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from : General Secretariat of the Council  
to : delegations  
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Subject : Google Books  
– Information from the German delegation

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Delegations will find attached an information note from the German delegation on the above subject which has been included on the provisional agenda, under "*other business*" for the forthcoming Competitiveness Council meeting on 28 and 29 May 2009.

*Background information from the German delegation for the "other business" item entitled "Google Books" on the agenda for the next meeting of the Competitiveness Council on 28 and 29 May 2009.*

Without the prior consent of the rights holders, Google has scanned books from US libraries and used the digital copies to create a database (the so-called "Google Books" project). The database shows Internet users a catalogue card view as well as, in most cases, short excerpts from the books ("snippets"). Among the books scanned are numerous books by European rights holders. For the digitalisation process, Google cites a limit of US copyright law known as the "fair-use" doctrine according to which certain types of use of copyrighted works which have not been expressly approved are admissible insofar as they serve the public interest (such as reporting, education, research, etc.).

American associations of authors and publishers have sued Google in the US for breach of copyright in what is known as a class action. The decision on a class action has an effect not only on the parties to the action but also on all members of a given "class". The dispute is to be resolved by a settlement – which still has to be finally approved by the court on 7 October 2009. The settlement sought would also concern European authors and publishing companies and would therefore have an impact on the European Union.

Authors and publishing companies may avoid the effects of the settlement if they declare by 4 September 2009 that they want to opt out, thus retaining the right to bring an action of their own against Google. Moreover, objections to the content may be submitted before 4 September 2009 with a view to changing the terms of the settlement.

Google's actions are irreconcilable with the principles of European copyright law, according to which the consent of the author must be obtained before his or her works may be reproduced or made publicly available on the Internet.

The German delegation would like to raise Member States' awareness of the risks associated with this activity and draw their attention to the fact that Google's actions as described above could have an impact on the concentration of media ownership and on cultural diversity in general, and especially in the European Union. By digitalising millions of books, the company Google has stolen a march, since the only option open to rights holders is to opt out of the settlement *retroactively*. As a result of this behaviour, initiatives such as Europeana, which digitalise and make available on line copyrighted works only after prior consent has been obtained from the rights holder, have also lost ground.

Discussion should continue in the next Council meeting. In the meantime, the Commission is requested to take the matter up and examine the Google Books project as well as the impact of the settlement sought in the USA from the point of view of copyright law, law on restrictive practices and cultural policy and, where appropriate, to introduce new measures to protect rights holders.

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