlement will have upon blind and print disabled Americans. Approval of the settlement will also constitute a significant step forward in the global effort to eradicate the grave inequality the world's visually impaired and print disabled face have historically faced in obtaining access to books, knowledge and information. Thus, as the internationally recognized organization speaking on behalf of blind and partially sighted persons at the international level, the WBU

urges the Court to consider the impact approval of the settlement will have in bringing not only the United States', but the world's visually impaired and print disabled people one step closer to enjoying their human right to equal access to knowledge and information.

III. Access to Information by People with Print Disabilities

Access to the printed word is one of the greatest challenges faced by the blind and millions of other Americans with print disabilities, including those with learning disabilities such as dyslexia; processing issues, developmental delays, or intellectual disabilities; and those who cannot access print or manipulate print books because of a neurological or muscular disorder, ranging from persons recovering from stroke to those living with cerebral palsy, upper spinal cord injury or simply severe arthritis. Because these individuals cannot read print, they have had to rely upon alternative and inferior avenues to gain access to the printed word.

Until recently, books have been available predominantly in print, which is inherently inaccessible to people with print disabilities. To read and enjoy the knowledge and information contained in print books, people with print disabilities have had few, limited options. They can subscribe to alternative library services for people with print disabilities, purchase audio books, or, if a student, rely on their university to scan and the print book and convert it into an electronic copy. Each of these alternatives is woefully inadequate when compared to the quality and quantity of print material and information available to non-disabled readers.

Libraries for the blind and print disabled offer only a small fraction of the books available to the non-disabled public in formats that are accessible. Currently only 5% of all published works are available in accessible formats. Of that amount, 90% of these accessible formats are produced by and at the cost of the voluntary and non-profit sector. To put this disparity into context, the Library of Congress receives some 22,000 items each working day and adds

approximately 10,000 items to its collections daily. But its National Library Service for the Blind and Physically Handicapped, one of the largest library collections of accessible materials, can only produce about 2,000 titles a year, representing less than one percent of the books published annually.

Most print-disabled people do not qualify to borrow from these collections, however, because of the narrow scope of the Chafee Amendment, 17 U.S.C. § 121. To access these few books, blind and print disabled must prove their disabilities in accordance with the Chafee Amendment. For many individuals with print disabilities, such as dyslexia or processing disorders, the medical proof required to qualify for access can be costly or difficult, if not impossible, to obtain. As a result, these individuals have even fewer opportunities to access the printed word. Those who, as a result of age or illness, develop a temporary or permanent print disability have historically failed to register under Chafee.

At the same time, Braille literacy has plummeted while the time and expense of producing Braille books remains substantial. For persons with other print disabilities, Braille has not been an option, so they, too, have been shut out of independent access except to the extent an audio book was available.

Commercially available audio books are similarly limited. They account for only 5% of books in print. Often, these books are only available in abridged format, long after issuance of the print book and with navigation suitable only for recreational reading. The expense associated with producing a performed audio book is such that few if any of the books covered by the settlement will be produced in such a format. Moreover, those audio books that are available are significantly more expensive than print books.

Finally, students and others who require print books that are not available on an audio book or via a library service for people with print disabilities, and who can prove they are qualified under the Chafee Amendment, must have the print book ripped apart, scanned and run through optical-character-recognition software, to create an electronic version of the book that is readable with screen-access software or through a tactile Braille display. The process of creating such a book can take hours or even months. Moreover, the resulting book is often full of conversion errors and lacks navigability, like chapter headings and page numbers, rendering it difficult or even impossible to read.

Digital books offer the opportunity for print-disabled readers to have equal access to the printed word, but only if they are designed with accessibility in mind. For years now, access to electronic books via text-to-speech software has been technologically feasible. Unlike print, electronic books are inherently susceptible to accessibility. However, distributors of e-books for sale have developed proprietary e-book reading devices that are gratuitously inaccessible and then used digital rights management (DRM) software to restrict the content so that it cannot be obtained on accessible devices or with accessible text-to-speech software. As a result, despite the increasing rate of adoption of e-books by publishers and book distributors, few of the e-books currently offered to the public are accessible to people with print disabilities. Thus, blind and print-disabled readers have been locked out of the technology that promises, for the first time in history, equal access to the information and knowledge in print books.

If approved by the Court, the proposed settlement will change all that. Because virtually all books published before January 1, 2009 will, by virtue of the proposed settlement, be accessible with text-to-speech software and readable on a refreshable Braille display, these books

will be accessible to more than 30 million Americans who cannot read print and those who can do so only with great difficulty or for short periods of time.

IV. How the Settlement, if Approved, Will Change Access to Information by People with Print Disabilities

The proposed settlement expressly provides that the books and materials subject to the settlement shall be accessible to the blind and others with print disabilities within five years of the Court's approval of the settlement. Specifically, the agreement authorizes Google to provide the material it offers users "in a manner that accommodates users with Print Disabilities so that such users have a substantially similar user experience as users without Print Disabilities." The material covered includes the material provided by Google through institutional subscriptions, public access services, and consumer purchases, as well as the material Google displays as snippets, book previews, and the pages in front of and behind the books (such as the table of contents and index).

Significantly, the Agreement places upon Google the obligation to offer the books in an accessible format at no greater cost to users with Print Disabilities. Specifically, Google must use commercially reasonable efforts to enable an "accommodated service" to users of Google's institutional subscriptions, public access services, consumer purchases and other revenue models. An "accommodated service" means a service that offers the text of books and inserts in the form of electronic text used in conjunction with screen enlargement, voice output, and refreshable Braille displays (or at Google's option and with the Registry's approval, other technologies to reasonably accommodate Print Disabilities) at no greater charge than the charge to view Books in a similar manner to users without a Print Disability.

For Institutional Subscription users with Print Disabilities, Google must offer an Accommodated Service for all books in the Institutional Subscription Database for which Google's automated OCR system is successful.

Further, under the agreement, Google must not unreasonably withhold its consent to a request from a Fully Participating library to work with particular third-party contractors to provide access to the full text of the Books and Inserts as described under "Accommodated Service" and to improve the quality of such Books (e.g. OCR quality and structure extraction) for the purpose of providing such access.

If within 5 years from the Effective Date of the Agreement Google has not complied, or ceases to comply, with its obligation to offer an accommodated service, upon notice by the Fully Participating Libraries, Google must use commercially reasonable efforts to identify and work with an alternative provider to readily provide copies of Books and Inserts requested by the alternative provider solely for the purpose of making those books accessible to users with Print Disabilities.

Finally, print-disabled users at Google's Partner Libraries will also have independent access to the texts. Libraries that have Digitization Agreements with Google are authorized to permit users with Print Disabilities to borrow digital copies of the library's collection. The digital copy must be accessible when used in conjunction with screen enlargement, voice output, or refreshable Braille displays. Certified users must agree to refrain from using, reproducing or distributing the book in an unlawful manner and the library must maintain data about its provision of "special access" to certified users.

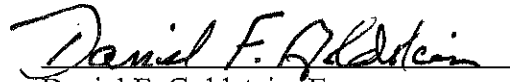
The dedication in the agreement to ensuring access to the covered volumes of material by people with print disabilities is historically unprecedented. If this Court approves the settlement,

print-disabled readers will have equal, independent access to 20 million volumes of information, an unprecedented scale of access to our collective written culture. Having equal access to information would materially advance more than 30 million Americans toward the goal of full participation in our society and equal opportunity. Moreover, the precedent set by the Court's approval of this settlement promises to be pivotal in shifting the current inaccessible e-book archetype to one that assures equal access to e-books and information to persons with print disabilities. On the other hand, if the Court denies approval of the settlement, there is no other present prospect that would open the door to this treasure of information to those who are currently unable to access print.

V. Conclusion

The National Federation of the Blind, the American Foundation for the Blind, the Xavier Society for the Blind, the DAISY Consortium, the Bazelon Center for Mental Health Law, the National Spinal Cord Injury Association, the Burton Blatt Institute at Syracuse University, and the World Blind Union therefore respectfully ask that the Court consider the monumental implications the Court's approval of the proposed settlement will have on the print-disabled community in opening a world of information and education previously denied them, and the transformative impact the settlement will undoubtedly have in influencing the publishing and e-book industries to make accessibility a priority. Accordingly, we ask that the Court approve the proposed settlement agreement so that blind and print disabled readers may have, for the first time in history, equal access to the printed word.

Respectfully Submitted,



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On behalf of the above-listed Amici

Date: September 8, 2009

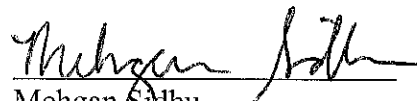
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2009, I caused true and correct copies of the foregoing comments to be hand delivered to the U.S. District Court for the Southern District of New York and to be served via e-mail on the following counsel of record:

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