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The Google Book Settlement: An International Library View

Stuart Hamilton

International Federation of Library Associations

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take an official position and trying “to work it from the inside.”⁷⁷ 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-juridicial heritage and tradition set it apart from the other countries included in the **AGBS**

As was the case with the **WUC**, the **Union des Ecrivains et des Ecrivains Quebecois**, 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**).”⁷⁸

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**. 🐾

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**)⁹ 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. 🐾

Endnotes

1. “Objection of Canadian Standards Association to Proposed Settlement” filed on 09/08/2009 with the U.S. District Court, Southern District of New York, p 1-2.
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.
4. Writers' Union of Canada Statement of Objections, filed with the U.S. District Court for the Southern District of New York, 09/11/2009.
5. Quoted in “Authors lobby U.S. court to reject Google deal,” *Globe and Mail*, 7 Jan 2010, pR3.
6. **Norman Oder**, “Revised Google Settlement Offers Minor Changes on Antitrust Issue, No Response on Library Pricing”, *Library Journal* (online), 11/14/2009.
7. Quoted in “Authors lobby U.S. court to reject Google deal,” *Globe and Mail*, 7 January 2010, pR3.
8. Letter from **James Turk**, Executive Director of **CAUT**, to **Judge Chin** of the U.S. District Court for the Southern District of New York, 28 January 2010.
9. Quoted in “PW's Publishing Person of the Year: Richard Sarnoff,” *Publishers Weekly*, 7 December 2009, p22.

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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As is well-known, in 2005 **Google** was sued by the **Author's Guild** and the **Association of American Publishers** for illicit digitization of copyrighted works. In October of 2008, the three parties negotiated an out-of-court settlement that has since been amended and is now awaiting approval by a court in New York. As both author and publisher of books, **IFLA** falls within both sub-classes of plaintiffs in the suit, and consequently has formalised its position on the settlement in an official statement prepared by its Copyright and other Legal Matters (CLM) Committee and approved by its 20-person international Governing Board.¹ This statement was submitted as an amicus brief to the court in September 2009.

IFLA's position is that of a deep commitment 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 light of this, we welcome **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, we also believe that there are some clear consumer and access issues that must be satisfactorily addressed before we can support this, or any similar subsequent agreements among libraries, rightsholders, and corporate partners.

Chief amongst these is the issue of territoriality. As an organisation representing libraries all over the world, **IFLA** has strong concerns 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. 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. **IFLA** wants library users worldwide to have the widest possible access to information via the Internet.

Further to this, we are also concerned about the monopolistic nature of the project. During the **IFLA World Library and Information Congress** in Milan in 2009, **IFLA's** CLM Committee held a session on the **Settlement** that included a presentation by a **Google** representative. This presentation revealed that

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 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. **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.² 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

1. <http://www.ifla.org/en/publications/ifla-position-on-the-google-book-settlement>.
2. <http://www.eblida.org/uploads/eblida/10/1252227760.pdf> and http://www.libereurope.eu/files/LIBER_Position_Statement_Google_Settlement.pdf.