

**Google Books Settlement Hearing** – September 7, 2009, Brussels – Panel 3: The Book Rights Registry  
slides: <http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-sld-090907.pdf>  
text: <http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-res-090907.pdf>

## **Towards an International Registry**

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<http://www.datcha.net/>

Full paper (still a draft):  
Orphan Works and the Google Book Search  
Settlement – an International Perspective.  
<http://www.datcha.net/ecrits/liste/orphan-gbs.pdf>

## **Indexation and Digital Access to all books will happen**

- it makes economic sense in a digital world
- it is desired by nearly all concerned

The real **issue is modalities** : access, control, profit

The actors: authors publishers libraries **public** – bookstores ?

**Books at issue** in GBS settlement: *Non U.S. unregistered books*

Partial Solution: exceptions and limitations

- for indexation and search of all books
- for access to orphan books – only a subset of unregistered books

Diligent **search is economically untractable on a large scale**

- to identify orphan books
- to find (unregistered) rights holders

Exceptions and limitations do not apply to non-orphan ... and orphan cannot be separated

The alternative : **an up-to-date registry**

*National Registry*: incompatible with the "no formalities" requirement of Berne 5(2)

*International Registry* + standardized metadata:

- formerly impossible technically
- now possible in the digital/Internet world – i.e., the world that is raising all these issues
- compatible with the intent (not the letter) of Berne 5(2)

## **What of unregistered books**

The **three-step test** remains a **guiding principle**

- special case: *changes should be minimal* for the stated policy aim: **make books available**
- no conflict with normal exploitation of works:  
Internet has new normal mode of exploitation : *open access*  
Access control and payment enforcement are exclusive rights  
==> enforcement by others is unwarranted further infringement (*minimality principle*)  
[Copyright Collective are no longer representative unless including Creative Common, etc.]
- no unreasonable prejudice to interest of right holders: access restrictions prejudice the only remaining interest of unreachable authors: being read and known

## **Rough outline** of evolution

*International registry* + standardized metadata – with *free access* (advertising support ?)

Copyright still belongs to rights holders as now, but not enforceable unless correctly registered.

(e.g. 17 U.S.C. § 411 and § 412 )

Possible modalities to be analyzed: digital copies only – (not) for profit uses – registration delays ...

## **Conclusion**

Books will be digitized - The registry will exist

Not necessarily through this settlement agreement

With European participation and control or without it

The choice is yours : Remember ICANN and the control of Internet bodies

**The Status of Books in the GBS Settlement** regarding display uses

Display Uses of digitized works	United States work		not a United States work	<i>legal solution</i>
	unregistered with © office	registered with © office		
public domain				no problem
orphan			impractical	exception or limitation
unregistered non-orphan			no solution	<b>no</b> exception or limitation
registered				explicit agreement
<i>legal solution</i>	excluded from GBS agreement		protected against formalities by Berne art.5(2)	
	Formalities may be imposed by U.S. legal system			

First line : status with respect to legal classification

First column : status with respect to the settlement agreement

(though the agreement does not distinguish orphans)

Note that each classification has its own registry and registration procedure.