

The Google Book Search copyright settlement and the future of information—Part 2

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The following is the conclusion of a two-part article on the Google Book Search settlement. The first part was posted August 13.

Who has criticized the settlement?

During the period between Google's announced settlement and the court's final fairness hearing now scheduled for early October 2009, Judge Denny Chin has requested the submission of objections from members of the class (authors and publishers represented by the AG and AAP). Many others not included in the lawsuit have also expressed concerns about the outcome of the case.

Prominent among these are public libraries, educational and research institutions as well as those conducting their own book digitization projects. Thus far, the court has not permitted the views of these groups to alter the legal issues under review or change the court process currently underway.

On May 4, 2009, The American Library Association (ALA), the Association of College and Research Libraries (ACRL) and the Association of Research Libraries (ARL), representing over 139,000 libraries and 350,000 librarians, filed an amicus brief on behalf of the plaintiffs. The brief was signed by Jonathan Band of policybandwidth.com, an expert on Internet technology and intellectual property law. Important sections of the document deal with how the settlement will contribute to increasing inequalities among libraries and its lack of user privacy protections.

According to Band's document, the settlement does not specify how market-driven pricing will deal with the disparities in funding for higher education institutions as well as K-12 schools. With regard to user privacy the document states, "The Settlement's silence concerning user privacy stands in stark contrast to its detail with respect to the measures Google and fully participating libraries must take to protect the security of their digital copies of books."

The associations are not asking the judge to reject the settlement but instead are requesting that the court institute a vigorous oversight program that will ensure the parties' behavior does not compromise fundamental library values including equity of access to information, patron privacy and intellectual freedom.

Brewster Kahle is the founder of the Internet Archive, a non-profit competitor to Google Book Search. Kahle has pointed out that the settlement is an unprecedented outcome for a class-action lawsuit. Rather than contribute to a clarification of the legal definition of fair-use in the digital age and provide financial damages to those infringed, Kahle says the settlement places monopolistic control of online books in Google's hands.

In a *Washington Post* column on May 19, 2009 opposing the settlement entitled "A Book Grab by Google," Kahle wrote, "If

approved, the settlement would produce not one but two court-sanctioned monopolies. Google will have permission to bring under its sole control information that has been accessible through public institutions for centuries. In essence, Google will be privatizing our libraries. ...

"Google would get an explicit, perpetual license to scan and sell access to these in-copyright but out-of-print orphans, which make up an estimated 50 to 70 percent of books published after 1923. No other provider of digital books would enjoy the same legal protection. The settlement also creates a Book Rights Registry that, in conjunction with Google, would set prices for all commercial terms associated with digital books."

Kahle's solution to the problem involves an appeal to the legislative branch of government to pass laws to prevent Google's pending monopoly, "The promise of a rich and democratic digital future will be hindered by monopolies. Laws and the free market can support many innovative, open approaches to lending and selling books. We need to focus on legislation to address works that are caught in copyright limbo. And we need to stop monopolies from forming so that we can create vibrant publishing environments."

Among the more farsighted responses to the settlement has come from Robert Darnton, director of the Harvard University Library. Professor Darnton's "Google and the Future of Books" was published in the February 12, 2009 edition of the *New York Review of Books*. Recognized as a leading authority on both American cultural history and eighteenth century France, Darnton recommends a historical review of the experience of the Enlightenment in search of a solution to the problems posed by the digital conversion of mankind's collected works.

Darnton explains that the Enlightenment vision of the Republic of Letters—where readers and writers exchanged ideas freely among themselves—attempted to dissolve the inequalities of society with the power of the printed word. He shows how these ideas contributed to the creation of the first public libraries in America. "'Free to All,' it says above the main entrance to the Boston Public Library ..." He also explains that these ideas guided America's Founding Fathers in establishing laws that limited copyrights and patents while they "acknowledged authors' rights to a fair return on their intellectual labor, but they put the public welfare before private."

However, the socio-economic structure of the time "contradicted the lofty ideals of the Enlightenment. Despite its principles, the Republic of Letters, as it actually operated, was a closed world, inaccessible to the underprivileged." Darnton, and others see parallels between the stated aims of the Enlightenment and the stated aims of Google and the realities of eighteenth century society and the realities of early 21st

century life.

But, Darnton writes, “It would be naive to identify the Internet with the Enlightenment. It has the potential to diffuse knowledge beyond anything imagined by Jefferson; but while it was being constructed, link by hyperlink, commercial interests did not sit idly on the sidelines. ... Their struggle for survival is leading toward an oligopoly; and whoever may win, the victory could mean a defeat for the public good.”

Darnton is disheartened because the US Congress and the Library of Congress missed their opportunity in the early 1990s to address the digital transition in the public interest. He writes, “We could have created a National Digital Library—the twenty-first-century equivalent of the Library of Alexandria. It is too late now. Not only have we failed to realize that possibility, but, even worse, we are allowing a question of public policy—the control of access to information—to be determined by private lawsuit.”

Recently, the US Justice Department opened an antitrust inquiry into the monopolistic implications of Google’s settlement with the authors and publishers associations. The inquiry does not mean that the department will necessarily oppose the settlement, but it does suggest that Google’s critics have gotten the ear of the Obama administration.

What are the fundamental issues?

Without question the most fundamental issue in the Google Book Search program is the availability of free, universal public access to all the titles in the database. Any demands along these lines immediately challenge the business structures being set up by Google and its partners. It is precisely in the arena of access that the complexities and consequently non-inclusive elements of the settlement become clear.

According to the agreement, Google Book Search will provide free Public Access Service (PAS) to each public library and not-for-profit higher education institution that requests it. This service includes a one-user-at-a-time PAS terminal that can view the full text of all books in the library’s subscription database. A user can print a limited number of pages from the PAS terminal for a “reasonable” per-page fee set by the Book Rights Registry. The user will not be able to copy and paste text or annotate books accessed through the PAS. Although additional terminals can be made available to libraries for a fee, the details of this option are not available.

Obviously, this is not a system that is “free to all.” It exposes as false the claims made by Google’s Brin who said, “While this agreement is a real win/win for all of us, the real victors are all the readers.” Under conditions where hundreds of millions of people all over the world have Internet access, how can a single-user terminal in a local library where nothing can be copied or printed without charges represent a victory for readers? Brin should have stopped at the “win/win for all of us,” i.e., Google and its Book Search business partners.

While the final form of the copyright infringement settlement may well be adjusted to accommodate some of the concerns regarding its monopolistic tendencies, the essentially anti-democratic character of the agreement will not be fundamentally modified. This is because it is impossible to square the interests of the owners of Google and its publishing partners with the needs of the majority of society.

The economic foundations of capitalism require that the authoring, production and online consumption by the public of the new digital form of books be subordinated to the private control of large corporate ownership and the drive for profit. These facts of society are the basis of the exclusive and discriminatory nature of the Book Search project.

There is no question that the Google Book Search technology has brought society closer than ever to the democratization of human knowledge; that we can see a clear path to the conversion of all printed books into electronic form alone proves this. However, as with every scientific and technological development in twentieth and twenty-first century capitalist society, such advancements are always:

1. Encumbered with significant developmental aberration and technical limitation;
2. Stunted, deformed and never capable of fulfilling the promise of creators and inventors;
3. Converted into tools of the military-intelligence apparatus of the state;
4. Manipulated to serve generally coercive and destructive forces upon society and the people as a whole.

As Leon Trotsky explained in 1926 in a speech entitled *Radio, Science, Technique and Society*, “Technique and science have their own logic - the logic of the cognition of nature and the mastering of it in the interests of man. But technique and science develop not in a vacuum but in human society, which consists of classes. The ruling class, the possessing class, controls technique and through it controls nature. Technique in itself cannot be called either militaristic or pacifistic. In a society in which the ruling class is militaristic, technique is in the service of militarism.”

These same tendencies are embedded in the Google Book Search project and they cannot be waved away with the visionary promises of corporate CEOs or with well-intended legal arguments from the liberal and non-profit establishment. Brought to their logical conclusion under the deepening crisis of capitalist society, the barbaric social and political consequences of all the world’s information being organized for the profit interests of corporations like Google are far graver than anything even George Orwell could have imagined.

The alternative is a rational, and necessarily socialist, organization of a universal online catalog of mankind’s literature made available in unlimited form to everyone. Driven by the needs of mass society and organized as a central element of culture and education, the online book database would be funded by the government and include an appropriate compensation structure for authors, publishers and others involved in the creative and technical aspects of bringing this system to fruition.

The entire population—young and old—would be educated and trained on how to enrich themselves through this font of human accomplishment. Such measures are deeply democratic and require the conscious political activity of the working population to put them into place. Only in this way can the promise of the digital age be realized; where each individual will both benefit from and contribute to the whole of human thought.



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