

THE GOOGLE SETTLEMENT PANEL
Friday 6th November 2009 at the Charleston Conference

Library Concerns about the Settlement

I am personally very grateful for the participation in this panel of three senior representatives of the three parties to the Settlement, all of whom have been closely involved in the years of negotiation and are still engaged in the adjustments that are being made leading up to the November 9th ruling. In the light of that impending decision and knowing how busy these busy people are I am particularly grateful that they have agreed to come in spite of the changed circumstances since they agreed to our invitation.

I asked them to address particularly the concerns of the library community about the Settlement and have produced this document which I hope embodies them for their consideration when they make their presentations but this does not cut out other questions when the time comes for contributions from the floor. We have left plenty of time for interaction. The statements below are based on the brief prepared by the three main representative library associations (<http://www.arl.org/bm~doc/googlebrieffinal.pdf>) and supplemented later (<http://www.arl.org/bm~doc/library-associations-supp-filing-sept-2-09.pdf>) expanded by feedback from the organising committee of the conference and personal comments from other librarians. These are in part reactions to the STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA REGARDING PROPOSED CLASS SETTLEMENT dated 18th September 2009 (<http://thepublicindex.org/docs/letters/usa.pdf>) rather than the much longer Settlement document (http://www.googlebooksettlement.com/r/view_settlement_agreement). There is an FAQ however at <http://www.googlebooksettlement.com/help/bin/answer.py?hl=en&answer=118704>.

Here are the eight main lines of concern that I have identified.

1. The Settlement leads to concentrated control by Google over a huge library of digitized works, particularly orphan works, which has anti-trust implications as it could be seen as representing a monopoly.
2. The fact of such a concentration of power will disable competition and (thus) stifle innovation.
3. Little is known about the pricing of the Institutional Subscriptions (IS). Should there be a legal mechanism for ensuring fair pricing? Should a court be able also to examine the governance of the scheme, ensure that policies of inclusion

- and exclusion of books are transparent and make the host site open to research projects
4. There is a concern that the access being provided (through public libraries in particular) will not be sufficient for popular need. This could be expanded to cover concerns about inequality of access through libraries due to structural elements of the Settlement relating the arrangements for public access terminals and the pricing of the IS.
 5. Perhaps the key concern among the library community, who have a long tradition of defending the rights of their users, is what they regard as an inadequate assertion of the right to privacy. There is a demand for a detailed policy from Google about protection of user identity and its commercial exploitation.
 6. There is a related and more general concern about intellectual freedom. Is there any guarantee against suppression of content that does not appeal to dominant ideologies?
 7. Academic libraries include in their role a concern for the rights of academic authors, usually not members of the Authors Guild. Does the Settlement truly represent the interests of these authors?
 8. Finally there is a concern specifically raised by some academics (see the comments by Professor Darnton at <http://www.thecrimson.com/article.aspx?ref=524989>) that the actual editions will be of an inadequate quality in that they will be missing illustrations, which will reduce their utility for research and education and probably making it commercially impossible to supply a complete edition.

There is obviously a certain level of clarity about some of these concerns, which reflects the very complex nature of the Settlement document and to some extent some failure to understand some of its decisions but they are nevertheless real concerns, basic to the mission of the library community. For the purpose of this Charleston panel, I have omitted the concerns from librarians, authors and publishers located in other countries and thus not part of the Settlement but whose publications, because they are available in the USA, will be part of the Settlement.

The bottom line however has to be stressed. Most librarians welcome the Google initiative and the Settlement. They are just concerned about how it is going to work and how their interests (primarily perceived by them as those of their patrons) can be safeguarded.

Anthony Watkinson
University College London
October 2009