

IFLA Statement to the European Commission hearing on the Google Book Settlement

Mr. Chairman, thank you for inviting the International Federation of Library Associations and Institutions, also known as IFLA, to comment on the Google settlement.

IFLA is the leading international body representing the interests of library and information services and their users. It is the global voice of the library and information profession and has 1600 member associations and institutions in approximately 150 countries worldwide. IFLA is both the author and publisher of books, and thus falls within both sub-classes of plaintiffs in the US Goggle Book Settlement. As a result IFLA has submitted a position statement to the court in New York.

IFLA is committed to the principles of freedom of access to information and the belief that universal and equitable access to information is vital for the well-being of people, communities, and organizations. IFLA therefore welcomes Google's potential contribution to achieving these goals by providing access to a digital library of millions of books. The proposed settlement under discussion in New York could prove very fruitful. However, IFLA believes that the following consumer and access issues must be satisfactorily addressed before IFLA can support this, or any similar subsequent agreements among libraries, rightsholders and corporate partners.

Firstly, we would talk about **territoriality**. As a body representing libraries all over the world, IFLA is deeply worried about the territorial limits of the settlement. As it stands, the expanded services permitted under the settlement would be provided only to users located in the United States. Users outside of the USA will only have access to a more limited version of the Book Search service. IFLA is very concerned that if the Google settlement is approved in the United States and if Google is not willing or able to reach agreements with rights holders in other countries, the consequence will be an ever-widening inequality in access to books in digital format.

Secondly, we would raise the issue of **pricing policy**. The economic terms for the Institutional Subscriptions Database will be governed by two objectives: (1) the realisation of revenue at market rates, and (2) the realisation of broad access by the public, including institutions of higher education. Libraries' recent experience has been that publishers of scientific journals have prioritised revenue generation over broad access, forcing many libraries to cancel subscriptions. If the beneficial societal effects of the Book Search Project are to be fully realised, it is critical that the importance of broad access be given strong weight in the settlement.

Libraries will pay an as-yet undisclosed fee to license access to the database. In view of the potential monopolistic nature of the project, and the collaborative manner in which it must be implemented, IFLA asserts that libraries must have an integral – and not merely advisory - role both in the establishment of pricing for the Institutional Subscriptions Database and the manner in which revenue from it is allocated to the parties, including libraries. It is unclear if libraries as consumers can negotiate on behalf of their users, and they apparently cannot negotiate access through consortia arrangements. It must therefore be possible for any library or institutional subscriber to request the court to review the pricing of services provided.

In connection to this, we would like to emphasise the role of **libraries as providers** as well as users or consumers. Librarians must be involved in the policy setting process for the Book Rights Registry as libraries serve as the contributor of content to the database, and as the

primary consumer of content on behalf of their users. Libraries' massive investments in collecting, organizing and preserving this corpus is as essential for the project's success as the work of the authors and publishers who created the stock in the first place.

Connected to pricing policy is our next area of concern. In copyright, **contracts too often override statutory exceptions and limitations** in ways that diminish users' rights. IFLA asserts that the settlement should therefore clearly state that nothing in it supersedes legislated users' rights, including specific and general exceptions for libraries and their users, and any existing or new approaches to making orphan works accessible.

IFLA is also concerned about the **monopolistic nature of the project**. It is estimated that Google are digitising 30 million books at a cost of c. \$750 million. The immensity of the project, and the fact that Google has a 5-year lead, makes it challenging for others to start viable competing projects. In consequence, a large proportion of the world's heritage of books in digital format could be under the control of a single corporate entity should the settlement be approved.

In light of this, IFLA is keen for the US court to exercise its authority to ensure the realization of the broadest possible public benefit from the services enabled by the settlement.

We must also highlight possible **censorship issues**. According to the proposed settlement, Google may exclude from the database 15 % of scanned books that are under copyright, but out-of-print. This could exclude one million books. Google is likely to come under pressure from interest groups and even governments to exclude books that are purported to contain "undesirable" information. If Google submits, this could lead to the suppression of these books worldwide and the stifling of freedom of expression. It is therefore of the utmost importance that the settlement obliges Google to publish lists of books that are excluded from its services, and the reason for the exclusion.

Finally, IFLA would like to point out that **patron privacy** is a core value for libraries. Parts of the settlement imply that Google will collect and retain information about users' activities. However, the settlement does not specify how users' privacy will be protected. IFLA has urged the US court to require Google to cooperate with library associations and other representatives of users' interests to ensure that adequate measures are taken to protect personally identifiable information.

Mr. Chairman, IFLA's position on the settlement is consistent with the views of both EBLIDA and LIBER. We have forwarded a written version of this statement to the Commission. Thank you very much for this opportunity to address the hearing.