

Article on Google Book Search Settlement

Yesterday's issue of the *Frankfurter Allgemeine Zeitung* (**FAZ**) contains an interesting article on the Google Book Search Settlement written by **Prof. Burkhard Hess**:

The settlement concerns a class action lawsuit between Google and – as plaintiffs – the Authors Guild, the Association of American Publishers as well as individual authors and publishers about books scanned for the Google Book Search without the authors' consent. Basically, the proposal for the settlement provides on the one side the payment of compensation for class members and the establishment of a registry of rights to books while it contains on the other side an authorisation of Google to scan books, maintain an electronic database and to make worldwide commercial uses of books.

The problematic issue the present article is dealing with, is the opt-out-mechanism provided by the settlement: Authors who do not object within the opt-out deadline (which has been extended until 4 September 2009) will be bound by the settlement. Thus, authors are “compelled” to take action if they don't want to be bound by the settlement. In other words – the opt-out mechanism is meant to substitute the authors' consent in the digitalisation and marketing of their books.

Hess points out in his article that the strategy of an opt-out mechanism might involve difficulties in view of the Berne Convention for the Protection of Literary and Artistic Works since this Convention guarantees a certain minimum standard of protection: In his article, *Hess* raises doubts whether the opt-out mechanism – which would lead to an automatic deprivation of the authors' copyright – meets the requirements of this protection standard.

With regard to the fairness hearing – which will take place in New York on 3 September – *Hess* suggests that it is not only the concerned authors who should intervene – rather he suggests that also the German Federal Government could do so, as an *amicus curiae*, in order to submit the reservations against the settlement.

The article titled “Es wird Zeit, dass die Bundesregierung eingreift” can

be found (in German) also online on the website of the FAZ.