

DRAFT**EBLIDA position statement on the Google Settlement**

EBLIDA is the European Bureau of Library, Information and Documentation Associations. We are an independent umbrella association of national library, information, documentation and archive associations and institutions in Europe. We promote unhindered access to information in the digital age and the role of archives and libraries in achieving this goal.

EBLIDA therefore welcomes Google's contribution to obtaining these goals. The Google Book Search programme has the potential to provide public access to a digital library of millions of books. It will, fully developed, be an unprecedented source for the advancement of 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 three 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.

EBLIDA welcomes the settlement and hopes that this settlement will be the beginning of a fruitful cooperation between Google and the rights owners.

EBLIDA wants to draw attention to conditions that are of concern to European librarians.

Territoriality

EBLIDA is deeply worried with the 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 of USA will only have access to

the current Book Search service, which, regarding books in copyright only consists in the display of three “snippets” consisting of a few sentences of text.

Because of the class action nature of the settlement, there is no way to widen its scope to include users located outside USA. The expanded services will therefore only be available to users located in countries outside 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.

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

It is therefore of the utmost importance that the 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 to information can be made available all over Europe on an equitable basis for the advancement of learning and human development.

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Hoping that it will be possible to establish European settlement, EBLIDA assumes that the U.S settlement will function as model for the subsequent ones. EBLIDA therefore wants to point to the following issues of concern:

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 the project started in 2004, giving Google a 5-year lead, makes it improbable that other enterprises or institutions will start competing projects. In consequence, a large proportion of the world’s heritage of monographic literature in digital format will be under the control of a single corporate entity. This raises serious concerns.

The parties acknowledge the District Court’s authority to regulate their conduct under the settlement. In view of the monopolistic nature of the project, EBLIDA hopes that the Court will exercise this authority to ensure the realization of the broadest possible public benefit from the services enabled by the Settlement, and in case of European settlements, that the relevant national authorities will exercise the necessary control to prevent instances of abuse of dominant position.

Pricing policy

The economic terms for Institutional Subscriptions Database will be governed by two objectives: (1) the realization of revenue at market rates for each Book and license on behalf of

Rightsholders and (2) the realization of broad access to the Books by the public, including institutions of higher education. So far, publishers of scientific journals have given priority to the realization of revenue at the cost of broad access, and many libraries have been forced to cancel subscriptions. If the beneficial societal effects of the Book Search Project are to be realised it is important that the realization of broad access is given equal weight.

In view of the monopolistic nature of the project, and the absence of competition, it must be possible for any library or institutional subscriber to request the relevant national Competition Authorities to review the pricing of services provided.

Censorship

According to the 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.

Based on experience, it is safe to assume that Google will come under pressure from interest groups and even governments to exclude books that are supposed to contain “undesirable” information. If Google gives in to political pressure and removes books from the database, this will, due to the monopolistic nature of the project, lead to the suppression of these books worldwide. It is therefore of the utmost importance that information about such exclusions are available to the public.

Google should, therefore be obliged to publish lists of books that are excluded from its services, and the reason for the exclusion.

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 researches to get access to the database for research purposes.

European settlements 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.

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 collect and retain information of user’s activities. However, the Settlement does not specify how user’s privacy will be protected. In response to these concerns, Google has stated that it will take appropriate steps to protect user privacy.

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