

Google goes around

The saga of Google's attempt to put millions of books online without permission rumbles on. We are still waiting for dates for the court case brought by the US Authors' Guild, after Judge Denny Chin rejected Google's motion to throw it out in May – having earlier rejected a proposed settlement between the Guild and Google. Now there are spin-off cases. Last autumn the Guild and others launched a case against US university libraries collected as the "Hathi Trust", over their use of books scanned by Google. As reported in October's *Freelance*, Hathi smartly withdrew its list of "orphan" books after authors' reps were able to locate one of the allegedly-missing authors in under three minutes. This case may well reach trial as early as November. Lawyers for the Guild argue that "nothing in copyright law permits the unlicensed scanning, copying and use of millions of copyrighted books, whether by a giant commercial entity like Google or a group of university libraries." The Association of Research Libraries and the Association of College and Research Libraries both fought the proposed settlement: "by forgiving Google for unlawfully scanning millions of copyrighted works," the website Inside HigherEd summarises, "the settlement would give the company an unchallengeable monopoly on digitized books." Now the library groups have filed a "friend of the court" brief in the Hathi case that "reads like a glowing review of Google Books".

Where it all began: the 1710 Statute of Anne, "An Act for the Encouragement of Learning," itself out of copyright, we believe, since 1760 or earlier.



Court: no 'implied contract'

A COURT has reaffirmed the principle that freelancers' clients cannot claim "implied terms" extending the uses they can make of work beyond what is absolutely necessary to the commission.

In July 2010 Tyson Sadlo was engaged by a company called Oxygen 10 Limited to shoot portraits for *Today's Business Woman*. He subsequently granted syndication rights to Celebrity Pictures Limited. Celebrity Pictures and Tyson Sadlo sued a related company, B Hannah Limited, for infringement of copyright when it sold the pictures on to *Bupa*

Health magazine and they appeared on the *Celebrity Angels* website. In the meantime Oxygen 10 had been dissolved.

B Hannah introduced all sorts of complications in their defence, leading to some entertaining comments from Mr Justice Floyd in the Patents County Court – see the online version of this piece. The company claimed it had sent Tyson Sadlo a contract granting it all rights in the pictures. The court rejected that.

The significant part is B Hannah's claim that, even if there was no contract, there was an implied

assignment, making it owner of the copyright in the photographs or alternatively a joint owner.

The court rejected this, stating the principle that "If a court does imply a term, it should make no greater incursion into the rights of the copyright owner than is necessary to meet the case."

There is, however, an implied warning in this ruling against claims of implied contracts. If you receive a contract, and do the work, you may very likely be held to have accepted it, even if you do not sign it. So check that snail-mail.

What's a Digital Copyright Exchange?

RICHARD HOOPER has produced his report into the feasibility of a Digital Copyright Exchange. Most of it is devoted to answering the question "what's one of them, then?" The answer is largely that it'd be a "hub" offering a single point of access to databases that can answer the question "Who do I have to ask before I can use this piece of work?"

It also suggests that the "hub" should provide facilities for those who want to offer automated or "one-click" licensing of their works. Mike Holderness, chair of the Creators' Rights Alliance, says: "while it is good, and legally necessary, that Hooper stresses that an Exchange will be voluntary, this could lead to

pressure on creators to pile their works high and sell them cheap." If they don't offer their words, tunes and pictures on a "one-click" licence, he asks, "will would-be users turn to the likes of Getty Images, reinforcing their quasi-monopoly?"

As Hooper acknowledges, the concept of "one-click" licensing raises issues of media ethics and how uses harmful to the creator's honour or reputation will be stopped. Must there be a tick-box on the screen by use of which the buyer swears on their mother's life they are neither the Nasty National Party, nor Metastasis Tobacco plc, nor an agent for either of the above?

Mike Holderness welcomed the

stress the report lays on the importance of having and preserving "metadata" – information about the information that is a creative work, including especially who created it. The report stops short of changes to the law to make the theoretical prohibition on removing metadata properly enforceable.

The next step, Hooper says, is to set up a Copyright Licensing Steering Group to co-ordinate proposals being developed by "the industry". Much more work follows to ensure that the interests of the actual creators who provide that industry with both its raw and its polished material are represented there.

● See detailed responses online.

Netherlands plans fair play

THE government of the Netherlands has introduced a Bill in the country's parliament to guarantee authors and performers – from writers to cartoonists to photographers to actors – fair pay for use of our work.

In its current form it introduces the right of authors (and performers) who have licensed their work to "equitable remuneration". This has to be determined by the parties: if they fail to do so, it will be determined by the Minister of Culture. Authors

would have the right to demand that contracts are revised when the amount they've already been paid is "totally disproportionate with what the publisher has received" for use of the work. This mirrors the "wind-fall" provision that has existed in German law since 2002.

If the publisher or broadcaster does not "exploit" a work after a certain amount of time, the contract can be "dissolved" and all rights revert to the author.

The Minister of Justice will create a Commission – an arbitration body – to resolve disputes over contracts. Associations and trades unions, as well as individual creators, will be able to bring cases to this Commission. If the parties dispute the Commission's findings, they have three months to appeal: otherwise the settlement is definitive.

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thanks to Matt Salusbury and Axel Beelen for translations.

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"Does the Secretary of State accept that copyright is the legal expression of intellectual property rights, and is not a regulation? Is he aware of the widespread concern among the creative industries about clause 56, which will allow copyright to be amended by statutory instrument without full parliamentary debate? Will he assure the House that the Government will not change copyright in that way without proper parliamentary scrutiny?"

The ERR Bill contains much else of concern to trades unions and

others, in particular changes to employment tribunals. We will have our work cut out to focus parliamentarians' minds on all the relevant parts.

The Creators' Rights Alliance is encouraging authors and performers to send their MPs a letter in general terms, stressing how important copyright is to you making your contribution to the economy. Detailed briefings for them will be produced soon. See the outline letter at www.londonfreelance.org/fl/1208copy.html – please write in your own terms, and send the letter on paper for maximum impact.