

‘Googling the archives – ideas from the Google Books Settlement on orphan works and other clearance problems with putting archives online’

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The Google Books Settlement is the provisional settlement, reached in late 2008, of a copyright infringement class action brought against Google by the American Authors Guild and the Association of American Publishers. The case concerned the legality of Google’s “Library Project” through which, in partnership with various US libraries, Google digitised vast quantities of books without copyright permission and made searchable snippets of them available online. Claiming that most of the copyright books it digitised were out of print and not otherwise widely accessible, Google famously defended itself from claims of copyright infringement by citing “fair use” under US Copyright law.

While some observers have criticised the settlement for its essentially commercial nature and in particular, its potential anti-competitive effects, its undeniable effect is to increase public and academic online access to in copyright, out of print books. In this sense it is a rare breakthrough for online access to copyright archival material. This paper considers whether this model, or one very roughly based on it, could be applied to better facilitate public online access to other forms of cultural archival material such as broadcast archives. In particular, it considers whether new forms of statutory licensing could be introduced along the lines of an opt-out scheme.