

GOOGLE

COPYRIGHT FRAMEWORK

EBLIDA

## *Copyright Law and Libraries in the European Debate*

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## Project start:

14th of December 2004, runtime 6 years (Start phase incl. Pilot)

following the „Google Print for Publishers“ project started in October 2004

## Scope:

Digitization of approx. 15mio books from

„the Google 5“: Harvard, Stanford, University of Michigan, University of Oxford, New York Public Library

made available at the Google website (full text retrieval):

Public domain (USA 1922, internat. 1900): full text

copyright protected material: short excerpts, citations

Material from Publishers: not more than 20% of the whole work

linked to online bookshops

## Investment:

200 mio \$ (166 mio €)



**Contract (Google - Library of the University of Michigan):**

**Term: Pilot April 2005, Start Phase April 2009, annual prolongation**

**Costs: costs for own activities (scan costs: Google)**

**Digital Copy: 1 Google, 1 Library**

**passed on to library continually within 30 days after scan**

**Material returned within 3 weeks of scanning**

**Use of the material:**

**Google commitment to make available content searchable with no direct cost to end users, otherwise unrestricted use (except copyright)**

**Library can use copy on website restricting automated download and preventing download for commercial purposes**

**Copyright: If Google decides not to use digitized material because of dispute, library destroys own copy within 3 years**

**Library informs Google of existing copyrights; Mutual indemnity clause**



## Copyright:

**digitization: full digital reproduction**

**Right holders (AAUP, ALPSP, Authors Guild etc.): systematic breach of copyright. The right to make copies has to be granted by rightholder.**

**Google: copyright protected works are not made available in full - „fair use“  
cf. Kelly vs. Arriba Soft; Agreements with the Publishers**

**12 August 2005: Scan pause till November for copyright protected works**

**Opportunity for publishers to withdraw their books from the project**

**Publishers: not satisfied**

**Libraries: getting careful**

**20 September 2005: Authors Guild + 3 authors file lawsuit against Google**



**March 2005: French president Jacques Chirac commissions a study to find out how library collections in Europe could be put more widely and rapidly on the internet (Ministry of Culture, BNF)**

**28 April 2005: 6 Heads of State and Government advocate the creation of a virtual European library in a letter to the presidency of the council and to the commission**

**The digital libraries initiative is backed by 19 European national libraries**

**7 July 2005: positive answer from commission president Barroso**

**29 September 2005: CENL Conference - „The role of libraries in the information society“, Viviane Reding outlines „i2010“ in relation to libraries**

**30 September 2005: Communication of the Commission „i2010: Digital Libraries“ (+ Staff working paper and online consultation) adopted**

**14 November 2005: Communication at the culture council**



**On-line consultation: from 30 September 2005 till 20 January 2006**

**Planned for 2006:**

- a recommendation on digitization and digital preservation,
- other relevant community initiatives such as a review of the copyright framework,
- ↔ review of legal framework in the field of copyright and related rights
- a communication on the accessibility of scientific information
- ↔ study on the scientific publications markets in Europe

**Funding:**

- 6th Framework program, 5th call (2005): 36 mio €
- eContentplus (2005-2008): 60 mio €
- 7th Framework program (2007): ?? (>36 mio)



**Rental Right and Lending Right (19 November 1992)**

**Term of Copyright protection (29 October 1993)**

**Legal Protection of Databases (11 March 1996)**

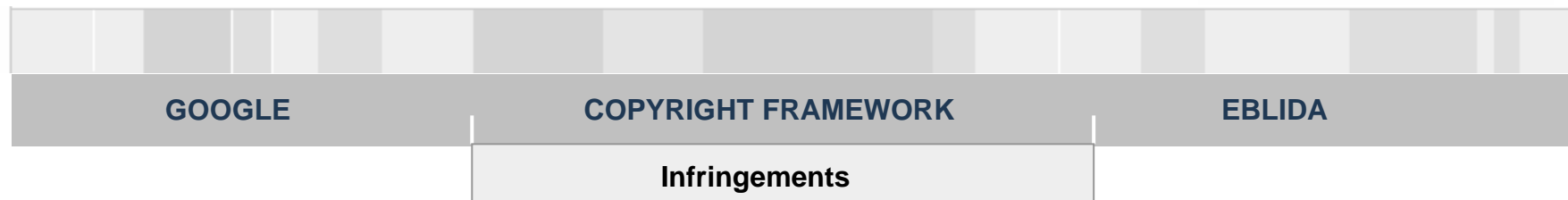
**Information Society (22 May 2001)**

**Enforcement of Intellectual Property Rights (29 April 2004)**

**International: Berne Convention, TRIPS, WIPO treaties**

**Europe: Internal Market, Subsidiarity**

**Nation: implementation in national laws**



## July 2005:

### InfoSoc Directive

„Reasoned opinions“: France, Finland (Art. 228 EC Treaty)

„Letter of formal notice“: Czech Republic (Art.226 EC Treaty)

„Informal contact“: Spain

## March 2005:

### Public lending Right Directive

Referrals to ECJ: Italy, Luxembourg

### InfoSoc Directive

„Letter of formal notice“: Belgium, Finland, Sweden (Art. 228 EC Treaty)





## Whereas-Clauses

**(34) optional exceptions limited to scientific purposes for public institutions such as libraries**

**(40) optional exceptions to reproduction right for certain non-profit making establishments (libraries etc.) in special cases; on-line delivery excluded**

## Optional:

**Art. 5 (2) c: exception to reproduction right**

**specific acts by libraries, no direct or indirect economic or commercial advantage**

**Art. 5 (3) n: exception to reproduction and communication/making available right works not subject to purchase/licensing terms may be communicated/made available to individual members of the public by dedicated terminals on library premises**

**Art. 5 (5): 3-Step-Test: special case, normal exploitation, legitimate interests**



- **Mandatory commitment to research and public accessibility: missing**
- **Harmonisation of copyright exceptions in the digital environment: poor**

**Translating traditional core library services to a digital environment:  
only on a case-by-case basis of legal agreements**

## **Right clearing process**

**Considerable effort**

**Missing Legal successors (e.g. Orphan works)**

**Numerous collective rights managers**

**High legal risk**

- **Neither cost-effective nor manageable**



## Consultation:

2006 review of the copyright framework for digital libraries

## Interests of Digital Libraries:

Electronic access

Digitization of analog material

Preservation

Relation between human right to information – exclusive right of rightholders

Fair use doctrine / fair dealings – formalistic concepts

Commitment to a digital library

# Demokratiezentrum Wien

Online: [www.demokratiezentrum.org](http://www.demokratiezentrum.org)

Quelle: Presentation at the conference Open Access to Digital Archives and the Open Knowledge Society organized by the Democracy Center (Demokratiezentrum Wien), 21/22. October 2005



## European Bureau of Library, Information and Documentation Associations

### Lobbying for archives and libraries



EBLIDA is the European Bureau of Library, Information and Documentation Associations. We are an independent umbrella association of national library, information, documentation and archive associations and institutions in Europe.

Subjects on which EBLIDA concentrates are European information society issues, including copyright & licensing, culture & education and EU enlargement. We promote unhindered access to information in the digital age and the role of archives and libraries in achieving this goal.

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UNESCO Collection of [National Copyright Laws](#)

EBLIDA wishes to acknowledge the generous support of the [Vereniging van Openbare Bibliotheken](#) (Netherlands Public Library Association) in hosting the EBLIDA Secretariat.

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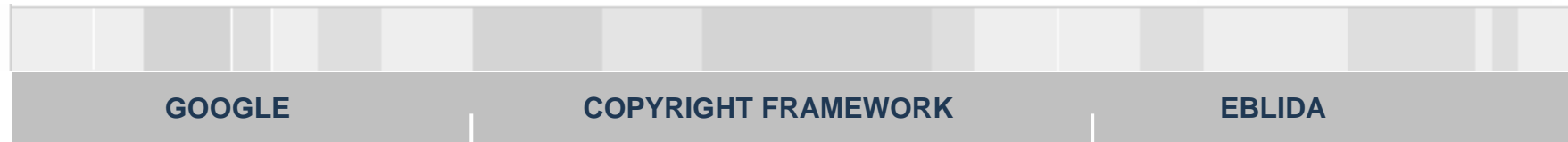
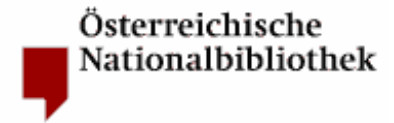
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**Thank you for your attention**