

FEP Resolution on the AAP – AG – Google Settlement

FEP and its member associations, meeting for their General Assembly in Brussels on 14th November, have agreed to the following resolution concerning the Association of American Publishers, Authors' Guild and Google settlement announced on the 28th October and which is about to be notified to all rights holders involved in the agreement:

The settlement to this long-running litigation is a significant step. In particular, we understand that in signing this settlement, Google de facto recognises that digitisation and making available are not covered by fair use. However, it must be acknowledged that the introduction of the opt-out principle in the agreement significantly weakens existing copyright regimes and stands in sharp contrast to European solutions, in particular to the Europeana project.

We look forward to the official launch of Europeana next week in the presence of the Culture Ministers of all EU Member States, which builds on the work of European publishers to digitise and make content available online and on the dialogue that we have had within the High Level Experts Group on digital libraries under the auspices of Commissioner Viviane Reding.

FEP has been always supportive of the Europeana 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.*(1) European copyright laws have allowed the development of a highly successful publishing industry, consisting of many SMEs, worth more than 22 billion euros and publishing 600.000 new books on a yearly basis, thus contributing to European cultural diversity.

Europeana recognises that in order to digitise and to provide access to copyright works, even to "snippets", it is necessary to previously obtain the consent of rights holders. European publishers note that the US settlement provides for a different opt-out solution which may be appropriate for the US but which effectively runs counter to the essential principle of prior consent which forms the basis of the European copyright legislation and of the Europeana project. It also de facto runs counter to the essential condition of the Berne Convention that registration should not be a prerequisite of copyright protection.

European publishers firmly support the essential principle of Europeana that all solutions should be based on open standards and must be market neutral so as to avoid the creation of de-facto monopolies. 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 consumers and society at large and which could endanger the European book industry and cultural diversity.

Europeana, by working in partnership and constant dialogue with all stakeholders, secures the integrity of works and high quality of authenticated digitisation. This way, European consumers can choose freely from the full, diverse range of works digitised with full respect for authors' moral rights.

FEP looks forward continuing working with the European Commission and the other European institutions to build together a truly multilingual and diversified European digital library, reflecting our common cultural heritage and values.

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