



**COUNCIL OF
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INFORMATION NOTE

from : General Secretariat of the Council
to : Council
Subject : Google Books
- *Information from the German delegation*

Delegations will find attached an information note from the German delegation on the above subject which has been included on the provisional agenda, under "*other business*", for the forthcoming Education, Youth and Culture Council meeting on 11 and 12 May 2009.

EDUCATION, YOUTH and CULTURE COUNCIL

11 - 12 May 2009

Since 2004 the internet search engine operator Google has been digitalizing books held in US libraries, naturally including numerous works by European authors, as part of its Library Project. Enormous databases are thus being created without the prior involvement of the authors, creating a *fait accompli*. The German delegation would like to raise awareness among the Member States of the risks associated with this activity, as well as the opportunities, and to initiate an in-depth debate at European level. If need be, the debate should be continued in one of the next Council meetings.

As regards the digitalization, Google is referring to a limit in US copyright law known as the fair use doctrine. The doctrine states that certain not explicitly authorised types of use of works under copyright are permitted if they serve educational purposes. In 2005 the US Authors Guild brought a class action against Google. Google reached a settlement and now offers to pay copyright owners 60 US dollars for works that have already been digitalized, and a 63 per cent share of proceeds in the case of future uses. The settlement provides authors and publishing companies with various options: They can opt out of the settlement or raise objections by September 2009; up until 2011 they can also have books removed from the digitalization programme. It is not least performing rights societies that are an important player when it comes to effectively representing the interests of the authors in these proceedings.

Further, within the framework of its Partner Program Google has concluded licensing agreements with publishing companies in Europe so as to be able to provide access to longer extracts online. When it comes to the digitalization of works held in European libraries, it appears that Google is only making use of works that are no longer covered by copyright. Works in the public domain are available in full on the internet.

Despite the specific legal issues this action raises, we would like to propose holding a differentiated debate at political level that should deal with the following aspects:

- The speed with which Google has already digitalized some seven million books and thus created a *fait accompli* is essentially due to the fact that, by making reference to the fair use doctrine, the rights were not first obtained from the rights holders. European rights holders are thus also affected. This approach enables Google to gain an advantage over other digitalization projects that are applying the opposite approach, that is first awaiting the author's consent. From a European perspective the situation in respect of the European digital library is of interest.
- The remuneration paid to the copyright owners is the subject-matter of a settlement offer made after the effect as part of a class action pending in the United States. However, on account of the as yet uncertain outcome of individual actions and Google's negotiating power, the rights holders' scope for decision-making is considerably limited. It would be important here to pool interests within the context of performing rights societies.

Google's Library Project provides better access to existing works and thus to education, knowledge and creativity. Nevertheless, it must be ensured that the rights of the authors and publishers are observed, and that sufficient account is taken of the interests of libraries and users. Market power can not be allowed to create irreversible *faits accomplis* making it impossible to follow-up and hold fair negotiations between the parties concerned.
