



Interview with Andrew Albanese of Publishers' Weekly Reporting on Google Book Settlement Survey Results

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KENNEALLY: Hello. My name is Christopher Kenneally for *Beyond the Book*. Over the last several months, Copyright Clearance Center has produced programs to inform authors and publishers in the U.S. and around the world about the choices they face over the proposed settlement in the landmark Google Books case. Because it is a class-action lawsuit that pulls together thousands of rights holders with published works going back decades, and because it involves the world's leading Internet business, the so-called Google Book settlement focuses concerns about the future of book publishing in ways that almost no other story in the business has for years.

As we record this program, the deadline for when rights holders must act is approaching fast. In the days leading up to September 4, 2009, *Beyond the Book* will repeat a series of programs featuring Michael Healy and Alan Adler, two leading figures in the Google Book settlement, as well as Lois Wasoff, one of the nation's most respected experts on copyright law and publishing.

And on Wednesday, September 23, Lois and I will present a free webinar with the very latest news about the settlement, including whether the U.S. Department of Justice may or may not move to object on the antitrust grounds. *Beyond the Book* and Copyright.com will provide details about how to register for that free program in coming weeks.

For now, however, we have an opportunity to get inside the heads of rights holders and others to learn what they, what many of you in the *Beyond the Book* audience, think about this very complex legal case. Andrew Albanese, Features Editor for *Publishers Weekly*, has followed this story since the settlement was announced last October, and he joins me now.

Welcome to *Beyond the Book*, Andrew.

ALBANESE: Thanks, Christopher.

KENNEALLY: It's good to have you here, and we've invited you because *Publishers Weekly* recently conducted a survey of its readers, asking really penetrating



questions about the Google case, and let's just dive into that, and start, I suppose, on the bright side of things. What's the good news for settlement proponents in the survey?

ALBANESE: If there's good news from the survey for proponents of the settlement, it's that overall support for its approval outweighed opposition. Net support was 41%, compared to 23% who opposed the deal. When I say net support, I mean people who either supported it enthusiastically, supported it with some reservations, or supported it but still hoped to see some changes in the final deal.

But to call the 41% figure good news, I think you'd have to be awfully optimistic. Forty-one percent still seems like a fairly low number for such a sweeping deal, and of that 41%, only 13% said they were enthusiastically in favor of the agreement. So that is a fairly low number.

KENNEALLY: Right. And so, of the remaining 25% or so, and I'm not a math major, but people would like to see changes, they have no opinion – how does that break down?

ALBANESE: It basically broke down into – pretty much into thirds. In Major League Baseball, they have a saying that everyone wins 54, everyone loses 54, it's the other 54 that count. And it pretty much breaks down this way, too. Twenty-three percent, or maybe roughly a third, are not feeling so good about this. Roughly a third are feeling OK about it, but there's a whole other section whether they – they're completely indifferent, or don't understand this deal at all.

Twenty-eight percent said they were still unsure how they were going to act, and another 5% said they were indifferent, and then another 4% said they were on the fence – they didn't know that they were indifferent, they didn't know that they were unsure, but they wrote in comments suggesting that there were – they had significant issues with the deal.

KENNEALLY: Well, as you say, the sort of classic mixed results – great fodder for reporters and others like ourselves, but really, leaving everybody with a kind of – you know, scratching their heads and wondering what is going to happen when this finally goes before the judge.

Any good news at all, or what's the news for those who have been lobbying against this, or who feel strongly that this should not go through?



ALBANESE: I'm not sure that the survey gives opponents of the deal any good news, because again, this survey – or, excuse me, this settlement is not going to be approved by a vote, it's going to be approved by a federal judge. And that judge will be looking at whether or not the deal is – conforms to class action law. So, I'm not sure how much good news comes out for the opposition in this settlement.

KENNEALLY: Well, as you say, it is going to be up to the judge here. Is there a sense you have, though, right now, of who may be the happiest, and who may be the most discontented? And you surveyed, really, three groups – were able to break down the survey, I should explain, between three groups – the publishers, the authors, and librarians, who may or may not have works involved, but who certainly are really crucial to the public's understanding of the settlement, and to the sort of settlement's progression moving forward.

ALBANESE: That's right. Well, we didn't ask about anyone's happiness with the deal, so it's really hard for us to say how happy or unhappy people may be with it. However, we certainly got a lot of comments in which people indicated their levels of happiness.

But I would say first off, if there's a happy party here, it would have to be Google. Throughout all of this, Google Book Search has been growing, and every day it does, it becomes a better service, and a more integral service, and a more useful service. And it's already a more useful service than anything that's gone before it, especially for book users.

And frankly, whether this goes forward or not, Google seems to be winners here, because among general users, the vast majority of people, they just want to find their books online. And this service has gotten better over the last year, and it continues to advance, and most of these people don't really care about whether or not Google took a book off a library shelf.

KENNEALLY: Right. And yet, though, as you say, well, it's probably unfair to ask whether people are happy or not, they did give some strong opinions. And it seemed to me, in the summary that you published earlier this week, that one or two comments sort of felt like, well, they're – was it librarians, Andrew? You tell me, that felt that getting these books onto the web and discoverable in that way, it was a good thing. They were for that, but they were not so enthusiastic about Google being the ones to run this.

ALBANESE: Well, I would say out of the three parties that you mentioned, the most supportive, generally, and we'll read supportive into being somewhat happy, were



large publishers. They were the ones who support the deal in the largest numbers. I think just over – just under 60%, 58% or so of large publishers were behind the deal.

Now, notably, small publishers were the second most supportive of the deal, but they were also the most vocal opponents. The least of all the surveyed components, small publishers were the least on the fence. Only 15% of small publishers said they didn't know what they were going to do or where they stood on the deal. Thirty percent of them said that they were against it. I found that to be a very, very interesting number.

KENNEALLY: Yeah, let's pursue that, if we can. Was there anything in their comments that you read, or that when you've been following the story, and as I mentioned at the top, you've been reporting on all of this over the last – almost a year now. What do you read into that, that the smaller publishers are more concerned?

ALBANESE: I read into that they have the most on the line. If you are a small publisher, every copyright that you own probably means something to you. And whether this deal would be great for you and giving you tremendous exposure and all kinds of chances to take in new income, which it very well may do, you just don't know. And so, it's a tough gamble for these people, for the people who, where every copyright really impacts the bottom line. It's a gamble.

KENNEALLY: What about the level of understanding? You know, there are numbers here – this is an overwhelming number of numbers, I should say, in this report, which we will link to from our *Beyond the Book* site. But while people are familiar with the survey, they've heard about it, it certainly has gotten a great deal of attention in *PW* and in more mass media like the *New York Times* and elsewhere. But while they know about it, their level of understanding is perhaps not as high as one might hope.

ALBANESE: Yeah. I think that if anything really came out of the comments section, it was that the level of understanding of the deal is pretty low. And even more interesting is the level of indifference was pretty high. A lot of people – they may have had an opinion, but they didn't really care how the deal fell one way or the other. At least, this is what they said in comments.

Now, notably, two thirds of our respondents said that they were well enough informed to make a decision about how they want to – how they should act and move out the settlement.



KENNEALLY: And that would have to be an important number, I would think, Andrew, because one of the aspects of a class action lawsuit that a judge will want to look at closely is just how well the class has been informed about the settlement.

ALBANESE: Now, this is an interesting point, because obviously, you're absolutely right. Notice in the class action settlement process is very important. However, we should note that we didn't ask people how they were notified. And we should also note that we probably reached a more, shall we say, engaged sector than the settlement at large, which targets the entire universe of U.S. copyright holders. We – our survey went out to people who signed up to receive a publishing e-newsletter.

So, in that e-newsletter – in our e-newsletters, we cover the settlement quite a bit, so we're assuming that the people who signed up to get our newsletters probably know quite a bit. Whether they were sufficiently noticed or not, that's a different matter for the court.

KENNEALLY: All right. And in fact, perhaps that's a good opportunity for you to tell our audience about the survey itself – who responded, how many, and just how it was conducted, over what period of time, and remind everybody that we are talking with Andrew Albanese, Features Editor for *Publishers Weekly*, about a recently published survey in *PW* looking at the Google Books settlement. And so, Andrew, to tell us how many respondents you got, and how they all broke down.

ALBANESE: Sure. In the end, we received 891 responses. Roughly 28%, I believe – let me see if I can pull that number up – I think 28% were librarians. About – excuse me, 28% were authors, 26% I think were librarians, and the rest were made up of a range – maybe another quarter, around that, were publishers, large, small, medium, independent, whatever, and the rest were made up of literary agents and lawyers and bloggers and foreign rights holders, foreign authors, in smaller numbers.

We sent our survey out to readers of our newsletters via e-mail. It was a very quick, unscientific, and admittedly imperfect survey, but what we were hoping to do was just get a very general sense of how people were leaning. What they were thinking about the deal, what messages were getting through.

We didn't ask people about monopolies, or orphan works, or any of the issues that have been raised by the opposition. We just straight out asked people who they were and what they thought about the deal.

KENNEALLY: And is your sense, from having attended a number of events, and it seemed like at the end of July there, a day did not go by, at least in New York City,



that there wasn't some program trying to explain the Google Book settlement to people. Maybe that's an indication of what's going on in Manhattan, and just how I think Google, the name alone, focuses attention, and that the interest in this is well beyond those who are impacted.

But nevertheless, you had a chance to not only hear from people in this electronic fashion, this survey, but when you are at these events, you mingle, you talk, you're doing your journalistic thing. And is what you've heard at those meetings, and what you heard in the survey, does it all sort of sync up, or what?

ALBANESE: They do. They definitely – they certainly do. In fact, we decided to do the survey after we – basically one publisher told us in May that they weren't really worried about the opposition, that they saw the opposition as being organized by a small sect of people, and we weren't so sure, because we, anecdotally, were hearing a lot of people who should be, you would think, getting behind this settlement, who were not behind it.

So we decided to do the survey to find out where people really were. And my impression is that – and this especially was true in the comments, is that people seemed to have their minds made up. I don't think there are a lot of people who were terribly convinced by discussion of the settlement. I think the more people listened to the discussion of the settlement, they just got confused. I think a lot of people had their minds made up before the events began in New York City, how they felt about it.

And we saw this in the comments, because a number of people would write in things like, Google is stealing my property. There is a monopoly here. A lot of things where you would expect a little more nuance and understanding, people just were pretty solidly against.

KENNEALLY: They were – yes, those kinds of reactions, they're really almost visceral. There was one finding that you did do some reflection on in the article under the section, *Why We Fight*, and I should remind our audience that all of this, of course, goes back to 2005, when first the Authors Guild and then AAP sued Google over something that was then known as the Library Project. And it's taken – whatever, now, nearly four years for that lawsuit and the negotiations that have produced this settlement to come to this point, where we're facing the September 4 deadline.

You asked people, though, in the survey, what they thought of the original lawsuits themselves, and what did they tell you?



ALBANESE: This was the most interesting part to us. We asked people what they thought about the original lawsuits, whether they thought they were ill-advised, well-advised, whether Google's use of these library books was fair use, possibly, how – for whatever reason. And we found that less than half of the people that we surveyed supported the filing of the original lawsuits.

Now, the good news for the proponents of this deal is that only 15% thought the lawsuits were ill-advised, or felt like Google had a good fair use case, and that's a pretty low number. But a great majority of them were – I wouldn't say majority, over a third of them were indifferent to the lawsuits being filed at all.

And what this brought up for me personally was the healthcare debate going on. I think, if you look at the way the healthcare debate is going so far, that the problem is that the problem we're trying to address with healthcare legislation wasn't properly framed. People may not love their insurance companies, but when you're going to introduce sweeping reforms like this, I think you needed to sort of set up why this, exactly, was needed.

And I think if there was a deficiency in – that this question showed in the Google process so far, it's that people didn't really understand what we're fighting for here. The problem wasn't properly framed for them to get behind, or lined up against this settlement in great numbers.

KENNEALLY: We'd only be speculating, too, but that sense of indifference may be connected to the fact that the books involved here are all books that are out of print, or as the settlement itself refers to them, commercially unavailable. So if people are indifferent, it may be that they don't see their own works, the more recently published books, immediately involved. And it may be other people's books, and so therefore, they don't need to concern themselves.

ALBANESE: That may very well be true, and there were some comments that sort of alluded to that. Absolutely. A number of comments indicated – people indicated that their books had so little value to them that it wasn't even worth their time to engage with the survey – or just, excuse me, to engage with the settlement.

Now, that may be true. A lot of these books have been out of print, and not making money, and have little value to the authors or publishers for a long, long time. But when you consider that they are going to be part of an overall corpus that's going to have possibly tremendous value, it becomes a more interesting issue.



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KENNEALLY: Well, certainly, and what's interesting above all, and we remind everybody that, as you pointed out, the decision that's going to be made here is not going to be the result of any kind of vote. It's going to come down to one judge, Judge Denny Chin, in Federal District Court in New York City. And it's just an odd coincidence, he happens to be the same judge, I believe, who was involved in the Bernie Madoff case, and who sentenced Madoff to 150 years for his Ponzi scheme.

So really, we're going to have to wonder what's going to be important to Judge Chin. I can well imagine he would read this survey, just as a useful background for him. And do you think he might read anything into it himself? I mean, if you were the judge and you read this survey, what conclusions would you come to?

ALBANESE: Interesting. You know, if I was the judge, and I was reading this survey, I would check myself, because this is – I don't think of this as the kind of survey that will probably factor into his decision too much. It's an – it's admittedly a small section of the overall universe of copyright holders, and it may or may not give him some insight into how well the classes represent the world of authors out there.

But he's going to be hearing a lot of testimony right there in the courtroom from the very same people who responded to our survey. And I think more important to him is going to be how this settlement works within the law.

I think there are probably a lot of class action settlements that get very low levels of participation. You consider that anyone who ever smoked a cigarette, for example, was lumped into a class – it – this settlement probably – it's probably going to – well, I can't say. I wouldn't want to speculate. (laughter)

KENNEALLY: Well, I guess – so you know, I was going to say to conclude, Andrew, that settling matters of law is best left to judges who are trained that way.

ALBANESE: Exactly.

KENNEALLY: But doing the hard reporting about a case like this is left to good journalists like yourself, and we appreciate what you've been doing in *Publishers Weekly*.

We've been speaking with Andrew Albanese, who is Features Editor for *Publishers Weekly* about a survey recently published in the magazine and online, looking at rights holders and others' views of the proposed Google Book settlement.

Andrew, thank you very much for joining me today on *Beyond the Book*.



ALBANESE: Thank you, Christopher.

KENNEALLY: And this is Chris Kenneally for Copyright Clearance Center's *Beyond the Book*, hoping you'll join me and Attorney Lois Wasoff on Wednesday, September 23, for a free webinar with the very latest news about the Google Book settlement. That will come, of course, after the September 4 deadline has passed, but before the fairness hearing that is to come the first week of October.

Beyond the Book and Copyright.com will provide details about how to register for that free program in coming weeks, but in the days leading up to September 4, we invite you to follow, on *Beyond the Book*, a series of programs reprising interviews with Michael Healy and Alan Adler, two leading figures in the Google Book settlement, as well as a comprehensive educational seminar with Lois Wasoff and myself that was first presented in April.

So, until we meet again next time on *Beyond the Book*, all the best.

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