
In September 2009, Serge Eyrolles, president of the French publishing association Syndicat national de l’édition (SNE) described Google Books in the following manner: “It is an infernal machine, it never stops. …It is a disgrace. It is cultural rape.” Although Mr. Eyrolles’ terms are harsher than those used by most observers of the Google Books case and the two settlement proposals it has produced, he is not alone in his general sentiment. Recent months have seen heated debate in the popular press and academic forums concerning the Google Book Search Settlement, both in its original and in its revised form. Objections have come from virtually all sides—from possible competitors of Google, authors’ and publishers’ groups, human rights, privacy and general public interest organizations, Attorneys Generals of various states and even the U.S. Department of Justice. Opposition has been no less intense, or vocal, in other countries such as France and Germany, both of which have submitted amicus briefs opposing the first settlement proposal.

At present, it is impossible to know what the terms of the final settlement will be. But whatever they prove to be, it is clear that one of the settlement’s most important consequences will be how it changes the orphan works debate—not only in the United States but also elsewhere in the world. This international resonance is most revealingly on display in Europe, the United States’ closest ally regarding international copyright law and policy—and it is on the European Union that the article will focus on.

It is clear that international harmonization should play a fundamental role in whatever new orphan works legislation is enacted, just as it is clear that the Google Books Settlement offers an unprecedented occasion to address this matter—a sort of silver lining to the international cloud formed by the settlement. It has highlighted the need both for the United States and for the member states of the European Union to take greater action to resolve the orphan works problem. Moreover, resolution of the orphan works problem is essential to any and all mass-digitization efforts. As recent developments in Europe have shown, however, such efforts are simply not feasible on public funds alone and will require partnerships between public and private institutions.

This article will trace the impact which the proposed settlements have had in the European Union on attempts to mass-scale digitize books and other works, as well as on the debate surrounding orphan works legislation. I will both explain the terms of the debate at the time that the first settlement proposal was submitted to the court and new developments directly or indirectly caused by the Google Books settlements with a view toward developing legislative solutions for the future.