



Høgskolen i Telemark

The Google Book Settlement

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Nolug 15. okt 2009



Ikke riktig å si ekspert

Men har hatt mulighet for å følge dette feltet:

som bibliotekpolitiker i Norge

som leder av NBFs opphavsrettsutvalg

som medlem av EBLIDAs copyrightgruppe EGIL

som medlem av IFLAs copyrightgruppe CLM

Har fulgt med og bygger også til en viss grad på

materiale fra Jonathan Band, jurist og rådgiver for ALA

<http://www.policybandwidth.com/index.html>



HISTORIKK 1

- 1996: Google starter som et prosjekt etablert av to studenter ved Stanford university: Page og Brin
- 1998 : Google Inc. stiftes fra en garasje i Menlo Park i Silicon valley
- 2006: Google verdsatt til ca 1000 milliarder kr
- 2009: Google verdens mest besøkte nettsted (Alexa)



HISTORIKK 2

- 2004 : Google kunngjør at en ønsker å inkludere i basen ”the full text of books from the world’s leading research libraries” : avtaler Stanford og Michigan
- 2005: To søksmål reises mot Google:
Forfatterorganisasjonen The Authors Guild
Fem forlag: McGraw-Hill, Pearson, Penguin, Simon & Schuster, and John Wiley & Sons
Begge aktører med begrunnelsen: Brudd på copyrightlovgivningen
Googles svar: Dette er ”fair use”



HISTORIKK 3

- Omfattende offentlig debatt i USA og Europa
- Tre år med rettstvist
- Domstolen: U.S. District Court for the Southern District of New York
- Oktober 2008: Før domstolen rakk å ta stilling i saken kom Google og de saksøkende parter fram til et forlik som nå drøftes worldwide
- Forliket forutsetter en domstolsgodkjenning
- Forliket er meget omfattende og er på over 200 sider



HISTORIKK 4

- Opprinnelig frist for å melde som rettighetshaver at en ikke ville være del av forliket: 5. mai 2009
- Våren 2009: Flere innsigelser mot forliket
- Domstolen i New York utsatte fristen for ”opting out” til 4. sept 2009
- Domstolen planla en “Fairness hearing” 7. oktober 2009



HISTORIKK 5

- “Fairness hearing” 7. oktober 2009 er utsatt
- 18. sept: USAs justisdepartement ber domstolen avvise hele forliket
- Partene er nå igang med å drøfte en justert versjon av forliket



GOOGLE 1

- Googles mål er å organisere informasjonen i verden og gjøre den tilgjengelig og nyttig for alle.



GOOGLE 2

Som et første trinn for å oppfylle dette målet utviklet Googles grunnleggere Larry Page og Sergey Brin en ny tilnærming til søking på Internett. Det hele startet på et studentrom ved Stanford University og spredde seg raskt til informasjonssøkere over hele verden. Google er nå anerkjent som verdens største søkemotor – en gratis tjeneste som er lett å bruke og som normalt gir relevante resultater i løpet av brøkdelen av et sekund.



EN INTERESSANT RØST: DARNTON 1

- ROBERT DARNTON: LIBRARY DIRECTOR
HARVARD
- JUNI 2008 I NEW YORK REVIEW OF BOOKS:
”Now, I speak as a Google enthusiast. I believe Google Book Search really will make book learning accessible on a new, worldwide scale, despite the great digital divide that separates the poor from the computerized.”



EN INTERESSANT RØST: DARNTON 2

FEBRUAR 2009 I NEW YORK REVIEW OF BOOKS:

”Libraries exist to promote a public good: "the encouragement of learning," learning "Free To All." Businesses exist in order to make money for their shareholders—and a good thing, too, for the public good depends on a profitable economy. Yet if we permit the commercialization of the content of our libraries, there is no getting around a fundamental contradiction.”



EN INTERESSANT RØST: DARNTON 3

”What provoked these jeremianic- utopian reflections? Google. Four years ago, Google began digitizing books from research libraries, providing full-text searching and making books in the public domain available on the Internet at no cost to the viewer.”



EN INTERESSANT RØST: DARNTON 4

”As an unintended consequence, Google will enjoy what can only be called a monopoly—a monopoly of a new kind, not of railroads or steel but of access to information. Google has no serious competitors.”



EN INTERESSANT RØST: DARNTON 5

” This outcome was not anticipated at the outset. Looking back over the course of digitization from the 1990s, we now can see that we missed a great opportunity. Action by Congress and the Library of Congress or a grand alliance of research libraries supported by a coalition of foundations could have done the job at a feasible cost and designed it in a manner that would have put the public interest first.”



EN INTERESSANT RØST: DARNTON 6

”It is too late now. Not only have we failed to realize that

possibility, but, even worse, we are allowing a question of public policy—the control of access to information—to be determined by private lawsuit.”



AKTØRENE

- NYE INTERNETTSELSKAPER
- TRADISJONELLE FORLAG
- NETTBOKHANDLERE
- DATABRANSJE
- BIBLIOTEK
- FORLEGGERBRANSJE
- FORFATTERFORENINGER



AKTØRENE

- COLLECTIVE LICENSING AGENCIES (KOPINOR-LIKNENDE AKTØRER)
- REGJERINGER (TYSKLAND MV)
- BORGERNE, FORBRUKERNE
- FORSKNINGSINSTITUSJONER
- USAs DEPARTMENT OF JUSTICE



HVA GÅR FORLIKET UT PÅ? 1

- Forliket er meget komplisert
- Etablerer en mekanisme slik at Google kan fortsette å inkludere digitaliserte bøker i basen i bytte for at rettighetshavere får betalt
- Dreier seg bare om bøker utgitt før 5. januar 2009 – ikke tidsskrifter
- Berører aktører fra USA og utenfor USA som har rettigheter I USA
- Det skapes et nytt “Book Rights Registry” (BRR) som skal forvalte rettighetene til de aktuelle bøkene
- Forliket åpner for mange ulike muligheter vedrørende Googles bruk av bøkene
- Domstolen må godkjenne forliket



HVA GÅR FORLIKET UT PÅ? 2

- Forliket skaper fire typer tjenester for brukere i USA:

Snippets – mindre utsnitt av bøker – tilgjengelig for alle

Åpner for kjøp/salg i markedet av produkter

Institusjonsabonnement

Offentlig tilgang



BIBLIOTEKENE 1

- Fully participating library will provide Google with in-copyright books to scan into its database, and will receive a digital copy of each book it provides. The set of books the library receives is the library digital copy (LDC).
- FPL must sign agreement with BRR. Agreement releases FPL from liability for infringement, and highly constrains what FPL can do with LDC while book is in copyright.
- FPL may use LDC to print replacement book; to provide access to people with print disabilities; to develop finding tools that display snippets; read or download five pages of book if not commercially available.



BIBLIOTEKENE 2

- FPL must comply with extensive security, record-keeping obligations.
- Michigan, Wisconsin, Texas, UC, Stanford are FPLs.
- LDC books will emerge from restrictions on rolling basis as copyright expires.
- Cooperating libraries will provide in-copyright books, enter into agreement with BRR, receive release, but will not receive LDC



VIDERE

- Google må betale minst \$60 til rettighetshavere for hver bok skannet før 5. mai 2009.
- Av inntektene som framkommer av annonser på Google, institusjonsabonnement og salg i markedet av produkter går 37 % til Google og 63 % til rettighetshaverne
- Så snart BRR har skaffet en tilfredsstillende inntektsbase, vil \$200 bli utbetalt til hver registrert rettighetshaver
- I tillegg vil BRR betale til rettighetshavere basert på brukertilgang for hver bok (“usage fees based on how many users access a particular book”)



IFLA 1

IFLA, the International Federation of Library Associations and Institutions, is deeply worried about the territorial limits of the settlement.

The copyright laws of a country apply only within that country. Therefore, the settlement, which is based on US litigation, would apply only in the United States of America.



IFLA 2

Google has not disclosed the size of the project, but independent experts estimate that it may amount to digitising 30 million books at a cost of c. \$750 million.

og

In view of the potential monopolistic nature of the project, IFLA urges the court to exercise its authority to ensure the realization of the broadest possible public benefit from the services enabled by the settlement.



IFLA 3

In view of the potential monopolistic nature of the project, and the collaborative manner in which it must be implemented, IFLA asserts that libraries must have an integral (not merely advisory) role both in the establishment of pricing for the ISD and the manner in which revenue from it is allocated to the parties, including libraries. It must therefore be possible for any library or institutional subscriber to request the court to review the pricing of services provided.



IFLA 4

Censorship

According to the proposed settlement, Google may exclude from the database 15 % of scanned books that are under copyright, but out-of-print. This could lead to the exclusion of one million books.



IFLA 5

Privacy

IFLA urges the court to require Google to cooperate with library associations and other representatives of users' interests to ensure that adequate measures are taken to protect personally identifiable information.



Høring i kongressen 10. sept 2009 1

- United States House of Representatives 111th Congress 1st Session September 10, 2009
“Hearing on Competition and Commerce in Digital Books: The Proposed Google Book Settlement”

Marybeth Peters

The Register of Copyrights



Høring i kongressen 10. sept 2009 2

”The Copyright Office has been following the Google Library Project since 2003 with great interest. We first learned about it when Google approached the Library of Congress, seeking to scan all of the Library’s books. At that time, we advised the Library on the copyright issues relevant to mass scanning, and the Library offered Google the more limited ability to scan books that are in the public domain. An agreement did not come to fruition because Google could not accept the terms.”



Høring i kongressen 10. sept 2009 3

When the parties announced last fall that they had reached a settlement in what was becoming a long and protracted litigation, our initial reaction was that this was a positive development. But as we met with the parties, conversed with lawyers, scholars and other experts, and began to absorb the many terms and conditions of the settlement, a process that took several months due to the length and complexity of the documents—we grew increasingly concerned.



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We realized that the settlement was not really a settlement at all, in as much as settlements resolve acts that have happened in the past and were at issue in the underlying infringement suits. Instead, the so-called settlement would create mechanisms by which Google could continue to scan with impunity, well into the future, and to our great surprise, create yet additional commercial products without the prior consent of rights holders.



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For example, the settlement allows Google to reproduce, display and distribute the books of copyright owners without prior consent, provided Google and the plaintiffs deem the works to be “out-of-print” through a definition negotiated by them for purposes of the settlement documents.



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Although Google is a commercial entity, acting for a primary purpose of commercial gain, the settlement absolves Google of the need to search for the rights holders or obtain their prior consent and provides a complete release from liability. In contrast to the scanning and snippets originally at issue, none of these new acts could be reasonably alleged to be fair use.



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In the testimony below, we will address three specific points. First, we will explain why allowing Google to continue to scan millions of books into the future, on a rolling schedule with no deadline, is tantamount to creating a private compulsory license



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Second, we will explain why certain provisions of the proposed settlement dramatically compromise the legal rights of authors, publishers and other persons who own out-of-print books. Under copyright law, out-of-print works enjoy the same legal protection as in-print works.



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Finally, we will explain that foreign rights holders and foreign governments have raised concerns about the potential impact of the proposed settlement on their exclusive rights and national, digitization projects. The settlement, in its present form, presents a possibility that the United States will be subjected to diplomatic stress.



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To summarize, it is our view that the proposed settlement inappropriately creates something similar to a compulsory license for works, unfairly alters the property interests of millions of rights holders of out-of-print works without any Congressional oversight, and has the capacity to create diplomatic stress for the United States.



US Department of Justice 18. sept 2009

CONCLUSION

This Court should reject the Proposed Settlement in its current form and encourage the parties to continue negotiations to modify it so as to comply with Rule 23 and the copyright and antitrust laws



Hva skjer videre 1

Mange muligheter:

En ytterlighet:

Partene blir enige: Moderate endringer av forliket, domstolen godtar dette og Google kan fortsette i store trekk uendret



Hva skjer videre 2

En annen ytterlighet:

Det hele faller sammen med basis i at partene ikke blir enige om de moderate endringene eller de blir enige men domstolen kan ikke godta dette



Hva skjer videre 3

Også mellomvarianter kan tenkes



Hva skjer videre 4

Så kan saken ankes inn:

Hvis domstolen godtar moderate endringer i forliket, kan berørte parter i saken anke saken videre i rettssystemet

Hvis domstolen nekter å godta moderate endringer i forliket, kan også dette ankes videre i rettssystemet