

August 11, 2009

The University of California libraries believe that the scholarly community stands to benefit substantially from the vast digital library that Google is building as part of its Google Book Search (GBS) initiative. For this reason, we have been proud partners with Google and have contributed more than 2 million volumes to its book scanning efforts. The partnership is governed under the terms of a cooperative agreement that was signed by UC President Robert Dynes in 2006 after discussion with the University and Senate leadership and the Board of Regents.

The UC libraries further believe that the scholarly benefits of GBS will be extended under the terms of the proposed Settlement Agreement proposed by Google, the Authors Guild, and the Association of American Publishers on behalf of authors and publishers of books in which a U.S. copyright interest exists.

Benefits of the proposed Settlement are documented extensively in the FAQ that is available from these pages. They extend to users and to authors or rights holders of the works that would appear in the GBS corpus and include:

- Widespread access to a single, vast, digital library with works drawn from across the world
- Freedom to search the entire corpus, read up to 20% of any in-copyright out-of-print work, and read or download all works that are in the public domain
- "Accommodated services" that make books in the corpus available to visually impaired users
- Free public access terminals in public library buildings (including public higher education library buildings)
- Research corpora that may be used for textual analysis, linguistic analysis, automatic translation, and other research
- Copies of Google's digital scans that are owned and managed independently by participating libraries and can be used, for example, to support library collection management and the preservation of our printed cultural heritage

The UC libraries are sufficiently comfortable with the terms of the Settlement Agreement that we are presently working with Google on a cooperative agreement that will enable our continued participation with GBS should the Settlement be approved.

Despite the recognized public benefits of Google Book Search, a number of concerns have arisen in consultation between the UC libraries and the Senate faculty pertaining primarily to the operation of Google Book Search should the Settlement be approved by the Court.

Several of these concerns we understand to be addressed by the Settlement Agreement or by the terms that are common to the cooperative agreements being signed between Google and the libraries that wish to participate as its partners should the Settlement be approved. This reflects in no small measure the close involvement of the UC libraries, along with libraries from the Universities of Michigan and Stanford, in the negotiations that resulted in these agreements.

Other concerns have to do with Google's intentions should the Settlement be approved by the Court. Here, Google has provided explanations and assurances in various public and private meetings and statements, which have led us to certain understandings regarding Google's intended conduct if the Court approves the Settlement. We nonetheless believe that a comprehensive public statement by Google would allay continuing concerns and also foster a more informed perspective on the Settlement and the future operation of Google Book Search.

Accordingly, we encourage Google to confirm and, where appropriate, elaborate upon each of the understandings that we list below in a single public statement.

With regard to the workings of a post-Settlement market place (see item 11), we merely voice our continued concerns as well as those of our faculty and look forward to continued and productive dialogs with all parties – Google, the Registry, and the library or libraries that manage the non-consumptive research corpus – to iron out the potential difficulties that are envisaged. We recognize that these matters are beyond the scope of the Settlement Agreement and may not all be addressed in the cooperative agreements between Fully Participating Libraries and Google.

1. We understand that with the exception of journals, Google intends to scan all categories of books and not exclude any categories from the corpus. Further, we understand that there is no upper limit on the number of books that Google intends to scan and make available through its Book Search initiative.
2. In the Settlement Agreement, Google has reserved the right to exclude up to 15% of books from the corpus. Notwithstanding this provision, we understand that
 - Google does not intend to exclude books of any kind from the corpus for editorial or non-editorial reasons;
 - Should Google exclude some books for editorial reasons in future, it will publicly post a list of books that are excluded;
 - The Fully Participating Libraries have the right to take the Library Digital Copy (LDC) of books that are excluded for editorial reasons and make them available through another provider under the same Settlement terms that govern Google as a provider.
3. When a rights holder asks for its book to be removed from the corpus we understand that
 - For requests received within 27 months of the Court's approval of the Settlement, Google will physically delete all copies of the scan of that work from its storage servers so that the book will not be in the corpus.
 - This requirement applies even though the term “remove” is defined in the Settlement Agreement in a manner that might allow Google to maintain a copy of such a work in a dark archive.
 - The Settlement Agreement recognizes that copies of the rights holder’s book may exist on a backup tape and in this regard acknowledges that deletion is not or may not be propagated through layers of backup tape and redundant servers.
 - For requests received after 27 months of the Court's approval of the Settlement, Google is not obligated to delete copies of the work from the corpus.
 - The above applies equally to the Fully Participating Library that has copies of the rights holder’s book in its Library Digital Copy (LDC).
4. With regard to orphan works, we understand that Google will:
 - Continue its support of orphan works legislation;
 - Actively promote and engage in information sharing that will assist scholarly and other relevant communities to identify works that have become true “orphans;” and

- Assert its right under the Settlement Agreement to insist that information on the orphan status of books in the Book Rights Registry (BRR) be made public and will include this information in its distributions of information about orphan works.

We encourage Google to participate in developing an openly available web-searchable list of orphan works that can be updated as pertinent information is gathered about specific works by libraries and other interested parties.

5. With regard to public domain works, we understand that Google will:

- Actively promote and engage in information sharing (akin to that suggested in item 4 above) so that such works can be identified and broadly known;
- Allow public domain books to be downloaded for free for the life of the GBS initiative.

In addition, as a matter of contractual obligation with the Fully Participating Libraries Google must:

- Lift any and all restrictions that apply to copies of public domain works in Library Digital Copies should it, for any extended period of time, not allow public domain books to be downloaded free;
- Allow fully participating partner libraries to share their Library Digital Copies of public domain books with other academic and research institutions as well as with public libraries.

6. We understand that Google will accommodate any rights holder, such as academic authors of out-of-print books, who wants to dedicate his/her books formally into the public domain and make these books freely accessible in GBS without charge or restriction.

In addition, we encourage Google to participate in the development of procedural guidelines that provide a clear roadmap for rights holders to follow in making their content more fully available.

7. We understand that Google commits to make the following functions available permanently and freely for all users:

- The search functionality that yields results from the corpus, and
- The preview uses for least 20% of the contents of in-copyright out-of-print books unless the rights holder has given permission for more or has decided not to make preview uses available.

8. With regard to the institutional subscription, we understand that Google will use a license that conforms to standard library licensing terms (e.g. as developed in partnership with publishers and following standards promoted by ICOLC) and that makes the typical guarantees about digital preservation, product access to walk-in users, supply of use data in standard format, and respect of privacy.

9. With regard to both the commercial and the institutional subscription versions of Google Book Search, we understand that Google is developing standards of confidentiality that will apply to collection and use of personally identifiable data on Book Search usage. We strongly urge Google to adopt strict standards. We also strongly urge the library or libraries that manage the non-consumptive research corpus to adopt the strictest possible standards of confidentiality for all uses of the research corpus and any pertinent products and services.

10. We understand that Google will publicly declare that every obligation that it has undertaken under the Settlement Agreement and under any supplementary or side agreements with libraries and others will be binding on any successor in interest that might acquire the corpus.

11. Finally, the pricing model remains a significant concern for libraries and their faculty users alike. We recognize that Google is well aware of this substantial concern and that it is premature for Google to outline its business plans in detail. To prevent any misunderstanding of our position, we reiterate our concerns:

- With regard to the institutional subscription, we acknowledge two important checks on the power that Google may exercise: the incorporation of twin objectives (provide revenue to rights holders and ensure broad public access) into the Settlement Agreement; and the arbitration process described in the terms common to the library cooperative agreements. These are unique as far we know with regard to library products and we welcome this departure.

However, we remain concerned about pricing and we suggest that among other things:

- Google and the Book Rights Registry build in additional safeguards to ensure that prices for institutional subscriptions to the Book Search corpus will be and will remain over time reasonable and affordable so that the public access goal of the proposed Settlement will be achieved; and
- The Books Rights Registry in some transparent way represent the interests of academic authors and scholarly publishers in decisions it makes about pricing and other important matters.
- With regard to the commercial product, we acknowledge Google's vision of how a competitive book search market will operate but encourage it to elaborate that vision in light of the concerns that others have expressed about its dominance in that market.

Undoubtedly there are other issues that the scholarly community will want to see addressed including:

- How the book annotation provisions in the Settlement Agreement can be implemented with the least amount of conflict with scholarly norms;
- Whether and how users who purchase access to books online through GBS will be able to share those books with other users and to continue to enjoy access to the books they purchase even if Google's business model changes;
- How the library or libraries that manage access to and use of the non-consumptive research corpus will ensure access and protect privacy.

We look forward to engaging in the scholarly community's discussion with all parties in the coming months and years.

Sources

Google's Library FAQ: <http://books.google.com/googlebooks/agreement/faq.html>

Google's Library information document:

<http://books.google.com/googlebooks/agreement/libraries.pdf>

At Panel on Google Book Settlement, Support, Criticism, Contentiousness, Norman Oder -
Library Journal, 1/29/2009: <http://www.libraryjournal.com/article/CA6633319.html>

Audio recording of remarks at the recent ARL meeting, available from: Google Book Settlement
101 [audio recording] Daniel J. Clancy, Engineering Director, Google Book Search Project
Membership Meeting Proceedings of the 154th ARL Membership Meeting, Houston, Texas, May
20–22, 2009: <http://www.arl.org/resources/pubs/mmproceedings/154mm-proceedings/topical.shtml>

A meeting with Pam Samuelson, Richard M. Sherman Distinguished Professor of Law and
founder of the Samuelson Law, Technology & Public Policy Clinic, and selected Berkeley faculty
held on June 22, 2009.