



IP in the digital age

By James Harris on September 22 2009

Google's attempt to create a vast electronic library has raised some interesting questions over intellectual property rights. James Harris finds out why

Internet giant Google is no stranger to controversy, and its ambitious new undertaking proves the company is not afraid to ruffle some feathers. 'Google intends to digitise all books that have ever been published, including those that are out of print,' explains Clive Halperin, partner of GSC Solicitors. The litigation that the project has spawned could have far-reaching consequences.

It wasn't long before Google came across its first hurdle. A collective body of publishers and authors in the US contested the project in a class action, on the grounds that it would infringe their intellectual property rights. Although the case was settled as each party reached an agreement, it still needs to be sanctioned and approved by the US courts, the result of which will be announced in a hearing next month.

The case could determine how digital media rights are determined in other jurisdictions, which is why GSC Solicitors' media practice has taken such an interest. The City law firm has seven partners, two of which are in the media practice, which advises on all aspects of media and entertainment businesses including contractual matters and intellectual property litigation.

The European Commission is certainly paying close attention to the case. 'The Commission does not want to fall behind in the digitisation race, and it is exploring the possibility of putting European texts online.' As Halperin points out, with only one per cent of European texts currently digitised, a fragmented copyright system and language barriers to overcome, this may be a tall order.

Google-bashing

Halperin explains that as part of the settlement, Google would take 37 per cent of the revenue, and give the rest to a books right registry, which would pay copyright holders.

Says Halperin: 'There is an altruistic reason for the service, researchers and academics would be able to access books anywhere in the world.' There are other benefits – authors and publishers would be compensated for long-neglected works, and books with murky ownership or long copyright periods would be rescued from obscurity.

For all the benefits that would ensue, Google has attracted some pointed criticisms, not least for the reach of the service: 'One of the concerns that Google runs into now and then is privacy. The service gives Google the power to monitor who's accessing what and there are people who are seriously concerned about online privacy.'

Some detractors are also worried about the effects on copyright law. Under the new system, Google would digitise the books and make them available 'for display use'. If the book is in print, Google will be able to make the text available only if the rightsholder opts in. In the case of books that are not commercially available, either because they are out of print or because they have unknown copyright holders (orphan books), the company can make display use of the books unless the copyright holder opts out. 'Controversially, Google decides whether a book is commercially available or not,' says Halperin.

The new system would therefore require authors to take a more active role in protecting their copyright. Says Halperin: 'If you want to use a book, [to adapt it into a movie for instance], it is your responsibility to find out who wrote it, who holds the copyright and then ask for permission. Google is trying to turn that on its head.'

Google has also attracted some international criticism. The French and German governments were quick to criticise the lack of international representation: 'There is a concern the books registry is dominated by US representatives. The service may also cut international treaties that decide who benefits from copyrights.'

Whatever the outcome of the case, it is unlikely to be the end of the story: 'Other companies will try to protect their copyright interests, so there'll be further litigation and almost certainly an antitrust investigation.'