The Long and Winding Road to the Google Book Settlement
The Copyright Obstacle to the Mass Digitization of Books

- The composition of a U.S. research library
- Clearance costs

20% Public Domain

70% In Copyright, Out of Print

10% In Copyright, In Print
The Original Library Project

• Scan and snippet display
The Original Library Project

- The library copies

Google starts library project: Dec. 2004
AG and AAP file suit: Oct. 2005
Settlement announced: Oct. 2008
Dept. of Justice objects: Sept. 2009
Modified Settlement: Nov. 2009

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The Original Library Project

- Fair use
- Opt out

Google starts library project
AG and AAP file suit
Settlement announced
Dept. of Justice objects
Modified Settlement

Dec. 2004
Oct. 2005
Oct. 2008
Sept. 2009
Nov. 2009
The Litigation

- Two infringement suits filed in SDNY in October 2005
The Settlement

- October 2008
The Settlement

• The class action mechanism
The Settlement

• Court needs to certify the class
• Find the settlement fair, reasonable, and adequate
The Settlement

- The books included – U.S. and foreign books published before January 5, 2009
The Settlement

• The Book Rights Registry
The Settlement

- The display services
- In-print/out-of-print defaults

20% Public Domain

70% In Copyright, Out of Print

10% In Copyright, In Print

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Display Services

• The (20%) preview
Display Services

- Consumer purchase

20% Public Domain

70% In Copyright, Out of Print

10% In Copyright, In Print

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- The institutional subscription
Display Services

• Free public access
Display Services

• The research corpus

20% Public Domain 70% In Copyright, Out of Print 10% In Copyright, In Print
The Settlement

• Rightsholder options

- 20% Public Domain
- 70% In Copyright, Out of Print
- 10% In Copyright, In Print
The Settlement

• Revenue sharing

• The “orphans” controversy
Benefits

• Unprecedented access, particularly to visually disabled

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70% In Copyright, Out of Print

10% In Copyright, In Print

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Objections

- Usurpation of legislative function
- Privatization of knowledge

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Objections

• Rule 23 concerns – breadth of settlement, diversity of class members (orphans, foreigners, academics)
Objections

• Competition

• Price of institutional subscription

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Objections

• Privacy
• Censorship
• Public access
Objections

- Justice Department brief on September 18, 2009
Modified Settlement

• Justice Department proposals – competitive snippet display
Modified Settlement

• Eliminates foreign books
• Independent fiduciary for unclaimed books
• Eliminates MFN clause