



LIGUE DES BIBLIOTHÈQUES EUROPÉENNES DE RECHERCHE
ASSOCIATION OF EUROPEAN RESEARCH LIBRARIES

LIBER position statement for the European Commission's hearing on the Google Book US Settlement Agreement Brussels, 7th September 2009

These comments on the European Commission's hearing on the Google Book US Settlement Agreement are from **LIBER (Ligue des Bibliothèques Européennes de Recherche / Association of European Research Libraries)**. LIBER is the principal organisation representing research libraries in Europe. Its current membership includes almost 400 national and university libraries in more than 40 countries.

LIBER's mission is to represent the interests of research libraries of Europe, their universities and researchers. LIBER promotes in particular:

- efficient information services
- access to research information, in any form whatsoever
- innovation in end-user services from research libraries in support of teaching, learning and research
- preservation of cultural heritage
- efficient and effective management in research libraries

LIBER strongly supports the submissions made by EBLIDA (European Bureau of Library, Information and Documentation Associations) and IFLA (International Federation of Library Associations and Institutions). LIBER is a member of IFLA, and LIBER and EBLIDA have a Memorandum of Understanding (at <http://www.libereurope.eu/node/151>).

The European researcher and learner sit at the centre of a pervasive digital information landscape. He/she expects to use a wide range of resources from the desktop. These could be locally hosted resources, such as digital holdings from the university or public library, or the mass of information resources that are available via the internet. Google Books clearly fits into this latter category. This digital landscape is not a vision of the future, rather it is how users expect to interact with all their resources now.

LIBER 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 in Europe. The Google Book Search programme has the potential to provide public access to a digital library of millions of books. It will, when fully developed, be an unprecedented source for the advancement of research, learning and human development.

Google and representatives of rights owners and publishers have come to an agreement on how to settle the copyright and other legal issues in relation to the Book Search Project.

This settlement is now under review by the United States District Court, Southern District of New York.

The settlement allows Google to offer four primary services:

- 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. (There are special rules for special categories e.g. fiction vs. non-fiction.).
- 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".
- 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.
- Free Public Access Service
Google may provide Free Public Access Service to not-for-profit Higher Education Institutions and Public libraries on specified conditions. In the case of each Research Library, no more than one terminal per library building will be available.

LIBER hopes that this settlement will be the beginning of a fruitful cooperation between Google and the rights owners. Hoping that it will be possible to establish European settlement, LIBER assumes that the U.S settlement will function as model for the subsequent ones.

However, **LIBER believes that the following issues must be satisfactorily addressed before LIBER can support this settlement**, or any similar subsequent agreements among libraries, rightsholders and corporate partners. The interests of the European researcher and learner will best be served by Europe addressing the points which LIBER makes below in its submission to the EC hearing on the Google Book Settlement.

1. Territoriality

LIBER is deeply worried with the territorial limits of the settlement.

The copyright laws of a country only apply within the territory of that country. Therefore, the settlement, which is based on U.S. legislation, only applies in the United States of America. The consequence of this is, that the expanded services permitted under the settlement, will only be provided to users located in the USA. Users outside the USA will only have access to the current Book Search service, which, regarding books in copyright, only consists in the display of three "snippets" comprising a few sentences of text.

Many books published in Europe have already been digitised by Google and will come under the terms of the Settlement. This means that people in the USA will have better access to such books than people in the continent where they were published.

Because of the class action nature of the settlement, there is no way to widen its scope to include users located outside the USA. The expanded services will therefore only be available to users located in countries outside the USA if Google reaches settlements with rights owner's organisations on a country-by-country basis.

Whether this is possible will not only depend on the good will of the parties involved, but also on the copyright legislation of the countries, e.g. whether they 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.

LIBER strongly advocates that the EC should take a leadership role in this area for Europe without delay. It should do this in two ways:

1. it has the power to bring together all interested parties in Europe to discuss and reach agreement on the copyright and licensing issues raised by the Google Book Settlement
2. it can, through its legislative powers, draw up legislation to be adopted in the member states which creates a framework for copyright laws and Directives which will reflect the advances made in the US Google Book Settlement and give the European researcher and learner the same advantages as the US user.

LIBER urges the Commission seriously to consider these suggestions.

To the extent that it is not possible to reach agreements, the consequence will be a substantial inequality in access to books in digital format. **Unless there will also be a European Google Settlement, European universities and learning institutions will experience a most serious competitive disadvantage compared to U.S. universities and institutions – not to mention the disadvantages for ordinary citizens.**

As stated by Commissioner Viviane Reding in her Lisbon speech on 9 July this year:

“If we do not reform our European copyright rules on orphan works and libraries swiftly, digitisation and attractive content offers will not take place in Europe, but on the other side of the Atlantic.”¹

The territorial limitations of the Google settlement highlight the truth of this statement. It is therefore of the utmost importance that the legal obstacles to settlements are overcome. No effort should be avoided to establish the necessary legal framework and settlements in all countries in order to ensure that this unprecedented source of information can be made available all over Europe on an equitable basis for the advancement of learning and human development.

¹ “Digital Europe – Europe’s fast track to Economic Recovery”, / Viviane Reding, EU commissioner for Telecoms and Media, The Ludwig Erhard Lecture 2009, Lisbon Council, Brussels, 9 July 2009.

2. 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. The costs may very well amount to \$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 will be under the control of a single corporate entity.

In case of European settlements the relevant national authorities must exercise the necessary control to prevent instances of abuse of dominant position to ensure the realization of the broadest possible public benefit from the services enabled by the settlement.

3. 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. In a paper environment, it is libraries who have taken on the role as trusted curators and preservers of the written record. There is still a role for trusted digital repositories, managed by the library sector in a digital environment. **LIBER believes that libraries (supported by the EC) should enter into dialogue with Google to agree a means whereby libraries can continue to exercise their historic role as curator and preserver,** but this time in a digital environment in connection with Google's digitised book collection. LIBER believes that this would be to the benefit both of Google itself and the European researcher/learner.

4. Research

The database containing the digital copies of the scanned books represents a unique corpus for computational analysis and research. Google and two institutions may host this Research Corpus for purposes of "non-consumptive research" by "qualified users". ("Non-consumptive" means that the text is not accessed for display or reading.) 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.

A European settlement should allow for European researchers to avail themselves of this possibility. It should also be possible to request an independent body to review whether the Host site's decision to refuse certain researchers or research projects is reasonable.

In the Google Book Settlement it is proposed that public and research libraries, upon request, will be able to offer free public access to Google's digitised book collection on one terminal per library building. This limitation clearly goes against what the researcher/learner expects: access to information resources from their desktop. **LIBER therefore urges Google to look at this provision again and to make an offering more in line with the expectations of researchers and learners.**

5. Pricing policy

The economic terms for the Institutional Subscriptions Database (ISD) 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.**

In view of the potential monopolistic nature of the project, and the absence of competition, libraries must have an integral (not merely advisory) role both in the establishment of pricing for the ISD and the manner in which revenue from it is allocated to the parties, including libraries. It must be possible for any library or institutional subscriber to request the relevant national Competition Authorities to review the pricing of services provided. The uneven distribution of wealth in Europe makes this even more important.

6. Censorship

According to the proposed settlement, Google may exclude 15 % of scanned books in copyright, but out-of-print from the database. This may amount to the exclusion of 1 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 gives in to political pressure and removes books from the database, this could lead to the suppression of these books worldwide. It is therefore of the utmost importance that Google be obliged to publish lists of books that are excluded from its services, and the reason for the exclusion.

7. Privacy

Privacy is essential for libraries. It normally requires a court order for a publicly funded library to disclose identifiable persons' lending habits or other activities in the library. Some of the services to be offered imply that Google will collect and retain information of

users' activities. However, the Settlement does not specify how users' privacy will be protected.

European settlements must presuppose that European standards for the protection of users' privacy are respected.

8. Contracts vs. statutory exceptions and limitations

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 our users, and any existing or new approaches to making orphan works accessible.**

*Prepared with input from LIBER members.
The Hague, August 2009*

For further information please contact

Wouter SCHALLIER - Executive Director
Koninklijke Bibliotheek - P.O. Box 90407
2509 LK The Hague - The Netherlands
T: +31 70 31 40 729 - F: +31 70 31 40 197
M: +31 6 29 04 79 52 - E: wouter.schallier@kb.nl

President	Mr Hans Geleijnse, Director of Library and IT Services, Tilburg University, Warandelaan 2, P.O. Box 90153, 5000 LE Tilburg, The Netherlands. Tel: + 31 13 466 2121. Email: hans.geleijnse@uvt.nl
Vice-President	Dr Paul Ayris, Director of UCL Library Services & UCL Copyright Officer, UCL (University College, London), Gower Street, London WC1E 6BT. Tel +44 20 7679 7834. Email: p.ayris@ucl.ac.uk
General Secretary	Dr Ann Matheson, c/o LIBER Secretariat, Koninklijke Bibliotheek, P.O. Box 90407, 2509 LK The Hague, The Netherlands. Tel: +44 131 650 2152. Email: a.matheson@tinyworld.co.uk / ann.matheson@ed.ac.uk
Executive Director	Mr Wouter Schallier, Koninklijke Bibliotheek, P.O. Box 90407, 2509 LK The Hague, The Netherlands. Tel: +31 70 31 40 729. Mobile: +31 6 29 04 79 52. Email: wouter.schallier@kb.nl
Treasurer	Dr Heiner Schnellling, Director, Universitäts- und Landesbibliothek Sachsen-Anhalt, 06098 Halle/Saale, Germany. Tel: +49 / 345 / 5522000. Fax: +49 / 345 / 5527140. Email: schnellling@bibliothek.uni-halle.de
Development Director	Professor Raf Dekeyser, Campusbibliotheek Arenberg, W. de Croylaan 6, B-3001 Leuven-Heverlee, Belgium. Tel.: +32 16 328 140. Email: raf.dekeyser@bib.kuleuven.be
LIBER Secretariat	Koninklijke Bibliotheek, P.O. Box 90407, 2509 LK The Hague, The Netherlands. Tel: +31 70 31 40 729. Email: liber@kb.nl
LIBER website	www.libereurope.eu
Stichting LIBER	Koninklijke Bibliotheek, P.O. Box 90407, 2509 LK The Hague, The Netherlands. Chamber of Commerce: 27334736