



International Federation of
Library Associations and Institutions

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 around the world. 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 social, educational, cultural, democratic, and economic well-being of people, communities, and organizations.

IFLA therefore welcomes Google's contribution to achieving these goals. The Google Book Search programme has the potential to provide public access to a digital library of millions of books. It can be, when fully and properly developed, an unprecedented source for the advancement of learning and human development. IFLA hopes that the proposed settlement under discussion in New York will serve as the beginning of a fruitful cooperation that will benefit the millions of users whom libraries serve throughout the world, bringing us closer to the achievement of our goal of providing equitable access to information.

However, IFLA believes that the following issues must be satisfactorily addressed before IFLA can support this, or any similar subsequent agreements among libraries, rightsholders and corporate partners:

Territoriality - The Digital Divide

IFLA is deeply worried about the territorial limits of the settlement. The copyright laws of a country apply only within that country. Therefore, the settlement, which is based on US litigation, would apply only in the United States of America. As a consequence, the expanded services permitted under the settlementi would be provided only to users located in the United States. Users outside of the USA would have access only to the current Book Search service, which for books in copyright permits the display of only three "snippets" consisting of a few sentences of text.

The expanded services would be available to users located in countries outside USA only if Google reaches settlements with rights owner's organisations on a country-by-country basis.

Whether this is possible would depend not only on the good will of the parties involved, but also on the copyright legislation of the countries -e.g., whether their laws allow for class actions or extended collective licensing, or whether they have collecting societies or other organisations with sufficiently broad legal authority to enter into an agreement with Google.

IFLA is concerned that if the Google settlement is approved in the United States and if Google is not able or willing to reach agreements with rights holders in other countries, the consequence will be an ever-widening inequality in access to books in digital format.

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 given priority to the generation of revenue at the cost of 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 be licensing access to the database, and thus paying a fee. The price structure is not set, and the terms of access for our users will need attention. 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 not clear that libraries as consumers on behalf of their users will be able to negotiate, as is the case with other databases. There apparently will not be the ability to 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.

Library users as consumers

Library users may be confronted with advertisements and other promotional items as they use the database. Libraries have no clear control over the nature and extent of these advertisements. In addition, users may choose to purchase a book after searching the database in or through a library, and thus the library as consumer becomes an agent in the sales and marketing of the database. Consumers expect to be protected against faulty products, to be free of deceptive advertising, to be safe, to choose freely, to be heard, to be informed, and to have a right to service. IFLA hopes that the settlement will support these objectives.

Further to this, IFLA 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.

Contracts v statutory exceptions and limitations

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.

Control of information by one corporate entity

Google has not disclosed the size of the project, but independent experts estimate that it may amount to 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 other enterprises or institutions 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 view of the potential monopolistic nature of the project, 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.

Long-term preservation

When the digitisation project is concluded, it will comprise a large proportion of the world's heritage of books in digital format. The participating libraries will have copies of "their" files for preservation or other uses. Although the Google settlement has provisions for business continuity, the settlement does not seem to include provisions for the long-term preservation of the entire database. Analyses of cost effectiveness may at some point in the future lead Google to reduce the amount of data by discarding parts of them. The importance and utility of the entire database for users worldwide requires that the agreement include provisions ensuring the long-term preservation of the database as a whole and IFLA urges the court to take this into its considerations.

Research

The database containing the digital copies of the scanned books represents a unique corpus for computational analysis and research. Under the proposed settlement, Google and two institutions may host this Research Corpus for purposes of "nonconsumptive research" by "qualified users".ⁱⁱ The host site has the authority to decide whether a user is qualified and whether the research is non-consumptive. There is no mechanism to challenge the host's decision and in consequence, certain types of research may be privileged. There seems to be no possibility for foreign researchers to get access to the database for research purposes.

It should be possible to request an independent body to review whether the Host site's decision to refuse certain researchers or research projects is reasonable, and opportunities for research should be available to qualified researchers throughout the world.

Censorship

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 lead to the exclusion of 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 to

political pressure and removes books from the database, this could lead to the suppression of these books worldwide and the contravention of censorship legislation or rights of freedom of expression. It is therefore of the utmost importance that Google be obliged under the settlement to publish lists of books that are excluded from its services, and the reason for the exclusion.

Privacy

Patrons' privacy is such a core value for libraries that a court order is usually required to force a library to disclose individuals' use of library resources. Some of the services to be offered under the proposed 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.

The expanded services consist of three primary services:

1. **Previews**

All users in the United States may search Google's entire search database for digitized books free, and see up to 20% text from out-of-print books. (Special rules for special categories e.g. fiction vs. non-fiction.).

2. **Consumer purchases**

Consumers may buy perpetual online access to the full text of out-of-print books. In-print books require that the copyright owner "opt in".

3. **Institutional subscriptions**

Users within an institution may view the full text of all the books in the Institutional Subscription Database (ISD, which will include all the books in the in-copyright but out-of-print category. "Non-consumptive" means that the text is not accessed for display or reading.

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