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The Google Book Settlement: An International Library View

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take an official position and trying “to work it from the inside.”7 The writers under the name “Canadian Writers Against Google Settlement” filed an objection to the AGBS to the U.S. Court on January 28th asking that Canadian copyright holders be removed from the agreement. Several new arguments (from Canadians at least) against the settlement were introduced:

- As well as violating the Berne Convention (an argument made forcibly by European interveners), the agreement would be in violation of U.S. obligations under NAFTA.
- Canadian authors' moral rights would be violated under the agreement.
- Competition and privacy concerns should be addressed.
- Canadian provisions for addressing orphan works should be respected.
- Canada's bi-lingual and bi-jurisdictional heritage and tradition set it apart from the other countries included in the AGBS.

As was the case with the WUC, the Union des Écrivaines et des Écrivains Québécois, the primary Quebec writers organization, did not advise members on a specific position on the AGBS.

The Canadian Association of University Teachers (CAUT), representing over 65,000 teachers, librarians, and other academic staff, also intervened with the U.S. Court on the AGBS in late January. CAUT echoed a number of the objections raised by other Canadian groups, including that the AGBS is in conflict with international copyright and trade agreements, ignores Canadian legislation on moral rights and orphan works, is in conflict with the separate Quebec legal and commercial regulatory regimes, and includes minimal privacy protections. CAUT also introduced the objection that the interests of its members are at odds with those of the AGBS plaintiffs in that “academic authors generally place a higher premium on access than is reflected in the (AGBS).”8

As we await the next stage of the ongoing GBS saga, from a Canadian perspective it is difficult to imagine that it could be implemented as written without it leading to transformative change in Canada's regulatory, publishing, and library environments. Whether the transformation is catastrophic or liberating or a little of both remains to be seen and will certainly be in the eyes of the beholder. As a librarian I tend to “fetishize” access (in the memorable phrase of European critic Roland Reuss) and am inclined to agree with CULC in its assertion that implementation of the GBS is a necessary first step in providing universal access to our print heritage, while providing reasonable protections for writers and content providers. I worry that “universal access” for a number of years will be limited to the United States, and that there has not been enough consideration of the research imbalance this will create, especially if institutional subscriptions are constrained in any number of ways for institutions outside the U.S... Setting aside the implications for academic research, the image of a Canadian having to travel to a U.S. public library to access a digital text of a Canadian title is both troubling and offensive. The impression left in a June 2009 meeting between Google representatives and Canadian educators and librarians that GBS implementation was at least ten years away in Canada does not offer much hope in this regard.

The only thing that is certain is that this process will not get any easier as it proceeds. I do believe, however, that the imperatives of the emerging digital reality will make a resolution to the multifaceted tensions surrounding the GBS both necessary and desirable for all concerned. An outcome that only addresses English language content must be seen as a partial and interim solution.

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Canadian Perspectives

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Paul Whitney joined the Vancouver Public Library as City Librarian in June 2003. He has served in national, provincial, and local leadership positions, including President of the Canadian Library Association and the British Columbia Library Association. He currently Chairs the following groups: Library and Archives Canada Council on Access to Information for Print-Disabled Canadians and the Canadian Urban Library Council Copyright Committee. Whitney serves on the International Federation of Library Associations (IFLA) Governing Board and is the Board liaison to the IFLA Copyright and Other Legal Matters Committee.

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The Google Book Settlement: An International Library View

by Stuart Hamilton (Senior Policy Advisor, International Federation of Library Associations (IFLA), 2509 CH, The Hague, Netherlands)

Ever since Google began digitizing millions of books in 2002, the Google Book project has fascinated the international library community. The tantalizing possibility of universal access to a massive number of books from American and European libraries, with further expansion to institutions elsewhere in the world — this is the stuff of librarians' dreams. Even as the years have gone by, and more books have been digitized, at the same time louder voices are heard against the Google initiative. The idea of universal access seems to have faded somewhat from librarians' minds, even if the possibilities Google Book offers remain attractive and seemingly within reach.

The International Federation of Library Associations and Institutions (IFLA) is the leading international body representing the interests of library and information services and their users. Founded in 1927, IFLA has 1600 member associations and institutions in approximately 150 countries around the world. In its 83-year history, IFLA has authored and published many books, and therefore has a great interest in the resolution of the Google Book question. Furthermore, some IFLA members are partners in the digitization programme itself, and as such are keen to see the success of the project and increase access to their collections.

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Endnotes

2. Ibid., p 5.
3. Letter from Jeff Barber, CULC Chair, to Judge Chin of the U.S. District Court for the Southern District of New York, August 31, 2009.
Google has digitized 10 million books (and is proposing to digitize an additional 20 million) at a cost of c. $750 million. The immensity of the project, and the fact that Google has a five-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.

Monopolistic concerns also contribute to our thoughts on the pricing policy proposed in the Settlement. 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. IFLA members’ 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 Google Books 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 believes 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 consortial 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, IFLA would like to see an emphasis on the role of libraries as providers of content, as well as users or consumers. Librarians must be involved in the policy setting process for the Book Rights Registry, because libraries serve as the contributors of content to the database, and as the primary consumers of content on behalf of their users. Libraries’ massive investments in collecting, organizing, and preserving this corpus are 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 an area we have a great deal of concern about, and something that libraries all over the world are contending with on a regular basis when offering access to digital resources. In copyright, contracts too often override statutory exceptions and limitations in ways that diminish users’ rights. 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’s amicus brief also highlighted the possible censorship issues in the proposed Settlement. Google may exclude from the database 1.5% 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. IFLA therefore believes it is 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, patron 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 U.S. 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.

Across the pond, the European Union has been considering the implications of the Settlement, and European library organisations such as the European Bureau of Library, Information and Documentation Associations (EBDLIA), and the Association of European Research Libraries (LIBER) have produced their own position statements. On the September 7, 2009, IFLA, EBLIDA, and LIBER, along with other library representatives, appeared at a special hearing at the European Commission in Brussels to comment on the potential effects the settlement would have for Europe and the rest of the world. Like the other plaintiffs in the Settlement, more than six months later we are still waiting to discover the decision of Judge Denny Chin. What happens next will not only be crucial for citizens of the U.S., but also for students, scholars, and library users in the rest of the world, as the first possible steps towards access to a global digital library are either taken or held back pending further amendments.

Effective with January 2008, Stuart Hamilton was appointed as IFLA’s first Senior Policy Advisor. His Ph.D research examined freedom of access to information on the Internet worldwide, and the ways in which libraries can overcome barriers such as censorship or the digital divide to ensure that library users receive the best possible access to online information resources. Hamilton has lectured extensively around the world on these and related matters, and his findings have been widely published. Prior to accepting this position, Hamilton worked for IFLA’s FAIFE Office (2001-2006).

Endnotes