

Scrap Google book settlement and start fresh

September 4 2009, By Chris O'Brien



At first blush, Google's plan to digitize millions of books seemed like a grand idea, opening up the world's libraries to readers everywhere.

Unfortunately, Google's effort has been clumsy from the start. The Mountain View, Calif., company bulldozed into the effort in 2005 without building consensus around its plans, and then acted surprised when its motives were questioned.

The result was years of litigation and a proposed settlement that has only antagonized critics.

By Friday, authors need to decide whether they want to accept that settlement or opt out and reserve their right to sue Google.

But before then, I think Google should scrap the whole thing and go back to square one.

The proposed settlement has the potential for creating the framework for

how books are digitized for the next century. The stakes for readers, authors and libraries are high.

Unfortunately, many on the outside of this process looking in feel like Google's been throwing its weight around on this issue. Google didn't exactly help matters in this regard when a spokesman was quoted on a Wall Street Journal blog calling one opposition group the "Sour Grapes Alliance." Gee, I wonder why some folks think Google can be arrogant?

It's a shame that it's come to this, because of the amazing potential behind this idea.

Google hoped that by scanning books and storing them on its servers, the contents could be more easily searched. Readers could browse virtual shelves, reacquaint themselves with the classics or rediscover an obscure or out-of-print gem.

Authors and publishers howled in protest, saying they had not granted Google permission. The Authors Guild and the Association of American Publishers sued. Last year, the parties unveiled a complex settlement that granted Google the right to continue scanning works while creating a Book Registry that would collect royalties from Google and funnel them to authors. Again, it seemed like a win-win.

But under further scrutiny, the settlement has stirred up widespread opposition.

There was the announcement of the Open Book Alliance, a coalition of Google adversaries such as Amazon, Yahoo and the Internet Archive who retained noted antitrust lawyer Gary Reback. There's the U.S. Department of Justice probe into the settlement terms. And then there's a wide array of groups, from small presses to the German government, that have expressed outright opposition.

The criticisms fall broadly into three categories.

Perhaps the most fundamental is whether the three main parties to the settlement truly are representative of the people who might be affected. As big as it is, a group like the Authors Guild still represents only a small percentage of the people who write books. And Google is just one of many companies with an interest in the digital book business.

The second issue is whether a class-action lawsuit is the right forum for hammering out an agreement that has such widespread implications. If someone is going to set the ground rules for digitizing our libraries, it would seem an elected body, such as Congress, is the better venue for such a discussion.

And finally, the terms of the deal itself have been raising eyebrows. [Google](#) would get permission to scan the [books](#), but there's no mechanism for granting such a license to anyone else. In theory, it appears someone would have to just start scanning, wait to be sued, and then negotiate a similar deal. That's hardly practical, or a recipe for fostering competition.

These are not issues that can be tweaked. Which is why a fresh start is the best option.

Constructing a truly open and equitable system won't be easy. Just figuring out which parties should be at the table to lend credibility to the process could be a mammoth undertaking. That's why turning to an elected body is probably a better course for ensuring the process is inclusive.

No doubt the idea of starting again will elicit groans from the Googleplex. Four years of litigation probably feels like an eternity for a 10-year-old company that's used to moving at Internet speed.

But it's the kind of goodwill gesture that would go a long way toward diffusing the mounting frustration among critics and begin laying the groundwork toward an equitable solution. If Google's motives are true, and I believe they are, then patience is the best course.

It's far more important to get it right than to get it done.

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