

Googling the Archives

**ideas from the Google Books Settlement on orphan works in
the digital environment**

Sally McCausland

Senior Lawyer

SBS

This presentation represents my personal views

Focus of today

- The orphan works problem in large scale digital archive projects
- How the Google Books Settlement treats orphan works
- How could these ideas apply to a public model for all cultural archives?

Effect of orphan works on digital archive projects

- Upfront cost and risk hits the bottom line
- Lack of certainty
- No defences means risk of costly & time consuming copyright actions
- No warranties means no distribution
- Cultural archives remain locked up

Possible solutions?

- “Diligent search” schemes unsatisfactory in this context.
- Government to do “orphan works” review.
-any solution must:
 1. Create certainty for users
 2. Keep incentives for creators
 3. Reduce mass transactional costs.

About Google Book Search

- [Overview](#)
- [Blog](#)
- [General Help](#)

Partner Programme

- [For Publishers](#)
- [For Authors](#)
- [Join Now](#)
- [Quick Tour](#)
- [Success Stories](#)
- [Partner Help](#)

Library Project

- [Overview](#)
- [Library Partners](#)
- [Librarian Help](#)

Want to know more?

Read the latest [News & Views](#)

[Add Book Search to your site](#)

We're working with several major libraries to include their collections in Google Book Search and, like a card catalogue, show users information about the book, and in many cases, a few snippets – a few sentences to display the search term in context.

What does a Google Books Library Project book look like?

When you click on a search result for a book from the Library Project, you'll see basic bibliographic information about the book, and in many cases, a few snippets – a few sentences showing your search term in context. If the book is out of copyright, youâ€™ll be able to view and download the entire book. In all cases, you'll see links directing you to online bookstores where you can buy the book and libraries where you can borrow it.

Want more information?

Check out the [News & Views](#) site for a history of the project, facts and fiction, media coverage, user stories and more.

Full View



[View the entire book](#)

Snippet View



[View a few sentences surrounding the search term](#)

No Preview Available



[View basic information about the book](#)

To see close-ups of these pages and to learn more about Google Book Search features, view our [Screenshots](#).

What's the goal of this project?

The Library Project's aim is simple: make it easier for people to find relevant books – specifically, books they wouldn't find any other way such as those that are out of print – while carefully respecting authors' and publishers' copyrights. Our ultimate goal is to work with publishers and libraries to create a comprehensive, searchable, virtual card catalog of all books in all languages that helps users discover new books and publishers discover new readers.

Google Book Settlement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
The Authors Guild, Inc., et al.,

Plaintiffs,

v.

Google Inc.,

Defendant.

-----x

NO.: 05 CV 8136

AWAITING
COURT
APPROVAL

What does the settlement mean for orphan works owners?

- *“Hey, let’s just start selling all the books and if there’s money to be made, the owners will either show up to claim it, or the money will lie there for 5 years while we give everyone time to wake up and smell the coffee. At the end of 5 years, we’ll pretty much know what’s orphan and what’s not. What’s not to like?”**
- **Georgia Harper, Collectanea*

Owner v user rights

Berne System:

Default is individual discretionary licensing

- User bears onus of finding owner and obtaining permission
- Owner need not register or be findable

Google Settlement:

User uses, owner must register to be paid

- User need not find owner or obtain permission
- Opt out system

Google: “archivist” organising the world’s information...

- The settlement is supported by the plaintiffs
- Opt-out and non-exclusive
- Revenue share via micropayments
- Flexible business model
- More books will be available to the public

...or “parasite”*?

- A private scheme that only Google can use to solve the orphan works problem.
- Google can use the orphans for free without the owners' consent
- Some argue it tips the balance too far towards digital aggregators and away from content creators

**Editor, Wall Street Journal 6 April 2009*

Can the Google Books Settlement model go public?

- Statutory licensing already provides a similar model of “use, register, pay”:
- Advantages:
 - Risk free to users
 - Minimal transaction costs
 - Collecting society builds register and researches owners
 - Micro-payments on a large scale
 - Public regulation and independent oversight

- A new experimental model merging the Google Settlement with new forms of statutory licensing could inspire schemes for mass digital access to other cultural archival material
- A regulatory framework for registering schemes would need to sit within international treaty obligations and satisfy a public interest test.

In conclusion...

Any solution must be...

- Easy to use and adaptable
- Low transactional costs
- Fair to rightsholders
- In the public interest

...the fairness hearings for the Google Books Settlement should be watched with interest