



Google Books Settlement Hearing
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Panel 3: The Book Rights Registry

Towards an International Registry

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Libres*

produced with the free software 



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

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	no exception or limitation
Registered				Explicit RH 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			



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>

<http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-sld-090907.pdf>

or as a single page document at

<http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-res-090907.odt>

<http://www.datcha.net/ecrits/Exposes/gbs-hearing/gbs-res-090907.pdf>

This presentation is based on:

Orphan Works and the Google Book Search Settlement – an International Perspective.

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

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