

12-1-2009

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Hart, Tara, "The Proposed Google Book Settlement: The Why and How" (2009). *Master of Science in Publishing*. Paper 14.
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The Proposed Google Book Settlement: The Why and How

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18 December 2009

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Submitted in partial fulfillment of the requirements for the Master of Science in Publishing degree
at Pace University

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On 28 October 2008, Google announced it had come to a landmark settlement with the classes of authors and publishers represented by the Author's Guild and the American Association of Publishers. This proposed settlement would allow Google to scan and display millions of books, which are still under valid copyright but no longer kept in print by the publisher, through their Google Books Project. This paper will examine the proposed settlement and its discrepancies with current copyright law, as well as concerns over the potential for Google to possess and exploit a monopoly over the World's digital English-language library.

Few topics in the book publishing industry have been as hotly debated as the proposed Google Book settlement has been in the last year. Fierce advocates laud the immense social value of having widespread access to a majority of books written in the last century that have been previously only available to a select few in the major academic libraries. Others feel that the proposed Google Book Settlement has rewarded Google for infringing on the copyrights of authors and publishers by the scanning and displaying of "snippets" (about three or four lines of text) in response to a Google query, without their permission. In my opinion, the proposed Google Books settlement is a flawed document that may serve to have severe repercussions in the long term for those parties it is meant to help the most: readers, libraries, authors and publishers.

The Rise of the Internet

The concept of Data Network theory, which is the mathematical theory concerning the exchange of data and information between computers upon which the

technology for the Internet is based, was first posited by Leonard Kleinrock, in his thesis proposal at M.I.T. in 1961. (Kleinrock, par. 1) The first actual communication between remote computers was accomplished in 1969, sent by Kleinrock from his computer at U.C.L.A. to a computer at Stanford's Research Institute. Universal standards for this interaction between computers followed in 1973 with the development of the "Transmission Control Protocol/Internet Protocol (TCP/IP) by Robert Kahn and Vincent Cerf. Growth was slow until 1989 when the World Wide Web was developed by Tim Berners-Lee, which created a graphical interface and allowed for the use of hypertext and hyperlinks to connect web pages together in a way that facilitated easy navigation. In 1995, dial up internet access began to be offered more broadly to the general public by America Online, CompuServe and Prodigy. By the following year over 14% of American households that owned a computer were also connected to the Internet. In 1996, there were over 45 million people on the Internet worldwide; three short years later in 1999 this number had grown to over 150 million, with Americans accounting for almost half of this number. In 2002, there were over 540 million internet users worldwide, with over 164 million users in the United States alone. ([Norman](#)) This exponential growth has continued to this day. It's hard to fathom that widespread internet access only became available a little over a decade ago and yet it has become such an integral part of our lives.

Google, Inc.

Founded in 1998 by Sergey Brin and Larry Page, Google's name is derived from the mathematical term "googol" which is the number one followed by one hundred zeros.

From the beginning Google sought to provide the “perfect search engine” which Page defined as one that “understands exactly what you mean and gives you back exactly what you want.” ([Google Technology](#)) The founders’ goal in creating Google was to “organize the World’s information and make it universally accessible and useful.” ([Google Company Overview](#)) To this end, Google operates over 150 domains, offering services that range from their primary function as a search engine to email, blogging, video-streaming and their proprietary social network, Orkut. Users have the ability to set their preferred Google interface language to one of more than 128 languages, encompassing all of the world’s major languages and several alternate language settings: including, “Bork, bork, bork!”, “Pirate” and “Elmer Fudd”. ([Google Search Settings](#))

Google has developed proprietary algorithms that allow it to analyze the full text of the web page and to rank these pages based on their relevancy to the user’s search query. Google is able to utilize over 500 million variables and over 2 billion terms when answering a user query. ([Google Technology](#)) This ability, along with the sheer volume of pages that Google has indexed, makes it a strong force in the Internet search business. In 2009, Arbor Networks announced, as part of their first Atlas Observatory report, that Google accounts for more than 6 percent of the world’s internet traffic. They went on to report that over half of the world’s internet activity is controlled by 150 content delivery networks, companies that deliver content to users directly without utilizing third part content servers. ([Norman](#)) So in fact, as Google is one of those content delivery networks, they account for six percent of 50 percent of the world’s internet traffic.

Google and Advertising Services

Google has gone from an internet start-up company founded by couple of Stanford students to a monolith that has become a large part of the online culture within the last decade. This enormous growth is the result of their ability to harness advertising on the internet. According to Michael Healy, Executive Director Designate for the Book Rights Registry, Google makes about 30 million dollars a day in revenue from income generated from these advertising programs. Earnings of this size and the sheer reach of their advertising makes them a force to be reckoned with. This is one reason many dissenters have voiced concerns over the proposed Google Books settlement. With the inclusion of millions of book pages, Google will be able to advertise alongside pages of book text, while being able to collect information about the reading habits of the Google Books user.

Google's advertising program has two parts, AdWords and Ad Sense. In 2003, Google introduced these programs, after their acquisition of Applied Semantics. This Santa Monica, California based company had developed a patented technology, CIRCA, which was designed to mimic human thought processes and to extract information from websites to return the most relevant results to a user query. As Randall Rothenberg points out in his article "Google Showing Us How We Can Reinvent Internet Advertising", "Just as the company's proprietary technology can help connect information seekers to appropriate Web pages, it can also link advertisers to relevant media." (Rothenberg, par. 3) In fact, many advertisers have taken advantage of Google's ability to not only reach consumers but to connect them to products and enhance their bottom line without

having to spend time and money researching the proper places for their advertisements

AdSense is an advertising program where Google provides advertising to content sites, such as Neopets.com, which is an online community of virtual pet owners. Site owner earnings are tied to either cost-per-1000 valid impressions, which is defined as the number of visitors to a page displaying Google advertising, or cost-per-click, which is the number of visitors that clicked through on the ad to the advertiser's site. The program policies prohibit the site owner from inducing, performing, or initiating any click through activity to enhance their earnings. ([Google AdSense](#)) Google allows the site holder to provide information regarding the site's target audience and to put limitations on the types of advertisements that Google can display, which was of concern for Neopets.com, as approximately 80% of their users are under the age of eighteen, when they were looking to utilize their highly trafficked pages for advertising. According to Chris Davis, Vice President of Sales for Neopets.com, it was important that any ads displayed on their site "meet or exceed Children's Online Privacy Protection Act requirements." ([Google AdSense Case Study: Neopets.com](#)) Davis goes on to assert that income from the AdSense program accounts for 30-40% of their advertising revenue. While Neopets.com is a highly trafficked social networking site and the revenue they earn through this program may not be typical; there are just one site, out of many that participate in this program. . It becomes hard to know if the web advertisements you see alongside your local news were placed by the newspaper or are put there according to the terms of their agreement with Google.

AdWords is a program that allows an advertiser to select key words that if entered

in a user query will display the advertiser's ad alongside any Google results page related to that user's query and on other Google pages as allowed by the user's account settings, Google's privacy filters or on the content sites participating in the AdSense program. Advertisers are also able to select target sites that they would like their ads to show on and make their ads compatible with Google's mobile phone technology. ([Google AdWords](#))

Google Print

In 2003, Google began negotiations with both academic and commercial publishers to secure the digital rights to their catalog of in-print titles. They were able to scan and display thousands of book pages, and have those pages appear in Google search results, in a preview form, in response to various user search queries. ([The Public Index](#)) Publishers realized that providing digital access to Google's users would promote their books without them having to spend money on advertising. Also with the inclusion of millions of book pages, Google was able take the concept of target advertising to the next level and by having the ability to advertise based on not just the terms one is searching for but the content of the books one is reading and the pages one visits after completing their search. Additionally, one can speculate that publishers would receive a share of any click-through advertising revenue that Google earned from ads displayed on pages dedicated to their books.

In December 2004, Google announced its plans to expand the Google Print program to include digitized versions of millions of books contained in the collections of

five major English-language library systems in its Google Library project: Harvard University, Stanford University, the University of Michigan, The Bodleian at Oxford University and the New York Public Library systems. The University of California library system signed a library-partnership agreement with Google in August 2006. Four out of the five initial library systems agreed to allow Google to scan only the titles that were in the public domain. Two library systems, the University of Michigan's main library and the University of California library system, allowed Google to scan their entire collections. The program has gone on to include university libraries across the United States, including Columbia University and Cornell. Additionally, Google has signed with at least five foreign university libraries, including the University of Madrid, the Cantonal, and Keio University in Japan. ([The Public Index](#))

These collections include millions of books that are protected under valid copyright claims. ([Vaidhyathan](#), 1215-16) Under the Google Library Project, Google planned to spend over 150 million dollars to scan and store the digital copies ([USA TODAY](#), par.1) with the goal of broadening search capabilities and access to previously unavailable print materials for users around the world. ([Milliot](#), par. 9) Santiago de la Mora, head of Google Books for Europe, claimed that "This really isn't about making money. We are doing this for the good of society. By making it possible to search millions of books that exist today, we hope to expand the frontiers of human knowledge." ([Skidelsky](#), par. 3) Google would gain access to the breadth of human knowledge and creation by the scanning and indexing of the millions of books to be found in these major library systems and sees their motivations as purely altruistic .

According to Google the goal of their Google Library Project is in line with their mission to “organise the world’s information” ([Skidelsky](#), par. 2) Google would like to see itself as working towards the greater good of accessible information. Some avid supporters touted the benefits this program would provide to scholars and librarians as a highly effective research tool that would help promote scholarship and reading. Yet, each scanned page becomes a new webpage for Google to display targeted advertising and to potentially earn millions of dollars through these ads. This makes any claim of altruistic motivations on the part of Google to ring false.

After performing a Google search, users would have full access to all books that have entered the public domain, which consist primarily of books published prior to 1923. For books published after 1923, Google users would be able to view snippets, defined as a highlighted section, usually between 3 and 4 lines of text, which contains the search term, along with the title, author name and publisher. ([Vaidhyathan](#), 1216) For books still under valid copyright, users could browse up to two pages, backward and forward, from the page containing the search term. However, users would not be able to print, cut or paste any information contained on that page. According to Susan Wojcicki, Google’s director of product management, this was done as a safeguard against illegal piracy and to protect the copyright claims of the rights-holder to any individual work. ([Milliot](#), par. 3)

Additionally, links to Amazon, Barnes and Noble and Booksense are provided to allow users to purchase the book, if they deem it appropriate for their needs. Google also allowed the publisher to add a link directly to their proprietary website and to share with

the publisher any advertising income generated by click through activity through to advertiser links. ([Milliot](#), par. 3-4) Jens Redmer, director of Google Book Search Europe, defended the program by saying “For copyrighted books we only show a snippet, except where we have a contract with the copyright owner. For those books we have digitized in some of the US libraries, that are still in copyright, we only show that there is a book out there on the market.” ([Devichand](#), par. 15-16) Google felt that by linking consumers to retail outlets for books still available in the marketplace, this project would stimulate book sales. ([USA TODAY](#), par. 2) I feel that this statement does have some validity. Exposure on the internet is critical to survival in this day and age where people are looking to the internet before turning to more traditional research tools, such as books and other print materials. By showing a small section of the work, users would be able to see that a book is available on the market and if interested must find it through their library or local book store.

Google Books Technology

When Google first started their Google Print program the technology to scan print books was extremely difficult and cumbersome to use without the destruction of the physical book. Optical Character Recognition (OCR) software only operated properly if the page being scanned was flat. With bound books, this is nearly impossible and led to some faulty scans, including many that showed the fingers or hands of the person operating the scanner for that particular edition. The other alternative involves the removal of the spine of the book and laying the pages out flat. ([Clements](#), par. 2)

Additionally, due to the way the book must be positioned to be scanned, many digital editions that are the result of this type of scanning have a detectable text shift while the user is scrolling through the pages of the scanned edition of the book.

In order to combat these issues, Google developed a proprietary infra-red projector that can detect the curve caused by the spine of the book and works with two cameras to render a high-definition image, which corrects for any distortion caused by the spine.ⁿ This high definition image can then be run through OCR software to create a high-definition image of the text without any perceivable text shift. ([Clements](#), par. 3) Google applied for and received a patent of this technology in 2009, allowing them to prohibit other parties from utilizing this technology. This poses the potential for Google to possess a monopoly in the digital library market. Any new entrant would first need to develop comparable technology to Google's patented infrared technology, before attempting to approach libraries or copyright holders for permission to use their works.

My Experience Using Google Books

Over the course of writing this paper, I have tried to utilize Google Books both through my computer's internet browser and by downloading titles onto my Sony E-Reader. Google has signed a deal with Sony to offer half a million public domain titles through the Sony e-Book store. My experiences were mixed trying to read and navigate these titles regardless of the medium. Using my browser, I searched for four titles that were first published before 1923 and therefore in the public domain but also had a current edition in print; Tess of the D'Urbervilles by Thomas Hardy, Wives and Daughters by

Elizabeth Gaskell, Moby Dick by Herman Melville and The Adventures of Tom Sawyer by Mark Twain.

While I am aware that this small sample may not statistically represent the true breadth of titles available or every users experience with Google Books, it was interesting to see where the Google Books library and partnership editions would appear in my search results. When I searched by title, I was able to find a full text Google library editions for Wives and Daughters and Tess of the D'Urbervilles in my initial Google search results. For the other two titles I was able to find more recently published versions, which were only available as a preview. However, when I went to the Google Book page, I was immediately given a full text library edition from a Google partner library's collection. I found the titles from the New York Public Library's scanned collection to be impeccable; there was no shifting of text or damage to the pages. They were more readable than scans from other libraries. In fact, the editions from the Harvard library and the University of Michigan's library, Wives and Daughters and Tess of theD'Urbervilles, both contained torn or ripped pages. Wives and Daughters was missing a large corner of a page, with a good section of text missing. That particular edition also contained the fingers of the person scanning the text.

I also downloaded titles onto my Sony e-Reader Pocket, directly from the Sony e-Book store. The titles I chose were among those that Google is offering as free downloads. While looking through the Google section of the Sony store I realized that, in addition to the half million titles available for free, they are also charging minor fees, often less than a

dollar, to download certain titles. ([Google eBooks](#)) I downloaded The Wind in the Willows by Kenneth Grahme and Celtic Fairy Tales edited by Joseph Jacobs and read through both of them with different experiences. First and foremost, I found several errors in these editions that may have occurred while the device formatted the scanned text, for example, exclamation points were replaced with the Arabic numeral one. Also, I chose to download The Wind in the Willows because it was one of my favorite childhood books and I wanted to be able to enjoy the line illustrations that are so integral to the charm of the book. I was disappointed to find that none of the illustrations were available, including the colophons at the beginning of the chapters, which detracted from the readability of this edition on my e-Reader. I also found it amusing that Google is quite serious about scanning all pages, even including all the end-pages and the covers of these editions. The Wind in the Willows had three pages of circulation records, showing years of dates that this edition was taken out of the University of Michigan's collection. I found this ironic, the illustrations were not scanned and included in the digital copy but the end-pages were. It seems that Google was more interested in scanning all the pages but had not been able to render the line drawings digitally. When I read Celtic Fairy Tales, the colophons were present and some simple line drawings, however, since I had never read this title, my experience would not have been as hampered by the lack of the illustrations. It just shows that there is little care being given to the user experience when using these digital scan editions. With print editions, there is great care and a level of quality control provided by the publisher.

For the Google editions I looked at, when you download the title onto your

computer or digital e-Reader, Google includes a notice with information about the Library project. This notice goes on to ask that you use proper citation and do not make illegal use of their editions. Despite Google's seemingly cavalier attitude towards the rights of copyright holders, they seem to understand the need and desire for proper attribution, at least when it comes to their digital editions.

Copyright Law

The purpose of copyright is to protect and promote the creator's ability to commercialize their intellectual property. The copyright owner has the sole ability to reproduce and distribute their property and any derivative works, unless they have specifically assigned those rights to another entity through a contract. As Piers Blofeld, of the Sheil Land literary agency in London, explains "The key principle of copyright law has always been that works can be copied only once authors have expressly given their permission." (Skidelsky) The United States also recognizes the copyright interests of foreign rights-holders, due to their entering into the Berne Convention in 1989. The Berne Convention sets a minimal standard of protection that all member countries must provide, which covers all works without the rights-holder needing to apply for registration with each particular country, unless being published in that country.

([Overbeck](#), 274)

Copyright has been a protected property right since the inception of the United States. It was originally created in the Copyright Act of 1790 to protect and promote the creation of intellectual property. There was a short term of copyright, originally fourteen

years, which could be extended an additional fourteen years by the owner filing for renewal. Over the years, these short periods of protection have been lengthened to the current standard of the life of the creator plus seventy years, established in 1998 with the Sonny Bono Copyright Term Extension Act. ([Overbeck](#), 235-6) This change has created a long period where the work may not be actively in print or being put to any use, but it is not considered part of the public domain. Once titles have entered the public domain, others would be able to exploit the once exclusive rights of the creator or assignee.

The rise of the Internet, its exponential growth and the large number of copyright infringements that occur on the internet led Congress to enact a pair of laws in the late 1990's that serve to define policy regarding copyrighted material on the Internet. The first, the 1996 Telecommunications Act, protects Internet Service Providers (ISPs) from liability stemming from the illegal use or posting of copyrighted material, while providing a Take Down notification system for rights-holders to inform the ISP about any infringement and to have the infringing material removed from that site. The second, the Digital Millennium Copyright Act, was passed in 1998 and broadened many of the protections for both rights-holders and ISPs. It served to bring the United States in line with the provisions of the World Intellectual Property Organization (WIPO), which was founded in 1967 by the United Nations, most importantly it serves to ban technology that would allow pirating in many forms, from being able to tape a "Pay-per-view" program using a VCR to circumventing Digital Rights Management (DRM) software and copying a digital file. ([Overbeck](#), 263-4) ([About W.I.P.O.](#), par. 2)

Authors and Publishers vs. Google

Publishers and authors viewed Google's ambitious digitization project as a severe infringement on their valid copyright claims. There is no legal precedent allowing any entity or individual to copy, display or distribute copyrighted material without the express consent of the rights-holder to that material. Copyright law clearly states that the rights-holder controls the ways their work is exploited for any broad use, either commercial or academic. ([Overbeck](#), 237) The large scope of Google's scanning program was at the crux of this argument. By controlling and indexing millions of books still covered by copyright, Google had the ability to earn millions of dollars through their advertising programs and Google has a history of targeted advertisement and earns money from those advertisers based on the number of valid clicks generated from the Google ads.

In September 2005, the Author's Guild, Inc., along with Herbert Mitgang, Betty Miles, and Daniel Hoffman, filed a class action suit against Google, [The Author's Guild, Inc., et. al v. Google, Inc.](#) They looked to represent their interests, along with those in a similar position; including other authors, their heirs, or other assignees, whose work was still protected under valid U.S. copyright. In October 2005, five major U.S publishing groups, Mc-Graw Hill, Pearson Education, Penguin Group U.S.A. Simon & Schuster and John Wiley & Sons followed with a suit against Google, [The Mc Graw-Hill Companies, Inc., et al v. Google, Inc.](#) Both suits established the major classes of authors and publishers who were being injured by the whole-sale scanning and display of copyright protected works.

They also went on to claim that since Google is a primarily commercial venture and that the addition of the scanned images of their copyright material would serve to add value to Google's enterprise at the expense of copyright holders, it is a violation of the copyright laws. Google countered that as they were only showing three or four lines of text that this use was clearly within the boundaries of "fair use", despite Google holding a copy of the entire book in their proprietary database. These two cases were officially joined as a single class action, [The Author's Guild, Inc., Association of American Publishers, Inc., et al v. Google, Inc.](#)

After the proposed settlement was submitted and given preliminary approval by the courts, Google and the plaintiffs started the notification process in January of 2009. To this end they took out ads in newspapers and magazines around the world, as noted in the proposed Google Book Settlement: Attachment K- Paid Media Schedule. This schedule details the circulation of each publication, the size of the advertisement and the number of times the ad was printed. This schedule illustrates that this truly was a world wide effort, in total almost 900 ads were run in a total of 216 countries. Additionally, a website was set up, www.googlebooksettlement.com, which was a compilation of information regarding the proposed settlement, including the ability for rights-holders to claim their books. The ads were between a full and half page in size and gave basic information about the rights-holders who will be covered by the terms of the proposed settlement and a listing of important dates, including opting out of the settlement and dates to register claims to works covered. I have included a copy of the settlement notice as it appeared on the Google Book settlement website and as it appeared in these

advertisements. ([Attachment B](#))

As originally proposed the parties agreed to have the final fairness hearing take place in May 2009. However, in response to an objection filed by the Steinbeck estate, which claimed that the complexity of the proposed settlement made it unreasonable to expect the average rights-holder to have become aware of and familiarize themselves with the intricacies of this proposed settlement, Judge Denny Chin agreed to push back the opt-out deadline, the date by which a rights-holder to decide if they wanted to participate in the proposed settlement, to 9 September 2009 and scheduled the final hearing to take place in October. ([Albanese](#) “Google Deadline“, par. 1) Prior to the scheduled hearing in October, Google and the plaintiffs agreed to revise certain segments of the proposed settlement in response to concerns over possible conflicts of interest and anti-trust concerns regarding Google’s imminent domination of the digital library market. This revised proposed settlement was submitted to the courts on 13 November 2009 and received preliminary approval from the Judge the following week. The timeline for the final approval hearing has been set for 23 February 2010 and any parties who wish to object to the revised proposed settlement must submit these objections by the end of January. The Department of Justice is now reviewing the revised proposed settlement and should have their opinion filed with the court by the middle of February. ([Supplemental Notice](#))

Fair Use

Google’s initial response to the suits filed by the Author’s Guild and the American

Association of Publishers was simply that their policy of only showing three or four lines of text, for books that were protected under copyright and in print, fell within the guidelines of fair use. Fair use was codified in the 1976 Copyright Act and a four part test to determine if the use was within the bounds. The test considers the purpose and character of the use, the percentage of the total work being utilized, the nature of the work being used and the effect the use will have on the original work, primarily if the use will impact the profitability of the original work. ([Overbeck](#), 243) According to Professor Peter Jaszi in his testimony before the Congressional Energy and Commerce committee in a hearing on “Fair Use: Its Effects on Consumers and Industry” in 2005, the courts tend to look at whether the disputed use constitute a transformative use, meaning does the disputed use have a different purpose or does it mimic the purpose of the original, along with whether the amount used is appropriate in light of the nature and length of the original. ([Jaszi](#), 5)

The Digital Millennium Copyright Act does not permit for any claim of fair use when a claim of an infringement is filed by the rights holder. The ISP is legally bound to remove the contested material. The ISP does have to notify the poster that their material has been classified as an infringement and been removed. The poster has the ability to appeal and to provide proof that the material is in the public domain or that they have obtained permission to use or own the copyright outright to the contested material. However, there is no fair use defense provided in the language of the Digital Millennium Copyright Act. ([Overbeck](#), 263)

The true test of fair use, even on the Internet, is the concept of transformative value: does the contested use created a new purpose for the work that does not conflict nor negatively impact the commercial value in the original work. The concept of a search engine, such as Google, being able to hold copies of copyrighted works in their server in order to facilitate their primary function of search was upheld with the Ninth Circuit court's ruling in *Kelly v. Arriba Soft Corp.*, where they found that "a search engine provides an entirely new use for the original work" ([Stanford University](#)) Additionally, the courts have found the caching, or catching and storing web page material, including copyrighted material, by internet search engines to be covered by the doctrine of fair use in *Field v. Google, Inc.* ([Stanford University](#)) Without the ability to save and quickly locate these cached pages, users would not be able to navigate through the internet effectively. ([Vaidhyanathan](#), 1212) The issue with the Google Library program and the use of "snippets" takes this concept of caching to another level. Google and their partner libraries are holding digital copies in their digital archives. The library copies are akin to their photocopying the material to preserve it, but with Google's displaying this information on the internet, they are acting as an aggregator of information and not truly transforming the material into a new product.

The Proposed Google Books Settlement

In October 2008, the Author's Guild, the Association of American Publishers and Google announced that they had come to an agreement which would create a variety of revenue models allowing Google to display and distribute scanned copies of copyrighted

material. For purposes of definition and limiting of scope, the proposed settlement only covers books and inserts published on or before 5 January 2009, with a valid and registered U.S. copyright. Therefore, any publisher, author, author's heir or designate who owns the copyright to a book published before this date is covered and effected by the terms of the proposed settlement.

Originally, the proposed Google Book settlement covered any books scanned from the collections of Google's partner libraries. This raised concerns over the large number of books that have never had copyright registration here in the United States and the violation of their rights under the terms of the Berne convention, which provides for copyright protection without registration with the copyright office of any member nation and does not take into account the varied copyright laws and protections that are part of the copyright schemes of other countries. In response to these concerns, the amended proposed settlement limits the scope to books that are registered with the United States Copyright Office or were published in the United Kingdom, Canada, or Australia, as referenced on the title page of the print edition.

Basic Terms

"The task before us was to take Google's audacious library digitization project and transform it into something good for readers and agreeable to the people who write and publish books, to do that we found that we had to make the project even more audacious." claimed Paul Aiken, president of the Author's Guild. (Albanese "Deal or No Deal", 23) The proposed Google settlement would create several different access models,

each designed to serve a different user. It also creates a nonprofit organization, the Book Rights Registry, which is charged with locating rights-holders, auditing and distributing payments from Google to various rights-holders, negotiating future uses with both Google and other potential digital distributors and resolving disputes between authors, publishers and Google. Additionally, the proposed settlement absolves Google from any liability for prior scanning, as long as the rights-holder has not opted out of the proposed settlement.

The proposed Google Books settlement has allowed any rights-holder that is a member of either the Author or Publisher sub-class to opt out of the proposed settlement. By opting out, that rights-holder forfeits any payment or protections offered by the proposed settlement, but they retain their ability to sue Google independently for infringing on their copyright. According to the opt-out language in the proposed settlement, Google has agreed to remove any material, that has already been scanned through a library agreement, belonging to a rights-holder that has opted out of the

proposed settlement. However, they make no assurances or promises that this material will not be scanned at a future date. As Google has claimed no wrongdoing in connection with their scanning project, they are under no obligation to prevent any material belonging to a rights-holder that has opted out to be included in a future scan program. This puts a reasonable amount of pressure on the rights-holder to monitor Google Books to ensure that their material is taken down promptly if rescanned.

In exchange for the right to scan and display the contents of books published

before 5 January 2009, Google has agreed to pay a one-time lump sum of at least 125 million dollars, which would go to compensate authors whose books were scanned prior to 5 May 2009 and to create the Book Rights Registry. Google is also allowed to continue scanning books in exchange for 63 percent of the revenue generated by the various revenue models and any advertising income generated by click-through activity coming from a page dedicated to a particular title or author, Google would retain the remaining 37 percent. ([Grimmelman](#), pg 11) Google will flow all income due to rights-holders through the Book Rights Registry, which will in turn either pay directly to the author, if the publication rights have reverted from the publisher, or to the publisher who will in turn divide that money according to the terms of the author's contract with their publisher.

The Book Rights Registry

The proposed Google Book settlement also creates an independent non-profit organization, the Book Rights Registry, that will be responsible for collection and maintaining information from rights-holders, including their contact information and their decisions regarding the different uses for their works authorized under the proposed Google Books settlement. According to Michael Healey, the designated Executive Director of the Book Rights Registry, he sees the primary functions of the Registry consisting of facilitating the education of rights-holders regarding their rights and responsibilities under the terms of the proposed settlement and to facilitate communication between all concerned parties. He recognizes that the proposed Google

Book settlement is vague and indefinite about the exact nature and functionality of the Registry and foresees the next couple of months, as the proposed settlement nears its final approval hearing in February, as the time period to firm up the organization and functionality of the Book Rights Registry. (Healy Interview)

Additionally, the Book Rights Registry is charged with collecting all revenues from Google and distributing the income to the different rights-holders. Its business model is based on structures already established with similar organizations, such as American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). The primary difference between these organizations and the Book Rights Registry, is that they are the result of compulsory licensing legislation enacted by Congress. ([Overbeck](#), 254) Compulsory licenses are granted by an act of Congress to prevent a monopoly from controlling access to copyrighted works.

Google has agreed to pay the initial cost of setting up this registry, approximately 34.5 million dollars. A portion of this amount will be used for the initial notice process and towards paying for the independent consulting firm that is handling claims administration until the Registry is fully operational. (Settlement Notice, Section 5.2) The terms of the proposed settlement merely states that if there is still a valid contract between the author, or an assignee, and the publisher, all income will be paid to the publisher and parsed out to the author according to the terms of the contract. As the proposed settlement deals with books that are no longer in print, it is reasonable to assume that some, if not many, of these contracts are silent on the digital rights now

present for the contracted title. When looking through the proposed settlement, in both versions, there is no explanation of how the income generated by the revenue models created by the proposed Google Book settlement is to be defined according to the subsidiary rights that are typically present in book publishing contracts. I asked Michael Healey if he foresaw this being problematic in the future, and possibly leading to litigation between authors and publishers and he was hopeful that it would not come to that, but acknowledged the proposed settlement's silence on this issue. Personally, I feel that this will lead to problems in the future. In the course of my job, which consists of processing royalty statements for the literary agency's clients, I have only seen two publishers, Simon & Schuster and W.W. Norton, paying out income received through their Google Partnership agreement. While these amounts are small, often less than a dollar per royalty period, I do foresee a day where the income publishers receive becomes worthy of authors demanding for a larger share. Additionally, as the proposed settlement serves to create a new market and a new product for these titles, I must disagree with Michael Healey and say that I feel that it is the duty of the framers of the proposed settlement to define the newly created revenue streams in terms that coincide with the commonly understood subsidiary rights that exist in publishing contracts. Without this clear definition, it is left to the whim and control of the individual publisher to define these rights and the authors may stand to lose the income stream that the proposed Google Book settlement appears to offer them as publisher may define these rights in such a way that any income generated will be for their benefit alone.

The Book Rights Registry administrative board will be made up of an equal

number of representatives from both the Author sub-class and Publisher sub-class.

Additionally, the amended proposed Google Book settlement includes provisions that will allow for at least two positions, one for authors and one for publishers, from the United Kingdom, Canada and Australia. This board of representatives will be able to make decisions in response to requests from Google and its library partners. (Settlement Notice, Section 6.2a). These decisions will require a majority vote, comprised of at least one director from both the Author sub-class and the Publisher sub-class. Additionally, the Registry is authorized, by the amount permissible by law, to license the Rights-holder copyrights to third parties, including new entrants into the digital library market. (Settlement Notice, Section 2.4) It is, however, unclear about how these representatives will be chosen, which should be of especial concern to that vast number of authors. If they are not able to participate in the selection of their representatives on the board of directors, how can they be assured that their best interests will be represented?

Additionally, librarians have expressed concern over their lack of a voice in the interaction between authors, publishers and Google, as they will be the primary market for many of the different access uses provided for in the terms of the proposed settlement. When I broached this topic with Michael Healey, he seems to feel that there was no place for librarians to participate on the board of directors for the Registry, He did mention that there would be several advisory boards and panels, yet to be established, which could provide librarians and other consumer groups to participate in the structuring and pricing of the different revenue models.

Revenue Models

In order to protect the interests of both the Publisher and Author and to prevent cannibalization of the print sales of their current or perennial backlist titles, the proposed settlement recognizes two different classifications of the works scanned through the Google Books Project, as “Commercially Available” and “Non-Commercially Available”. Books that are deemed as “Commercially Available” are defined as those still available for purchase new from the publisher. (Amended Settlement Agreement, Section 1.31) “Non-Commercially Available” books may be available in the used book market but the publisher is not stocking or selling new copies through a traditional book sales channel.

For books that are “Commercially Available”, as determined by Google by examining whether the book is available in traditional sales channels throughout the World, they will not be available through the revenue models as described below. Publishers will be able to include these books in their Partnership deals with Google. For books that have been deemed “Non-Commercially Available”, the rights-holders are able to select to have their book included in the revenue models below, with the caveat that to have your title available for purchase by the general public through an authorized Google Books account, the rights-holder must also make their book available to institutional and library users. In the event that the rights are jointly held by the Publisher and Author, or Author’s assignee, the proposed settlement provides for a structure that would allow the stricter limitations to be honored. For example, if an Author does not want their book to be searchable through any of the revenue models described below and would like to have

only bibliographic data shown, but the Publisher would like to allow unlimited access to the title, the terms of the proposed settlement say that the stricter requirements prescribed by the Author would be honored. Any dispute would be settlement by arbitration performed by the Book Rights Registry.

Institutional Subscriptions

The Institutional Subscription model is the largest potential income generator created by the Google Book Settlement. Google will have the ability to sell term licenses to various institutions, including colleges and universities, companies, and corporations. The fee for these subscriptions would be based on the number of potential users, but no clear definition of pricing structure is provided in the proposed settlement in its current form. This model will allow for user remote access through the current processes and procedures in place at those institutions, similar to the access provided to Lexis Nexis and other data and information aggregator programs.

The Institutional license will provide authorized users unlimited access to the entire catalog. Additionally, there is the potential for Google to create specialized subscription models, based on genre or sub-category, perhaps derived from the Dewey Decimal system or the Library of Congress organizational system. The specialized subscription model is not fully realized or clearly stated in the current proposed settlement but it is certainly a very real possibility, especially with the increased amount of meta-data, such as keywords and bibliographic information. (Rosenblatt, 10), that will become available once the database is more complete.

Users in this model would be able to print up to 20 pages at a time with a single print command. Any printed pages would be water-marked as copyrighted material and with encrypted session information, to identify the authorized user and the access point. Additionally, users would have the ability cut and paste up to four pages of text and to take and share annotations with other users in the same Institutional subscription. (Settlement Notice, Section 3.10cii5) This could be revolutionary in various fields, allowing students and professors to share their impressions and thoughts outside of the classroom.

There are some concerns that the proposed settlement does not set any limits on Google's ability to price these subscriptions. Some librarians are concerned that in 10 or 20 years when libraries may have eliminated or substantially decreased their physical collections and have become truly reliant on these subscriptions, that there will be an exorbitant fee established. When I spoke with Michael Healey about his vision for the Book Rights Registry, he assured me that he foresaw a future with librarian input regarding this project and the different subscription models. However, I wonder if this will truly come to pass if not established as part of the proposed settlement's terms and not as a goodwill gesture to a community divided over the potential for scholarship and the potential for price gouging.

Public Access

Public library systems would be granted one free authorized terminal, through the Public Access mode. (Settlement Notice, Section 4.8i) Not-for-profit colleges and

Universities would receive one terminal per four thousand full time students, if they qualify as an Associate's College according to the Carnegie Classification of Institutes of Higher Education, If they do not qualify as an Associate's College, the college or university would only receive one terminal per ten thousand full time students.

(Settlement Notice, Section 4.8 a1-2) Also, users under the Public Access model would have the ability to print materials but would be required to pay a per-page printing fee. Google will pay sixty three percent of this fee to rights-holders through the Book Rights Registry. If the library system, college or university would like to provide more than one terminal per building they would need to purchase an Institutional Subscription. The Book Rights Registry will have the ability to reevaluate and adjust the number of terminals made available to libraries, colleges and universities in the future, with the approval of the board.

Consumer Purchase

The Consumer Purchase model will allow purchases of digital editions directly from Google. Rights-holders have the ability to set their own prices for their digital versions or can elect to have Google set the price through Google's proprietary algorithm. This model would allow users to download and print copies of purchased books. Printed versions will contain watermarks, with a notice that the material is copyright and encrypted session information to identify the user and access computer, to prevent the scanning and pirating of these editions. Additionally, as with the Institutional Subscription model, users would have the ability to annotate and share these annotations

with others who have purchased the same book. (Settlement Notice, Section 3.10cii5)

Future Potential Uses

The original proposed settlement allowed for the unlimited potential for the development of future commercial uses, which include and are not limited to Print-On-Demand books, PDF downloads, and custom publication, which would be of use in higher education, especially in the creation of specialized course packets, which now are the result of endless permissions requests and compilation. The amended settlement limits this to Print on Demand capability and the potential for a Consumer Subscription model. The Consumer Subscription model would allow a consumer to have unlimited access to the entire corpus of books including in the Google Books project for a subscription fee. According to the proposed settlement notice provided by Google, all present rights-holders would have the ability to opt in or out of these potential uses .(Final Settlement Notice, pg 15) Orphan works, those works where the rights-holder is absent or unknown, would automatically be included in any future commercial endeavor.

Preview Uses and Non-Display Uses Created by Proposed Google Book Settlement

Previews and Snippets

For books that are in the public domain Google will be able to display the entire content online for browsing and for sale. Books that are still “Commercially Available”, or for sale new from the publisher, rights-holders will be able to authorize Google to offer

one of two preview options. The first is called the “Standard Preview”, which shows a maximum of twenty percent of the content for non-fiction titles, with no more than five adjacent pages shown in response to a user search. For works of fiction under this “Standard Preview”, Google will allow users to view up to five percent, totaling approximately fifteen pages, from location of the search term. Additionally, Google will block the last five percent of any work of fiction, eliminating a user’s ability to read an entire work of fiction online without purchasing the title.

Rights-holders also have the option to have their works displayed in a “Fixed Preview”, which only allows Google to display a fixed ten percent of the work regardless of whether the user’s search term is located in those pages. The prime benefit from these previews is to be found in marketing and exposure to consumers, prompting them to either purchase the title from Google or to go to a retailer or e-tailer, such as Amazon.com, and purchase a print edition. (Final Settlement Notice, 15)

Rights-holders will also have the option to just display “snippets” of their work in response to a user search. In this case, a user would be able to see about three or four lines of text that contain the search term, with a maximum of three “snippets” per title. The one drawback to this model is with works of fiction, users will not have the opportunity to really know whether the book fits their needs in the same way they will under either the “Standard” or “Fixed” preview models. However, for works of non-fiction this will drive users to their library or to purchase the title under the Consumer Purchase model, if that option has been made available by the rights-holder. (Final Settlement

Notice, 15)

Non-Display Uses

The proposed Google Book settlement also provides for two different non-display uses. One of the non-display uses is connected with the advertising revenue generated by ads displayed on pages dedicated to a particular title or author. Google has agreed to pay the same sixty three percent of revenue earned from these advertisers but reserves the right to place advertisements for other Google products and services for free on these same pages. (Final Settlement Notice, 16) Rights-holders again have the ability to opt out of this revenue model and this would prevent Google from displaying advertisements on any page dedicated to that particular work or author.

The other non-display use authorized by this proposed settlement would generate no income for either Google or the rights-holders. It is called “Non-consumptive research” ([Grimmelman](#), 11) and would allow researchers to perform computer analysis on multiple books from Google’s database of scanned books “but not research in which a researcher reads or displays substantial portions of a Book.” (Settlement Notice, Section 1.90) The proposed settlement provides for five different types of analysis under this model; image analysis, which would consist of analysis of the digitized image to improve its quality, automated translation, which would allow research on computerized translation techniques, research on indexing and the ability to effectively search text content, linguistic analysis on the evolution of language, and textual analysis, which would develop automatic techniques to extract information and understand the

interrelation of material contained in the Google Book database. (Settlement Notice, Section 1.90) These researchers would have access to algorithm listings of key terms, geographical and bibliographic listings, along with full text indexing, which would show the number of search term matches. (Settlement Notice, Section 1.91) There is no payment attached to these uses as it will not involve monetary compensation to Google. Google has also retained the ability to perform internal research and development under the definition of “Non-Display Uses”

The Benefits

Google and many others have touted the benefits of the proposed settlement to authors and readers alike. For authors, primarily those with valid copyright but whose books are no longer in print, it would generate new income streams allowing them to continue to benefit from their intellectual property, with the caveat that if the author did not want Google to be able to use their work, they could simply notify Google and deny them the use of their book.

The added exposure to be gained from the Google Books Project has been proven though an example in a recent article in The Boston Globe. A book published by Houghton Mifflin Harcourt in 1955 about the start of the Great Depression, titled THE GREAT CRASH OF 1929, by John Kenneth Galbraith, has been searched over twenty-two thousand times since the economic downturn began in September 2008. ([Denison](#), par. 15) This is a result of people looking for books about previous economic downturns and being led to Galbraith’s out of print title. David Langevin, Houghton Mifflin Harcourt’s

vice president of Digital Business Development, celebrates that “Google is giving some of our backlist books a whole new level of visibility, its keeping them in the public eye.”

([Denison](#), par. 5) There is also unrealized potential to be found in utilizing the Google Books Project to market and direct content to the appropriate users. (MacGregor, par. 6)

Professor Lateef Mtima, Director of the Institute of Intellectual Property and Social Justice at Howard University, feels that the “the obvious social justice and social utility “ found in the proposed Google Book settlement will be found in providing access to information and content to “so many segments of our society today who for decades have been left out of the communication exchange, who have been on the wrong side of the digital divide” ([Johnson](#), par. 3) As Jens Redmer states “The majority of human knowledge is still not online, its still stored in collections and libraries, at these great libraries around the world” ([Devichand](#), par. 7) This proposed settlement would allow the breadth of human thought and intellectual property created in the last ninety years to become a part of the digital age and provide access to this information to those who would not have access otherwise, due to geographic or monetary barriers. Pat Schroeder, former president and CEO of the Association of American Publishers, adds “People in very small towns will be able to research seven million books...That’s mind-boggling. Then, if they want to print out a book to have a copy of it, they can do it for so-much {money} a page.” ([Sturdivant](#), par. 11) This will be increasingly valuable as people get more and more accustomed to receiving information and content in the manner and format they choose. Frank Daniels, COO of Ingram Digital, foresees a future with an i-Tunes model available for books, where people could choose to buy the whole book or just the

chapters or sections they were interested in ([Sturdivant](#), par. 7), which the Google Book proposed settlement could provide for under a future, currently undeveloped, model.

If the Google proposed Book Settlement project gets approved by the courts, the true winners will be students and academics. In a recent Oxford University Press focus group, they found that seventy percent of Columbia University students had cited a book published in the 1900's in a recent essay in a Classics class. The reason was simple: it was available to them online in full text. They had no need to leave their dorm room to find it, because it was there and searchable on the internet. Tim Barton in his article "Saving Texts from Oblivion: Oxford U. Press on the Google Book Settlement" says "In a world in which students consult not shelves but keyboards, too many of those lively minds remain out of sight, exiled to those shelves, where every year there is a virtual conflagration not unlike the fire at the ancient library at Alexandria, as last copies of previous books crumble slowly to dust, or are damaged, stolen or lost." (par. 2)

Orphan Works

Orphan works are those that are covered by valid copyright, but the rights-holder cannot be located or are ambiguous or oblivious to their rights. Under current copyright law, these works are not eligible for any commercial use as there is no possibility of obtaining permission from the rights-holder. Under the terms of the proposed settlement, Google would gain the ability to utilize these previously unavailable works. Paul Courant, the head of the University of Michigan's library system calculates that there are currently between one and two and a half million orphaned works in their collection.

(Waters, par. 15). This creates a potentially huge portion of works being covered by the terms of the Google Book settlement and providing electronic editions of the work accessible to users without Google having obtained permission.

Google counters any concerns about the vast number of works that are potentially orphaned by saying that rights-holder will be impelled to claim their rights once they see the newly realized monetary value to be gained by stepping forward. ([Google's Fine Print](#)", par. 4) Additionally, one of the primary purposes of the Book Rights Registry is to locate rights-holders. (Settlement Notice, Section 6.1) The proposed settlement originally called for the money earned by the orphaned works to be held in trust for a period of five years, after which this money would be put towards the operating costs of the Book Rights Registry, with any remaining amounts to be allocated out to those rights-holders that have come forward and claimed their books. Many parties, including the Department of Justice, felt that this provision was a conflict of interest and had the potential for the Book Rights Registry to fall short of their duty to locate the rights-holders for these orphaned works. In response to these concerns, the revised proposed settlement now calls for all revenue earned by through the use of these orphaned works will be held in trust for ten years. (Settlement Notice, Section 6.3) A rights-holder can come forward at any point in that time and claim their rights and receive this income. After five years have passed, a portion of the amounts held in trust can be passed to the Book Rights Registry to provide additional funding to search for and locate the rights-holders. Any amounts that are left in the trust after a period of ten years would be allocated to charities dedicated to reading and literacy in the United States, the United Kingdom and Australia.

Another concern with the inclusion of orphan works in the proposed Google Book settlement, in its original version was that Google was guaranteed to receive comparable terms which are negotiated with the Registry by any third party, for any use of these orphaned works for a period of ten years (Google's Fine Print, par. 5). The rationale behind this is that Google is putting out the initial investment to establish the Book Rights Registry, which would not be required of later entrants into the digital library market. Due to anti-trust and monopoly concerns raised by the Department of Justice, this language was removed from the amended proposed settlement filed in November.

Challenges still facing the Google Book Settlement

Copyright Law and Fair Use

The settlement, as proposed, never addresses the issue of fair use. Rather it serves to create mechanisms and uses far outside the scope of the original suits and fair use standards and limitations. This may prove to be the downfall of the proposed Google Book settlement. It reaches too far outside the bounds of current recognized copyright norms, unsettling many rights-holders who worry that they are giving too much access and centralizing power in the digital market to Google. The proposed settlement serves to establish Google's presence as the only comprehensive digital library, potentially possessing the rights to millions of titles, with the high cost of equipment being just one barrier to entry for any future competitors. As Andrew Richard Albanese says in his article in Publisher' Weekly, "In other words, if this settlement is approved, any competing effort would have to go through the same, or an even more arduous process-

an insurmountable barrier to entry for would-be competitors. While the architects of this deal insist the issues are minor and should not keep the deal from approval, such criticism certainly does not bode well for a comfortable road ahead.” (“Deal or No Deal“, 25) This could be corrected with a compulsory license legislation enacted by Congress, which would force Google to turn over the digital files to either the Book Rights Registry or the Library of Congress so that any entrant into the digital book market would be able to apply for and receive access to the actual scanned pages of the texts in the Google database. This would also alleviate any anti-trust concerns, as it would lessen the barriers to entering this arena. Currently, any new entrant would first need to develop comparable scanning technology and then apply for and receive permission from the Book Rights Registry, or face similar litigation from rights-holders.

Another way to reconcile the concerns over Google’s dominance in the digital book market that the originally proposed settlement would provide would be to only allow snippet views of books published after 1923, regardless of their marketplace availability. This would serve to vindicate the need for accessibility on the internet. The snippet view is akin to the ability to use an aggregator, such as Lexis Nexis through a library subscription, where users enter a search term and are shown either bibliographic or search term relevant views. If the full text is available, it is through an agreement between the aggregator service and the rights-holder. Therefore, for the term of participation in all other revenue models, it would be the result of an “opt-in” registration by the rights-holder with the Book Rights Registry. This would allow individual rights holders the ability to control their rights, and prevent true disconnect between current

copyright and fair use norms and the terms of the proposed settlement.

However, noble the motives of Google in wanting to provide access to the vast majority of scholarship and content that is currently locked down without identifiable rights-holders, there is a concern about its impact on copyright law in general. As Christopher Buckley, author of Thank You for Smoking, says “Whenever I hear capitalism proclaiming noble motives, something makes me check my wallet.” ([Helft](#), par. 19) This proposed settlement sets a dangerous precedent of using first and asking permission later. This flies in the face of long standing and internationally ratified copyright law right, under the Berne convention. The opt-out provision impinges on the rights of any rights-holders who has made no attempt to enter the digital book market, but have had a copy of their book scanned due to its inclusion in a large university library system.

Conclusion

The proposed Google Book settlement, while far from perfect, does offer new digital opportunities for authors, publishers and readers alike. Unfortunately, the proposed settlement raises as many questions as it does opportunities. Its impact on readership and publishing will depend on the decision of the courts in February 2010 and in the future. I think there is a noble goal in providing access to millions of books to people who will never get a chance to walk the grounds of any of the universities participating in the Google Library project, let alone take a book from the shelf in one of their libraries. The Internet provides us the potential to reach out and grab information whenever its convenient. People no longer feel the need to seek out information by going

to the library, rather they turn to the Internet and a search engine. In today's electronic culture, the library and print books have become, for some, a bastion of last resort, rather than their primary source.

While I think that the proposed settlement should be approved by the courts, I do think that there either needs to be another revision to remove the monopolistic control that Google will have over the digital library market by providing open access to Google's scanned files of the books covered by the terms of the proposed settlement. Perhaps Judge Chin should grant conditional approval, with final approval to be granted only if Congress grants a compulsory license to the Book Rights Registry. In my mind, this compulsory license should cover any and all books published after 1923, so that the Registry will receive not only a digital copy of the books scanned through the Google Library project but digital copies of all the front list books when they are made available in an e-book format. The terms of this license should also include provisions that would allow new entrants into the digital library market to gain access to the same books Google has access to. This would eliminate the immediate need to develop the technology to compete with Google, which is the largest barrier to entering this market currently. I also feel that there should be a requirement that the Book Rights Registry cooperate with the United States Copyright office in their contact with rights-holders. This could be a unique opportunity for the Copyright office to update their information on rights-holders. With the changes in copyright law, which tie the date a work will enter public domain with the death of the creator, a true muddled situation has arisen, where the chain of ownership has become broken if not lost.

Congress also needs to pass legislation regarding the use of orphaned works, where the rights-holders cannot be located. If after a period of 10 years, neither the Book Rights Registry or the United States Copyright Office, can determine who owns the rights to a particular work; then the rights will become non-exclusive and the work shall enter the public domain. In this way, the proposed settlement will serve a larger purpose and will eliminate many gray areas in the current copyright scheme in the United States. This will be detrimental to those rights-holders who may be unaware of their interest in a particular work but as they are unaware of their interests and rights and are unable to exploit their interests, the losses are nebulous. Instead, these previously unavailable works will be able to contribute to the creation of future derivative works and scholarship.

There are many rights-holders who are unaware of this project and proposed settlement, and that may not become aware until they locate their copyrighted material on Google. In the event that they object to the inclusion of their work without their permission, I find it difficult to imagine that the courts would deny them their right to sue Google, despite the wording of the proposed settlement, even if the rights-holder never opted out or registered their books through the claims process and with the inclusion of the opt out procedures in place for rights-holders to make their works unavailable through the claims process. In the event that the court grants final approval over the terms of the proposed settlement in its current form, I feel that there will be years of appeals and the true value promised by this project will be missed by a whole generation of readers.

In conclusion, I have mixed feelings about the proposed Google Book settlement. I feel that the goal of universal access is lofty and highly desirable. Yet, it bothers me that this project and its future success or failure is tied to the fate of a purely commercial enterprise. While the powers that be that currently control Google laud their intent to “Do No Evil”, there is always the possibility that in the future, they will be less concerned about the public good they can provide and will solely look to their ability to use and exploit the influence they have in the world.

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