



**EBLIDA verbal intervention for the European Commission's
Google Book US Settlement Agreement information hearing,
Brussels, 7th September 2009**

Dear Mr Lüder, dear colleagues,

Thank you for inviting EBLIDA to this hearing – we welcome the opportunity to comment on the Google Settlement.

EBLIDA is the European Bureau of Library, Information and Documentation Associations. We are an independent umbrella organisation of national library associations in Europe, indirectly covering over 70,000 individual libraries throughout the EU. We promote unhindered access to information in the digital age and the role of archives and libraries in achieving this goal.

The Google Book Search programme has the potential to provide public access to a digital library of millions of books. It will, fully developed, be an unprecedented source for the advancement of learning and human development. Google and representatives of rights owners and publishers have come to an agreement on how to settle the copyright and other legal issues in relation to the Book Search Project and EBLIDA hopes that this will be the beginning of a fruitful cooperation between them.

EBLIDA wants to draw attention to conditions that are of concern to European libraries if this settlement is agreed in its current form. As my colleagues from IFLA and LIBER have already talked about most of the concerns we share, I will focus on a single point: the territorial limits of the settlement and implications for Europe.

Our initial concern for European libraries is the great inequality that will arise should the settlement be agreed only in the USA as there is no way to widen its scope to include users located outside the USA.

The settlement would allow Google to offer in the US, four primary services that would benefit consumers there and put European consumers at a great disadvantage:

- US users will get previews of up to 20% of out-of-print books – European users get only snippets.
- US consumers will be able to purchase digital full texts which are not available to European consumers.
- Institutions will be able to buy subscriptions for access to digital full-texts of in-copyright but out-of-print books which will particularly benefit universities and library users.
- For those libraries that choose not to purchase or cannot afford the institutional subscription, a free Public Access Service is offered, giving all libraries a terminal where full texts can be accessed for free.

European users will only have access to the current, more limited Book Search service and people in the USA will have better access to European books than people in the continent where they were published.

What can we do? As stated by Commissioner Viviane Reding , in her Lisbon speech, 9 July this year:

“If we do not reform our European copyright rules on orphan works and libraries swiftly, digitisation and attractive content offers will not take place in Europe, but on the other side of the Atlantic.”¹

The territorial limitations of the Google settlement highlight the truth of this statement.

As detailed in our response to the Green Paper on Copyright in the Knowledge Economy in 2008, we would like the European Commission to introduce a new copyright exception to allow anyone to digitize works that they have reason to believe are orphan works without risk of prosecution but with adequate provisions made for providing recompense when a rights holder appears at a later date.

We also believe that technical protection measures should not be allowed to prevent the use allowed by exceptions – the limited, specialised uses permitted by law.

As also stated in our response to the Green Paper, we believe that the scanning of works for the purpose simply of making their content searchable does not harm the rights holders – on the contrary it is free advertising and increases the usefulness of the books.

The four primary services for in-copyright books permitted under the settlement will be available to users located in countries in Europe only if Google, or other competitors, reach settlements with rights owners on a country-by-country basis. Whether this is possible will not only depend on the good will of the parties involved, but also on the copyright legislation of the countries, for example whether they allow for class actions or extended collective licensing. To the extent that it is not possible to reach agreements, the consequence will be a substantial inequality in access to books in digital format.

It is therefore of the utmost importance that the legal obstacles to settlements in Europe are overcome. No effort should be avoided to establish the necessary legal framework and encourage settlements in all countries in order to ensure that this unprecedented source of information can be made available all over Europe on an equitable basis for the advancement of learning and human development.

Hoping that it will be possible to establish European settlements, EBLIDA assumes that the U.S settlement will function as a model for subsequent ones. Without competitors, Google in effect becomes a monopoly supplier of out-of-print and in-copyright books. EBLIDA therefore asks the European Commission to help guard against the issues of concern already raised by IFLA and LIBER:

- The lack of guarantees for long-term preservation of the digitized material
- Potential censorship issues
- Patron privacy
- Pricing policy
- Control of access to the digital database for research purposes
- And that contracts should not be able to negate any exceptions provided in statute law.

EBLIDA’s more detailed views on these issues have been forwarded in our written statement and are consistent with IFLA, and LIBER.

Thank you for this opportunity to speak Mr. Chairman

¹ “Digital Europe – Europe’s fast track to Economic Recovery”, / Viviane Reading, EU commissioner for Telecoms and Media, The Ludwig Erhard Lecture 2009, Lisbon Council, Brussels, 9 July 2009.