

Google Book Search settlement

In mid-December, ALA and ACRL along with the Association of Research Libraries (ARL) continued the library associations' ongoing efforts to inform the proposed Google Book Search settlement.

On December 15, the library associations sent a letter to the U.S. Department of Justice (DOJ) asking for ongoing judicial oversight of the Google Book Search settlement, if approved by the court.

The library associations urged DOJ to request the court to review the pricing of the institutional subscriptions to ensure that the economic objectives set forth in the settlement agreement are met. Libraries, as the potential primary customers of institutional subscriptions, are concerned that the absence of competition could result in profit-maximizing pricing.

"In brief, we believe that active supervision of the settlement by the court and the United States will protect the public interest far more than any additional restructuring of the settlement," the letter states.

In the letter, the library associations point out that the United States, in its September 18, 2009, Statement of Interest to the court, agreed that Google would have exclusive control over the database, noting that under the settlement there was "a dangerous probability that only Google would have the ability to market to libraries and other institutions a comprehensive digital book subscription."

In addition, the United States urged the parties to amend the settlement "to provide some mechanism by which Google's competitors could gain comparable access to orphan works." However, the Amended


Settlement Agreement does not provide such a mechanism.

Google has a five-year lead-time advantage over potential competitors, during which it has refined the scanning process and scanned as many as 12 million books into its search database. Considering this significant head start, it is unlikely that any commercial competitor will enter into this unproven market in the foreseeable future. And there is no indication that the federal government or private foundations would fund the creation of a comprehensive database of books to compete with Google's.

The associations also expressed disappointment with DOJ's failure to urge the parties to the settlement, which include Google, the Authors Guild, and the Association of American Publishers, to require representation of academic authors on the Book Rights Registry board.

As the groups explained in their filings with the court and in their meeting with DOJ, academic authors wrote the vast majority of the books Google will include in its database. Without representation of academic authors, the Books Rights Registry may establish a pricing model that maximizes profit rather than public access to academic works.

The court has set a January 28, 2010, as the deadline for class members of the private settlement agreement to opt out of the Amended Settlement Agreement or to file objections, and February 4, 2010, as the deadline for DOJ to file its comments. The court will hold the fairness hearing February 18, 2010.

The full-text of the library associations' December 15, 2009, letter to DOJ and "A Guide to the Perplexed Part III: Amended Settlement Agreement," are available at wo.ala.org/gbs/. 

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