

**The proposed Google Book Settlement**

**Views from The Booksellers Association  
of the United Kingdom & Ireland Limited**

**[party to the Settlement]**



**To**

**European Commission**

**Google Book Settlement Information Hearing**

**Albert Borschette Centre**

**36 rue Froissart, 1049 Brussels**

**7<sup>th</sup> September 2009**

**From**

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*on behalf of The Booksellers Association of the United Kingdom & Ireland*



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views from The Booksellers Association  
of the United Kingdom & Ireland Limited

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*Executive Summary*

- The BA is a party to the Settlement and has already agreed to ‘opt in’ [2.1]
- There are three main parts to the proposed Settlement – Google will search, discover and store



# 1 THE BOOKSELLERS ASSOCIATION OF THE UK & IRELAND

1.1 The Booksellers Association of the United Kingdom & Ireland Limited is a trade association situated in London, United Kingdom. It was first formed 114 years ago and its aims are to help its members (booksellers) in the UK and Republic of Ireland to:

- Increase sales
- Reduce costs
- Improve competitiveness, efficiency and productivity
- Network
- Represent their views.

1.2 We very much welcome, therefore, the opportunity to give our thoughts and comments on the proposed Google Settlement to the European Commission at the special Information Hearing in Brussels on 7<sup>th</sup> September.

## **Membership**

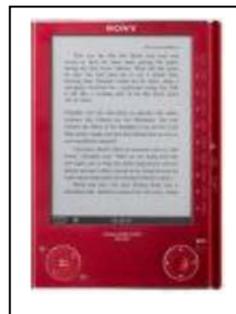
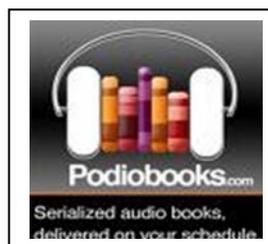
1.3 The Booksellers Association [“the BA”] has a diverse membership, covering many different types of businesses, large chains and small independents, general and specialist, traditional and non-traditional, terrestrial and online, retailer and wholesaler, located both on – and off – high streets.

1.4 3,901 bookselling outlets are currently in membership of the BA, of which 3,685 are situated in the UK and 226 in the Republic of Ireland.

1.5 It is very easy to set up a bookshop in the UK (although less easy to make a success of the business). There are no barriers to entry.

1.6 Similarly, joining the BA is easy. The only main requirements are that retail businesses have to have in stock at least €5,800 worth of books (at publishers’ recommended retail prices), be open to the public and pay business rates.

1.7 Members sell printed books, audio books, electronic books (e-books), and e-readers. One bookseller in London has now installed a ‘print-on-demand’ [“POD”] Espresso machine, which produces a bound paperback from a remote digital file in around four minutes.



(Left to right) Printed, audio, e-books and print-on-demand - all formats currently sold by BA members

1.8 84 of our companies/businesses are currently selling e-books. Google, as a bookseller, would be welcome to join the BA in the future.

## ***Period of change***

1.9 UK and Irish booksellers operate in a very competitive marketplace, competing particularly on:

- Price
- Service
- Location
- Stock range.

1.10 Our book market is one of the most competitive in the world, and since 1995, when the UK's Restrictive Practices Court ended our Net Book Agreement ["NBA"] (which allowed publishers the opportunity to impose minimum prices in the market place), UK and Irish bookselling has gone through a period of great change. There is now widespread price competition without any protection such as the Robinson Patman Act in the US. According to the independent marketing research agency, Book Marketing Limited, over 50% of all books in the UK's consumer book market are now bought below the recommended cover price.

1.11 In a UK market without any price controls, supermarkets began to sell books in large numbers. We then saw the arrival of internet bookselling.

1.12 Supermarkets and the internet booksellers have put pressure on the traditional high street booksellers. In 1995 we had 1,894 independent booksellers in BA membership; in 2009 (June) we now have 1,289.

1.13 The arrival of the e-book in the consumer book market is yet another challenge to booksellers who have faced increased competition and costs since 1995.

1.14 So when a significant development comes along like the Google Settlement, our aim is to do everything we can to ensure that we end up with a strong and vibrant bookselling sector, able to give first class service to the consumer in a retail environment in which competition is fair [see *Appendix A* for the Statement issued by the BA in November 2008].

1.15 We want our members to be part of the digital revolution, to be able to have easy access to digital material and to be able to sell that material to the consumer, if the latter elects to buy it through a bookseller.

## **2 PARTY TO THE SETTLEMENT**

2.1 The BA is a party to the Settlement and has already agreed to 'opt in', as titles owned by us have been scanned by Google [see attached spreadsheet *Appendix B*].

2.2 We wish to make clear that we are very impressed by much of what Google has done generally. Most of us use Google on a daily basis. We believe we have a good rapport with their senior executives - whom we like and respect - in their Library and Book Programmes.

2.3 Nevertheless, we do have some public interest concerns about the Settlement itself and we have recently submitted to the New York District Court some recommendations for consideration [see *Appendix C*].

## **3 PROPOSED SETTLEMENT**

3.1 This case is reported as being a \$125,000,000 class action settlement, applying to hardcopy books published anywhere before 5<sup>th</sup> January 2009. This is huge in our terms, and therefore has the potential to have a very considerable influence on how digital bookselling in the UK, Ireland and the rest of Europe will unfold.

3.2 It seems to us that there are three main parts to the proposed Settlement. Google to:

- Search, discover and store copyrighted material
- Pay rightsholders a sum for the books that have already been scanned
- Co-ordinate payments to authors and publishers via an independent Book Rights Registry on digital sales in the future [63% of the revenue being paid to rightsholders; 37% to Google].

3.3 The Settlement, if approved, will make Google:

- The world's biggest holder of digital content
- Potentially, the world's biggest digital bookseller.

3.4 The Settlement would give:

- Consumers in the US access to Google's expanded electronic content
- Consumers free access in nearly 20,000 US public libraries to the entire on-line repository of content (only charging fees to print)
- Other institutions and businesses the ability to take out subscriptions to Google and then allow their users access.

3.5 Note that Google have stated that they would like to see a similar arrangement in Europe.

## 4 COMMERCIAL AVAILABILITY & ORPHAN WORKS

4.1 Google will have the right to make non-display and display uses of any work published in hard copy before 5th January 2009 which is found at any time to be "*commercially unavailable*", as well as non-display uses of commercially available works.

4.2 Once the rightsholder has claimed a work, he or she can request at any time that display uses are turned off or challenge the Book rights Registry's determination of that work's status; for non-display uses to be turned off, the rightsholder will have to request that the book is removed altogether (an irreversible decision).

4.3 The commercial availability status of works will be assessed on a rolling basis. It is likely that when the commercial availability status of a work is changed, the Registry will notify the rightsholder who will then have thirty days to turn off display uses before they are activated by default.

4.4 But there seems to be some confusion as to what is meant by '*commercially available*'. Does this mean books available in the US through customary channels of trade (e.g. seen on a bookseller's website, or in a bookshop)?

4.5 And what happens outside the US? Would a title available for sale on a European website which US consumers could access be regarded as commercially available? Would the availability of, say, an on-demand title or, indeed, any other electronic book mean that the work was '*commercially available*'?

4.6 The position of Orphan Works is a particular worry to the BA.

4.7 Orphan Works are titles with no identifiable rightsholder. Some experts believe that since 1923, Orphan Works account for between 50% and 70% of all titles published. And there is no representative on the Board of the Book Rights Registry who has the responsibility to look after the interests of these Orphan Works. The latter have not been represented in the class action.

4.8 The UK Government has recently carefully considered options for Orphan Works in Chapter 4 of the *Digital Britain* report (June 2009), titled *Creative Industries in the Digital World* and came to the following conclusions:

*Mass digitisation projects are thwarted because of the orphan works problem. In order to pave the way for a more effective framework to deal with orphan works, the Government proposes to introduce legislation to enable commercial schemes for dealing with orphan works to be set up on a regulated basis.*

*As such a scheme would enable the operators of orphan works schemes to grant rights without the consent of the rights holder, appropriate safeguards will need to be put in place. The form of new legislative provisions will be outlined fully as work progresses on how such schemes might be administered.*

*However, the expectation is that anybody wishing to use orphan works will be expected to secure appropriate permission from the Government first, and permission will only be granted where the proposed operator can satisfy the Government that the business methods and procedures involved satisfy key minimum requirements, including making appropriate searches for the true owners and making provision for the reimbursement of rights holders who are subsequently found and claim the use of their work.*

*This work will also explore the extent to which powers to grant rights over certain works could be exercised by collecting societies or equivalent bodies through an extended licensing arrangement as operates in the Nordic countries. This would permit collecting societies or equivalent bodies, subject to appropriate safeguards, to assume a mandate to collect fees on behalf of rights holders who have not specifically signed up to that society.*

*These provisions, which have operated in Nordic countries for many years, would help streamline the problem of rights clearance. If a rights holder wishes to opt out of an extended licensing system, then they will have that option – thus maintaining control over the exclusive right. It will extend the ability of consumers to enjoy cultural works and it will collect royalties for the benefit of creators. That is good for creators and simpler for consumers and businesses.*

4.9 Since Google is the only party under threat of being sued, it seems that it will be the only company that will obtain the right to sell Orphan Works. The Settlement seems to give Google an explicit, perpetual licence to digitise, sell and post advertisements against these Orphan Works.

4.10 No one else has this privileged position. It appears that Google would have a de facto monopoly over these Orphan Works.

## 5 THE BOOK RIGHTS REGISTRY & FOREIGN TITLES

5.1 One of the main jobs of the Registry is to locate the rightsholders.

5.2 The creation of the Registry records all the rightsholders that agree to join in the Settlement in a single database.

5.3 This again is another sort of monopoly.

5.4 From a competition point of view, we found it interesting to note that although the Registry is prevented from offering a better deal to any of Google's competitors during the first ten years of its operation. This seemed to us surprising if the Registry is meant to be independent.

5.5 Furthermore, it is proposed that the Registry will be predominantly controlled by US publishers and authors. But much of the material held electronically comes from authors and publishers outside the US.

5.6 As noted in our submission to the US Court (see *Appendix C*), if the Settlement is approved by the Court, we believe that the Book Rights Registry should have European representatives.

5.7 Moreover, many have the perception that the Google database only concerns books in the English language. We understand, for instance, that around 10% of books already scanned are in Spanish.

5.8 It is estimated that that Google have scanned over 10 million books. One million are in full preview mode and another million are fully viewable and downloadable public domain works. About five million are currently out of print.

5.9 There is no way of knowing how many of the titles scanned in US libraries come from European sources.

5.10 Analysys Mason was commissioned by the UK Government to assess the drivers of and barriers to creative ambition in digital media in the UK. The research highlighted the difficulties in trialling new business models involving the use of IP: *“Rights holders find it hard to understand what business models will enable them to protect and monetise their rights online, and they are concerned that making rights available for use in unproven models may lead to piracy and generally a loss in the value of their rights.”*

5.11 As Mary Minow explained in [Google Book Settlement, orphan works, and foreign works](#) (LibraryLaw Blog, April 21, 2009): *“The largest group of non-active rights holders are likely to be foreign authors. In spite of Google’s efforts to publicize the settlement abroad, I suspect that most foreign rights owners of out-of-print books will fail to register with the Registry. There are a couple of reasons for this. For one, they may not know that their book is still protected by copyright in the US. In addition, they may assume that international network of reproduction rights organizations would manage their royalties, and not understand the need to register separately.”*

## 6 IMPORTANCE OF THE BOOK & COPYRIGHT

6.1 Books, we believe, are central to the acquisition of literacy, education and knowledge of all kinds: specialist and general, informal and formal, whether for adults or children, providing the basis of reading skills, inquiry, comprehension and individual enterprise.

6.2 Books build and transmit the culture, science and history of a society. The identity of a culture lives through the written word.

6.3 In our view, a book is ‘a book’, whether it is a hardback, paperback, audiobook or e-book, and the ‘*Bookseller of the Future*’ will supply a title to consumers in a multitude of different formats.

6.4 The UK book trade’s bibliographic database, Nielsen BookData, currently holds over 8 million title records. Over 120,000 new books are published each year in the UK, on every subject under the sun. There is great choice and diversity.

6.5 Underpinning this creativity is copyright. Creativity without the protection of copyright would be stifled. Authors and publishers would not spend time and effort in creating original works if not rewarded.

6.6 In the UK, books are protected by copyright until 70 years have elapsed since the author's death. Copying copyrighted material under UK law requires the prior permission of a rightsholder (unless a licence of dispensation has been previously obtained).

6.7 Scanning a copyrighted title without seeking first the permission of the rightsholder would be a breach of copyright in the UK and, we believe, throughout the European Union as a whole.

6.8 In the *Digital Britain* report the UK Government came to the following conclusion:

*The Government has considered whether there should be a modernisation of 'fair use' rights for consumers to reflect the realities of the digital age. The Government has concluded that the scope for such modernisation is heavily constrained within the EU copyright framework.*

6.9 The UK Government also published a report, *What role for a Digital Rights Agency?* in March 2009, followed by a Summary of Responses in June 2009, and the aspect of voluntary registration of rights was not widely supported (except possibly for orphan works). There were a lot of fears around voluntary rights registration contravening the Berne Convention if it became de facto compulsory. Meaning that rights holders would be severely disadvantaged if they were not to register their rights.

6.10 When Microsoft were conducting their own scanning programme, it took all reasonable steps to contact the copyright owners to seek permission before scanning.

6.11 If Google similarly had first sought the permission of the copyright owners before scanning books from library collections into their database and then offering browsers 'snippets', this US Class Action would not have been necessary.

## 7 IMPORTANCE OF THE BOOKSELLER

7.1 Specialist booksellers don't just put books on shelves. They provide a plethora of services, including:

- Advice and information on books as gifts, or for educational purposes
- Ability to obtain books not in stock
- Running of author events
- Organisation of book groups
- Promotion of books and reading, especially to schools.

7.2 Many bookshops are central to their local communities.

7.3 And in the future will, as we have explained, provide consumers with e-books in a range of different formats.

7.4 So in view of this, we very much welcome the recent comments made by Dan Clancy, Google's Director of Engineering, about the importance of the bookshop in society:



"Right now the physical bookstores are a critical part of our book ecosystem. A huge amount of books are bought because people go into a physical bookstore and say, hey I want this, I want that. It's a mistake if we think of our future digital world as digital means online and physical means offline. Because if that happens and 10 percent of the world goes digital, that's going to be really hard for all the bookstores to sustain their business model."

## 8 IMPORTANCE OF THE PUBLIC LIBRARY

8.1 Similarly, the public library plays a very important role in the UK & Ireland, allowing consumers free access to publications. This is of particular benefit to the less wealthy members of society.

8.2 We can put it no better than in the words of the European writer Carl Sagan in *Cosmos*:



Carl Sagan – author

“The library connects us with the insight and knowledge, painfully extracted from Nature, of the greatest minds that ever were, with the best teachers, drawn from the entire planet and from all our history, to instruct us without tiring, and to inspire us to make our own contribution to the collective knowledge of the human species. I think the health of our civilization, the depth of our awareness about the underpinnings of our culture and our concern for the future can all be

## 9 ASPIRATIONS OF GOOGLE

9.1 Google's aim is to expand quickly the number of titles scanned to 30 million titles.

9.2 But, in fact, their ambition is greater than this. In a presentation to the European Booksellers Federation (of which our Association is a member) on 4<sup>th</sup> July 2005, Jens Redmer, from Google, stressed it was Google's mission to organise all the world's information, and to make it universally accessible and useful. [Jens also stressed at the time it was never Google's intention to move into bookselling or publishing]

9.3 Already many of the titles that have been scanned in are published by publishing houses outside the United States.

9.4 UK, Irish and other European booksellers are affected because they sell very many of the titles that have been scanned in to the Google database.

9.5 UK and European consumers are able to purchase directly from US retailers already. Moreover, in a digital world, this is even easier and less costly, in view of no freight charges and (presumably) no custom checks.

9.6 Earlier this year, Hachette reportedly pulled its e-book titles from US retailers of digital books after growing concerned about the lack of territorial controls over where those titles are sold. This action happened because US distributors have not yet implemented systems to limit sales to assigned territories in a manner with which Hachette Livre (the French parent company of Hachette US) was comfortable. This would in all likelihood

create contract issues with European resellers and authors. (The Bookseller, 15<sup>th</sup> January 2009 - *Hachette pulls US e-books*)

9.7 And yet, because this is a US Class Action, those outside the United States can only be involved in the sub-class as a rightsholding author or publisher. UK, Irish and other European publishers and booksellers have had no involvement in negotiating the Agreement.

9.8 Furthermore, it seems that non-US publishers are put at a competitive disadvantage, as all out-of-print ["O/P"] titles are automatically included in Google's digital library unless the copyright holders have elected to opt out.

9.9 Moreover, the Settlement, if approved, would seem to remove the rights of foreign authors and publishers enshrined in the Berne convention, of which most countries are signatories.

## 10 MONOPOLISTIC IMPLICATIONS

10.1 Google already have a dominant position in the marketplace. According to the independent research organisation, Hitwise, 90% of search-engine enquiries from UK consumers come first to Google (76% google.co.uk in UK, 14% google.com in US).

10.2 It is difficult not to take the view that the Settlement would give Google such a powerful position - verging on a possible monopoly. Google seem to be given exclusive rights to commercialise millions of out-of-print books without having to negotiate for them individually.

10.3 No one else would find it easy to do what Google have done to date by scanning in 10 million books. No company in the book trade, we believe, has the resource. No one wants to start scanning titles and run the risk of being sued for breach of copyright.

10.4 And in the future, Google have said they want to look at consumer subscriptions, print-on-demand, custom publishing, PDF downloads, and the production of summaries, abstracts and compilations – all areas of key interest to existing booksellers.

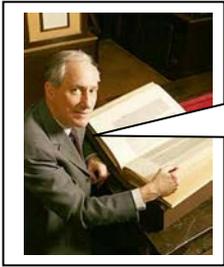
10.5 The Registry, it is proposed, would set prices for all commercial terms for unclaimed works. Google executives have suggested that:

- Over 50% of titles will be priced at \$5.99 or less;
- 80% of titles will be priced at \$14.99 or less.

10.6 We have two specific concerns:

- That after initially contacting the Google site, consumers are unlikely to move to other sites
- And having such a control over price, Google could initially lower prices to wipe out the competition and then move prices up.

10.7 In the New York Review of Books, the highly respected historian, Robert Darnton, said:



*Robert Darnton*  
*Historian*

“Google could become the world’s largest book business ..... an electronic supply service that could out-Amazon Amazon. It will enjoy what can only be called a monopoly – a monopoly of a new kind, not of railroads or steel but access to information”

## 11 EFFECT ON CONSUMERS

11.1 Superficially, all this looks rather good news for consumers:

- Expanded access to books and knowledge
- Titles that are out of copyright becoming freely available
- Up to (usually) 20% of the content of a book in copyright being accessed via a consumer’s PC

11.2 Ultimately, this should lead to more people reading globally, whether by means of ink on paper, or words on a screen.

11.3 However, if the Settlement is approved as is, we believe there will also be drawbacks. And that these drawbacks will not just be confined to the US market, but also to the UK and other book markets.

## 12 FEWER BOOKSHOPS

12.1 We have seen in the UK’s music industry the effect that iTunes has had on the retail infrastructure. Most of the specialist independent and chain record shops have been wiped out. We are fearful of something similar happening in the European book industry, or of our members being locked out from these developments.

12.2 Fewer bookshops in towns and villages will lead to:

- Less promotion of the book locally in shop windows
- Less opportunity to browse diverse titles
- Reduced activity in the community promoting books and reading
- Detrimental impact on culture and society generally

12.3 In view of this, we very much welcome the preliminary discussions we have had with Google to see how the bricks and mortar bookshops might become their digital partners by selling Google editions.

## 13 FEWER LIBRARIES

13.1 Most of the books scanned by Google to date have come from the collections of the one UK and four US libraries who initially agreed to participate (we understand at least another 25 libraries have also signed agreements).

13.2 These libraries have been very much in favour of the agreement. But if consumers can come along to a PC in a library and have access, potentially, to the inside of Book X through the Google Book Registry, then what's the point of having Book X in physical form twenty feet away on a shelf? There will be little need of libraries in the future.

13.3 Furthermore, all the information that in the past was under the control of public libraries will, in future, be in the hands of one private company, Google.

13.4 Is this in the public interest?

## 14 CONCLUSION

14.1 We believe that the present Settlement does have some drawbacks for consumers and society and places booksellers in a position of some disadvantage. But we do also believe that there are practical ways in which Google can allay our fears and we hope that the US Court will reject the Settlement as it stands and act on our Recommendations (see *Appendix C*) before the Settlement is re-presented.

14.2 Finally, we would like to admit that we found the Settlement horrendously complex. We have not been directly involved, we are not lawyers, and we apologise unreservedly in advance to all parties for any misunderstandings or errors.

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## Appendices

## **A: Statement from the BA (November 2008)**

In response to the announcement in the US by The Authors Guild, The Association of American Publishers (AAP) and Google on 28<sup>th</sup> October 2008 of a Settlement [see note at end] that would expand online access to millions of in-copyright books and other written materials in the US from the collections of a number of major U.S. libraries participating in Google Book Search, The Booksellers Association of the UK & Ireland Ltd (BA), on behalf of its membership, makes the following comment:

Google is an undisputed global leader in content provision and offers a superb search service; it has revolutionised accessibility of content worldwide and created many other ground breaking online services. However, in respect of the latest announcement from the US and various reactions to it, the BA wishes to express some concerns about the future for digital content if the District Court in New York approves the proposed Settlement.

As such a dominant player in the online world, Google will now occupy a unique gateway position that, if abused, could easily create a de facto monopoly. A situation where competition is removed from the market place by placing the keys in the hands of one company cannot, ultimately, be good for the consumer. This is a bridge too far. Monopolies = reduced choice and higher prices.

Many of our members in the UK and Ireland are already taking initiatives to participate in the digital book world. Our well received report, Brave New World, took the view that booksellers should embrace this future. However, it is the BA's belief that if this 'one-stop shop' direct to consumer approach of Google comes to Europe, it will surely result in a world that is culturally poorer for the consumer. Such is Google's strength, it is inevitable that in the long term, consumers would be denied a choice of channels as well as the customer experience of knowledgeable and interactive bookselling that does so much to build the debut authors, the little known poet, and the niche writer.

The BA would like to emphasise that progress in the dissemination of literature and knowledge is warmly welcomed by its membership, but believes that this recent agreement, if ever adopted in the UK and Ireland, would have a hugely damaging effect on the publishing and bookselling industry and, consequently, for authors and the public as well. We hope that those who have the ability to influence any similar UK agreements, will give them careful consideration.

Put simply, the BA membership cautions publishers, authors and other partners in the current retailing world that an over zealous embrace of this new Google initiative may well, in the long term, deliver a more limited route-to-market for books rather than the incremental benefits that seem to be the current perception. The online retailing world is still in development. Protecting the world that we know, while embracing the new, must be the sensible way forward.

## B: BA titles scanned in by Google

Title	Author or other contributor	Publication year	Digitization status (book has been digitized or may be digitized on or before May 5, 2009 without authorization)
Report of the 1948 Book Trade Committee	Booksellers Association of Great Britain and Ireland, Book Trade Committee, Publishers' Association, Joint Committee of the Publishers' Association of Great Britain and Ireland and the Associated Booksellers of Great Britain and Ireland	1954	Yes
Machine readable codes for the book trade	Machine Readable Codes Joint Working Party, Machine Readable Codes Joint Working Party (Great Britain), Julian Blackwell, Booksellers Association of Great Britain and Ireland	1979	Yes
Trade reference book	Booksellers Association of Great Britain and Ireland	1976	Yes
Directory of book publishers and wholesalers	Booksellers Association of the United Kingdom & Ireland	1984	Yes
Directory of book publishers and wholesalers		1990	Yes
Directory of book publishers & wholesalers	Kirsten Schlesinger, Booksellers Association of Great Britain and Ireland	1985	Yes
Directory of book publishers & wholesalers	Deborah Elliott, K. Schlesinger, Booksellers Association of Great Britain and Ireland	1988	Yes
Report	1948 Book Trade Committee, Hubert M. Wilson	1954	Yes
Directory of book publishers and wholesalers with their terms, and agents for overseas publishers	Kate Pocock, Andrea Livingstone, Booksellers Association of Great Britain and Ireland	1982	Yes
Economic Survey	Booksellers Association of Great Britain and Ireland, Kenya. Ministry of Finance and Economic Planning. Statistics Division	1971	Yes
Trade Reference Book	Booksellers Association of Great Britain and Ireland	1984	Yes
Trade Reference Book	Booksellers Association of Great Britain and Ireland	1970	Yes
A Directory of British publishers and their terms including agents for overseas publishers	Booksellers Association of Great Britain and Ireland, Kate Pocock, Booksellers Association Service House	1980	Yes
Economic Survey	Charter Group, Booksellers Association of Great Britain and Ireland, Charter Group Staff	1973	Yes

## C: BA Recommendations submitted to US Court

### Copyright province of Congress

1 Copyright is fundamental to the creation of ideas. It is too big an issue to be part of a private deal. The BA believes that these matters concerning copyright should be determined by law (e.g. Congress in the US) and that the same rules should apply to everyone and no one should have a privileged position.

### Orphan Works outside the Settlement

2 Similarly, with great respect, we do not believe that a civil court case in the US should decide on granting exclusive rights to Orphan Works. Orphan Works – that affect book trades in the US and in other countries - should be outside the Settlement.

### Book Rights Registry governance to involve Europeans

3 If the Settlement is approved by the Court, then we urge that the Book Rights Registry has European representatives, and that no independent registry should be prevented from offering a better deal to Google's competitors.

### Definition of 'commercially available'

4 We do think it would be helpful for book trades outside the US if it could be made crystal clear as to what is meant by '*commercially available*'. The definition has a considerable bearing on Display Uses.

### Public access

5 We would urge that anyone should have the opportunity to access the Book Rights Registry.

### Bookseller access

6 If approved, the Settlement as it stands is likely to lead to fewer bookshops and libraries, which would – we believe – not be in the public interest. In order to redress this downward turn, we urge Google to enable booksellers to be able to access Google's electronic book repository and the Orphan Works, and then for the booksellers to have an opportunity to purchase and re-sell the digital material, at trade terms, which will produce a profit for the rightsholders, for Google and for booksellers.

## D: BA Contact Details



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