Google Books Settlement Hearing
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Panel 3: The Book Rights Registry

Towards an International Registry
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INRIA : Institut National de Recherche en Informatique et en Automatique
AFUL : Association Francophone des Utilisateurs de Logiciels Libres

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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?
### The Status of Books in the GBS Settlement

<table>
<thead>
<tr>
<th>Display Uses of digitized works</th>
<th>United States work</th>
<th>not a United States work</th>
<th>legal solution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>unregistered with © office</td>
<td>registered with © office</td>
<td></td>
</tr>
<tr>
<td>public domain</td>
<td></td>
<td></td>
<td>no problem</td>
</tr>
<tr>
<td>Orphan</td>
<td></td>
<td></td>
<td>impractical exception or limitation</td>
</tr>
<tr>
<td>Unregistered non-orphan</td>
<td></td>
<td></td>
<td>no solution no exception or limitation</td>
</tr>
<tr>
<td>Registered</td>
<td></td>
<td></td>
<td>Explicit RH agreement</td>
</tr>
<tr>
<td>legal solution</td>
<td>excluded from GBS agreement</td>
<td>protected against formalities by Berne art.5(2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Formalities may be imposed by U.S. legal system</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Initial issues in GBS Settlement

Books at issue: Unregistered non U.S. books

Partial Solution: exceptions and limitations
- for indexation and search of all books
- for access to orphan books (subset of unregistered books)

Diligent search: economically untractable on large scale
- to identify orphan books
- to find (unregistered) rights holders

==> orphan and non-orphan are in the same boat

Exceptions and limitations do not apply to non-orphan
Alternative: 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

1) special case: changes should be minimal to achieve the stated policy purpose: make books available

2) 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) without benefit to absent rights holders

[Copyright Collectives no longer representative (must include CC, ...) ]

3) no unreasonable prejudice to interest of right holders: access restrictions prejudice the only remaining interest of unreachable authors: to be read and known
Evolution: rough outline

- International registry + standardized metadata

- Copyright remains with rights holders as now, but not enforceable unless correctly registered. (e.g. 17 U.S.C. § 411 and § 412)

- Possible modalities to be analyzed:
  - Free access to registry (advertising support?)
  - digital copies only
  - (not) for profit uses
  - registration delays etc.
Conclusion

Books will be digitized - The Registry will exist

Not necessarily through this settlement agreement

with European participation and control

or

without European participation

The choice is yours

Remember ICANN and the control of Internet bodies
Thank You

This presentation is available at
http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-sld-090907.odp
or as a single page document at
http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-res-090907.odt

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http://www.datcha.net/ecrits/liste/orphan-gbs.pdf

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