

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LITERARY WORKS IN ELECTRONIC
DATABASES COPYRIGHT LITIGATION

MDL No. 1379

**ORDER FOR
PRELIMINARY SETTLEMENT
APPROVAL**

This matter is before the Court pursuant to the motion of the plaintiffs in the above-captioned class action (the "Action") for preliminary approval of the settlement plaintiffs reached with defendants The Dialog Corporation, Dow Jones & Company, Inc., Dow Jones Reuters Business Interactive, LLC, d/b/a Factiva, EBSCO Industries, Inc., The Gale Group Inc., Knight Ridder, Inc., Knight Ridder Digital, Mediastream, Inc., NewsBank, inc., The New York Times Company, ProQuest Company, ProQuest Information and Learning Company, Reed Elsevier Inc., The Thomson Corporation, The Copley Press, Inc., and West Publishing Corporation d/b/a West Group, and with the non-party "Participating Publishers," which are listed at Exhibit A to the parties' Settlement Agreement dated March 21, 2005. (Defendants and the Participating Publishers shall be referred to herein as the "Defense Group.") Plaintiffs have moved for an order approving the settlement of the Action in accordance with the Settlement Agreement between plaintiffs and the Defense Group. Having read and considered the Settlement Agreement, and based upon familiarity with the files and proceedings in this matter, the Court finds that:

1. Plaintiffs filed the Action alleging, on behalf of themselves and a putative class of others similarly situated, that defendants violated the federal copyright laws;
2. Defendants have vigorously contested the allegations;

3. The parties have entered into a Settlement Agreement that has been filed with the Clerk of the United States District Court for the Southern District of New York;

4. The Court has reviewed the Settlement Agreement and determined it to be within the range of possible approval; and

5. The Court has reviewed the forms of notice attached to the Settlement Agreement and Declaration of A. J. De Bartolomeo in Support of Plaintiffs' Motion for Preliminary Settlement Approval, as modified by the amended notices handed to the Court at the hearing on March 31, 2005, and the Court has determined that the notices adequately advise class members of the terms of the settlement and further proceedings.

Accordingly, it is hereby **ORDERED** as follows:

6. The motion is **GRANTED**. The Settlement Agreement is hereby preliminarily approved.

7. The case shall proceed as a class action with plaintiffs Michael Castleman, E.L. Doctorow, Tom Dunkel, Andrea Dworkin, Jay Feldman, James Gleick, Ronald Hayman, Robert Lacey, Ruth Laney, Paula McDonald, P/K Associates, Inc., Letty Cottin Pogrebin, Gerald Posner, Miriam Raftery, Ronald M. Schwartz, Mary Sherman, Donald Spoto, Robert E. Treuhaft and Jessica L. Treuhaft Trust, Constance Romilly, trustee, Robin Vaughan, Robley Wilson, Marie Winn designated as Class Representatives, and with the following Class provisionally certified for settlement purposes only (the "Class"):

All persons who, individually or jointly, own a copyright under the United States copyright laws in an English language literary work that has been reproduced, displayed, adapted, licensed, sold and/or distributed in any electronic or digital format, without the person's express authorization by a member of the Defense Group or any member's subsidiaries, affiliates, or licensees (a) at any time on or after August 15, 1997 (regardless of when the work first appeared in an electronic database) or (b) that remained in circulation after

August 15, 1997, even if licensed prior thereto, including English language works qualifying for U.S. copyright protection under an international treaty (hereinafter "Subject Work"). Notwithstanding anything in the immediately preceding sentence to the contrary, a copyrighted work created prior to January 1, 1978, is a Subject Work only if it (a) has been electronically or digitally reproduced, displayed, adapted, licensed, sold and/or distributed by a Participating Publisher without the person's express authorization, and (b) is from a publication whose pre-1978 works have not been excluded from this settlement, as indicated on Exhibit A to the Settlement Agreement. Included in the Class are all copyright owners of Subject Works who, after June 25, 2001, responded to The New York Times Company's Restoration Request website or print advertisements.

8. A final settlement/fairness hearing shall be held on JULY 28, 2005, at 10:00 (the "Hearing") before the undersigned in Courtroom 618, United States District Court for the Southern District of New York, United States Courthouse, 40 Centre Street, New York, NY 10007. The purpose of the Hearing shall be to determine: (a) whether the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and adequate; and (b) whether the proposed Settlement Agreement should be approved by the Court and judgment entered thereon. At the Hearing, or such adjourned date as the Court deems appropriate, Plaintiffs' Lead Counsel and any interested person shall be heard on the fairness, reasonableness, and adequacy of the terms of the Settlement Agreement and on Class Counsel's application for an award of attorneys' fees and reimbursement of expenses as set forth in the Settlement Agreement. The Court preliminarily approves the proposed Settlement Agreement, including the procedures for establishing and administering the settlement funds and procedures for notice, exclusion, and objection as described therein, as fair, reasonable, and in the best interests of the Class.

9. The Court reserves the right to adjourn the Hearing or any adjournment without further notice other than an oral announcement at or prior to the Hearing or any adjournment thereof. The Court also reserves the right to approve the proposed Settlement Agreement at or

after the Hearing with or without modification as consented to by the parties to the Settlement Agreement and without further notice to members of the Class. The Court shall retain jurisdiction to consider all applications arising out of or connected with the proposed Settlement Agreement.

10. The Court approves as to form, content, and method the Notice of Class Action Settlement, the Summary Notice of Class Action Settlement (the "Summary Notice"), and the Canadian Summary Notice, substantially in the forms attached to the Declaration of A. J. De Bartolomeo in Support of Plaintiffs' Motion For Preliminary Settlement Approval as Exhibits "A," "B" and "C."

11. Within sixty days of the date of this Order, Lead Counsel shall cause to be forwarded by e-mail or United States mail, postage prepaid, at the last known mailing address, to each identifiable class member as defined above, the Notice of Class Action Settlement (the "Notice").

12. Also within sixty days of the date of this Order, the parties shall cause to be published, in the time and manner set forth in the Settlement Agreement, the Summary Notice and Canadian Summary Notice, and to otherwise comply with the notice program as set forth in the Settlement Agreement.

13. At least five business days prior to the Hearing, Lead Counsel shall certify compliance with the provisions of paragraphs 11 and 12 of this Order by declaration describing the aforementioned mailings and publications, and shall file with the Court Plaintiffs' Motion for Final Settlement Approval and supporting papers, and Motion for Approval of Plaintiffs' Attorneys' Fees and Reimbursement of Expenses and supporting papers.

14. The form and method of Notice, Summary Notice and Canadian Summary Notice specified herein is hereby approved and determined to be the best notice practicable under the circumstances, and the Court finds that the Notice, Summary Notice and Canadian Summary Notice comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure and with applicable standards of due process.

15. Members of the Class defined above will be excluded from the Class only if they comply with the procedures for exclusion as set forth in the Notice and Settlement Agreement, which procedures are hereby approved as fair and reasonable. Unless they have excluded themselves, members of the Class shall be bound by all determinations and judgments in this case relating to the proposed settlement, whether favorable or unfavorable, including without limitation the dismissal of the Action with prejudice and the release of the Defense Group from liability to members of the Class. Persons who will timely exclude themselves from the Class in accordance with the prescribed procedures will not be bound by any orders or judgments entered in this Action related to the proposed settlement, and shall not receive any benefits provided for in the proposed Settlement Agreement in the event it is approved by the Court.

16. Persons who fall within the Class definition and do not exclude themselves may enter an appearance on their own behalf or through counsel of their own choice at their own expense. If they do not enter an appearance, they will be represented by Plaintiffs' Lead Counsel.

17. Any member of the Class who does not exclude himself or herself but objects to: (i) the proposed Settlement Agreement; (ii) the class action determination; (iii) dismissal of the Action or the judgment and releases to be entered with respect thereto; (iv) the Proof of Claim; and/or (v) Class Counsel's application for attorneys' fees and reimbursement of costs and

expenses in the Action; or who otherwise wishes to be heard, may appear in person or through his or her own attorney at the hearing and present evidence or argument that may be proper and relevant; provided, however, that no person other than counsel for plaintiffs and the Defense Group in the Action shall be heard and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), unless, not later than July 15, 2005, such person has (1) filed a precise written statement of his or her objections and any related or supporting papers or briefs, (2) stated his or her intention to appear and be heard at the Hearing, and (3) delivered, by United States Mail, copies of such papers to the Court and counsel for the parties with a postmark no later than July 15, 2005, at the addresses shown below:

The District Court

Mr. J. Michael McMahon,
Clerk of the Court
United States District Court
Southern District Of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Plaintiffs' Lead Counsel

Michael J. Boni, Esquire
Kohn Swift & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107-3389

Diane S. Rice
Hosie, Frost, Large & McArthur
Spear Street Tower, 22nd Floor
One Market Street
San Francisco, CA 94105

A.J. De Bartolomeo
Girard Gibbs & De Bartolomeo, LLP
601 California St., Suite 1400
San Francisco, CA 94108

Any attorney hired by a class member to represent that class member or for the purpose of making objections on behalf of that class member is hired at that class member's expense.

Any attorney hired by a class member must file and serve a Notice of Appearance on or before July 15, 2005, at the addresses shown above. Any objection not timely made and in the manner provided herein shall be deemed waived and forever barred.

18. Any class member who retains an attorney to make objections to the proposed settlement on behalf of the class member or otherwise to represent the Class member in this litigation does so at the class member's own expense. Any such attorney must file a notice of appearance in this litigation with the Clerk of this Court and serve copies of the notice on the attorneys listed in paragraph 17 above, no later than July 15, 2005.

19. Pending final determination of whether the proposed Settlement Agreement should be approved, plaintiffs and all members of the Class, either individually, directly, representatively, derivatively, or in any other capacity, are barred and enjoined from commencing or prosecuting any action or proceeding asserting any claims whatsoever on behalf of themselves or the Class against the Defense Group members or Supplemental Participating Publishers, or any of them, that were brought or could have been brought in the Consolidated Amended Class Action Complaint or the complaint filed in *The Authors Guild, et al. v. The New York Times Company*, and that relate to or arise out of the claims as described in those complaints.

20. If the proposed settlement is not approved by the Court or shall not become effective for any reason whatever, the proposed Settlement Agreement (including any

