

**FEDERATION OF EUROPEAN PUBLISHERS STATEMENT ON THE AAP-AG- GOOGLE
SETTLEMENT
Brussels 4th November 2008**

FEP is reviewing the Association of American Publishers-Authors' Guild-Google settlement agreement in the Google litigation. FEP sees some benefits in the agreement while having the following concerns:

On the one side, FEP and its member associations appreciate that through this settlement Google has recognised the importance of intellectual property rights for authors and their publishers, and therefore that scanning and displaying books contained in the collections of US libraries are not covered by fair use.

On the other side, FEP and its member associations consider that *'freedom of publication in our society is in fact limited if books are not made available to the largest possible public through the widest possible means of distribution'* (1). In coherence with this principle, in analysing the impact of the agreement, European publishers will consider the risk of a de facto monopoly for distribution of books that is contrary to the interest of society at large and is endangering European book industry and cultural diversity.

Publishers and other stakeholders in Europe have invested important resources in digitising and making available books both previously out of print and in print through initiatives either collective such as Libreka in Germany, Gallica2 in France, eBog in Denmark to name just a few or individual enterprise such as Macmillan Publishing Service in the UK for example.

FEP has been always supportive of the European Digital Library (EDL) initiative which underlines that *since intellectual property rights are a key tool to stimulate creativity, Europe's cultural material should be digitised, made available and preserved in full respect of copyright and related rights.*(2) The EDL recognises that in order to provide access to works it is necessary to previously obtain the consent of rights holders.

FEP has been closely associated with the work of the High Level Group of Experts(3) and has substantially contributed to the elaboration of the memorandum of understanding signed by all major stakeholders including European libraries, as well as in the model contracts for digitisation and access to out of print works based on the opt-in principle. All these agreements were reached far before the agreement now announced in the US.

FEP together with other rights holders and major European libraries is working on the ARROW project whose output is an efficient and voluntary rights' clearance mechanism of orphan and out of print works in Europe.

The ARROW solutions are based on open standards, and are thus neutral from the business point of view and foster fair competition within the whole book value chain.

Furthermore and this is crucial for EU publishers, the EDL is built on a multilingual and culturally diversified model.

The legal and economic implications of the settlement agreement requires further examination in order to take into account the various legal systems and market dynamics in the EU.

FEP will continue to review the settlement agreement in view of its next General Assembly on 13-14 November 2008, on the basis of some key principles, which have been shared with European libraries and other stakeholders: previous consent of rightholders is always necessary (opt-in vs opt-out), works do not need to be registered to be protected, all solutions are to be based on open standards and must be market neutral so to avoid the creation of de-facto monopolies.

(1) FEP policy statement adopted in October 2002

(2) Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation

(3) Representatives from organisations that have a main interest in the debate on the digitisation and online accessibility of cultural material: cultural institutions, publishers, technology firms, and academics.
http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/index_en.htm

(PREVIOUS)

**STATEMENT FROM THE FEDERATION OF EUROPEAN PUBLISHERS ON
GOOGLE BOOK SEARCH LIBRARY PROJECT**

Brussels, 17 March 2006

The Federation of European publishers (FEP) is very concerned about what may be a serious violation of EU copyright by Google's Book Search Project concerning entire library collections. European publishers do not accept that European works, protected by copyright in the EU, are being digitised and made available without the consent of the right holders by Google and participating libraries.

The justification used by Google for its scanning of in-copyright material from libraries in the US, "fair use", does not apply in Europe. Within the EU, copyright exceptions are clearly limited by the 2001 Copyright Directive to non-commercial uses which do not conflict with normal exploitation of the works concerned. A commercial company like Google can not therefore make use of EU copyright works for its own commercial purposes within the EU without obtaining the consent of the right holders first. It is unacceptable that Google merely offers Europe's authors and publishers the retrospective option to "opt out" of the programme when they have never accepted to participate. Instead, authors and publishers should be free to "opt in" if, and only if, they wish to. By reversing the normal requirements of copyright in its own interests, Google proves that it is no respecter of European Copyright.

Furthermore, we would like to point out that if European digitised works under copyright were to be made available in Europe without the consent of the authors and publishers, it would infringe European national copyright laws. For example in Germany, it would infringe Paragraph 19a of the German Copyright Law which establishes that it is up to the author to decide if and how his or her works should be made available (e.g. in the internet)

FEP strongly supports the lawsuits against Google's actions initiated by *The Authors Guild* and the *Association of American Publishers* in the US. FEP member associations are currently considering taking legal actions against Google before their national courts. Furthermore, projects like "Volltextsuche online" in Germany, and Bookstore in the UK, show that there is no need to "expropriate" authors' and publishers' works in order to provide access to digital content. Publishers are already actively making their own works available online in Europe.

FEP

The Federation of European Publishers is the association representing national book and learned journal publishers' associations from 26 European Union and European Economic Area Member States. Thus FEP is the voice of the great majority of publishers in Europe. Founded in 1967, FEP deals with European legislation and advises publishers' associations on copyright and other legislative issues