



NATIONAL CONSUMERS LEAGUE

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October 20, 2005

Honorable Lamar S. Smith
Chairman, Subcommittee on Courts, the Internet, and Intellectual Property
House Committee on the Judiciary
B-352 Rayburn House Office Building
Washington, DC 20515-6219

Re: Google Print Library

Dear Chairman Smith:

The National Consumers League is concerned about Google Print Library, the large-scale effort by Google Inc. to scan the entire book collections of four major American research libraries and post them on the Internet in a full text, searchable format.

NCL is America's oldest nonprofit consumer advocacy organization and has been working since 1899 to assure consumers a well-informed marketplace of ideas. As such, we see tremendous potential value in Google Inc.'s bold vision for this new initiative. If properly constructed and wisely administered, this new venture sets the stage for a quantum leap in consumer access to information – “to make the full text of all the world's books searchable by anyone,” as Google itself puts it. We have already seen the power and usefulness of similar searchable databases for newspapers, periodicals, legal case decisions, maps, statistical databases, encyclopedias of all types, and a wide range of other resources available today instantly at the click of a mouse from desktops and laptops around the globe.

Beyond scholars and consumers, a system such as Google Print could also benefit writers and publishers by making their work more visible and available.

The dangers of doing it poorly, though, are just as dramatic. NCL is concerned that Google has not yet adequately addressed three basic issues regarding this initiative: (a) respect for copyrights; (b) fairness to writers and publishers; and (c) potential for cultural selectivity or censorship.

As Google has explained the program, it intends to scan the entire book collections of three major university libraries – Harvard, Stanford, and Michigan – plus that of the New York Public Library. Many of these books were published prior to 1923 and legally are in the public domain. But probably most remain under active copyrights still owned by the authors who created them or their publishers. To scan these books and post them on the Internet without first obtaining the appropriate rights appears to be a straightforward violation of Federal law. This issue was settled by the United States Supreme Court in its 2001 decision in *New York Times Co. vs. Tasini et al* with respect to republication of newspaper articles in the LEXIS/NEXIS computerized database, and the same principle should apply to Google Library.

Copyright is a basic protection for creative artists in all media embodied in Article I, Section 8 of our Federal Constitution. Authors can spend years or a lifetime producing a quality, insightful book, receiving little or no income until it reaches the public. Their “ownership” of the work, their ability to negotiate sales of the reproduction rights to a publisher or other outlet, and to limit the ability of others to copy the work without compensation, is their only basis for income for the effort. With modern publishing economics often favoring the blockbuster bestseller, typically it is the authors of serious nonfiction, literary novels, and innovative works who face the most difficult economic climate – and the loss of their creative output would make our entire society the poorer.

A system allowing publishers to “opt out” of Google Library is not an adequate response to this point. As a practical matter, many copyrights are owned and controlled by individual authors, not publishers, and as a matter of principle, the burden of obtaining the right to scan a work and make it available on the Internet should rest with the purchaser, not the seller.

Finally, by the very scope of its vision, Google Library unavoidably raises a concern of cultural selection that must be faced squarely. We do not doubt Google’s good intentions. But any database which represents itself as being a “full” or “complete” record of American culture as reflected in the collections of four major research libraries must, in fact, be complete. The sheer scope and cumbersome nature of the project may force Google to cut corners at some point, raising inevitable questions. To the extent that Google finds itself drawing lines for inclusion or exclusion based even indirectly on content – style, political slant, format, author, and so on – it makes itself a censor of our history and culture. At an early point, Google might want to consider bringing together a group of noted scholars, archivists, and historians to help it avoid falling into an inadvertent trap on this account.

Overall, NCL applauds Google for its initiative and vision in launching the Google Library program, and we would be happy to work with them in any way to help achieve their goal for the public interest. First, though, we would encourage them strongly to rethink their fundamental approaches to these issues we have outlined above. Google Library, once constructed, could represent a fundamental sea change in American culture and scholarship. The public has a right to insist that it be constructed wisely, not only in its technology, but also in the basic cultural values it reflects.

Thank you for providing us the opportunity to present these views. We ask that you consider holding timely public hearings on this issue of great public, legal, and cultural significance.

Sincerely,



LINDA F. GOLODNER
President

Cc: Sergey Brin, Co-Founder & President
Google
Larry Page, Co-Founder & President
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