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The Authors Guild, AAP, Google Settlement: An Interview with Michael Healy, Executive Director of the Book Industry Study Group and expected Executive Director of the Book Rights Registry

KENNEALLY: Authors and publishers in the United States and around the world have followed with interest the class action suit for copyright infringement brought against Google in 2005 by the Authors Guild and Association of American Publishers. Last fall, the parties announced a proposed settlement, and today we hear for the first time from a man whose expected next job will be to make that agreement a reality. On behalf of Copyright Clearance Center, welcome everyone. My name is Christopher Kenneally. As director of Author Relations here at CCC, I have the great pleasure to introduce Michael Healy, who is currently executive director of the Book Industry Study Group. Michael, thanks for joining me.

HEALY: Thank you very much for inviting me, Chris.

KENNEALLY: It's a pleasure to have you here today, and here at the offices of Copyright Clearance Center near Boston, it's a beautiful June day outside but I know you're looking well ahead into the future. You can see dates in October and September and further even, beyond all of that, all approaching rather quickly. So let's talk about the proposed settlement, where it's going to take you and authors and publishers everywhere. First of all, let's help everyone understand better the arrangement that you're currently working under. In May, the Book Industry Study Group announced an agreement with the Authors Guild and AAP, which will have BISG provide services to support the establishment of the Book Rights Registry, and with you, as the director of the BISG, devoting about half time to BRR issues. And then, when the settlement is approved, you are expected to serve as the Book Rights Registry's first executive director. So congratulations first, but with all of that said, and it's a mouthful, tell us a bit about yourself and your career. Give us some idea of what it was about this opportunity that attracted you.

HEALY: Well, I started my career as a librarian in the dim and distant past now, but in fact, did almost no conventional librarianship of the kind that most of your listeners would recognize. In fact, in those days, I specialized in putting interlibraries mostly in the developing world, systems for library usage, and also databases of electronic publications. And I did that for several years and from there, it was a relatively small step to moving into digital publishing in those pioneering days of the late 1980s and early 1990s. And really, I stayed in electronic publishing for



pretty much the next 15 years, mostly in editorial roles for pioneering companies like SilverPlatter and Chadwyck-Healey, which is now part of ProQuest.

And as I say, I stayed in digital publishing as something of a pioneer for those 15 years, and over time, that work took me into the area of international standards and the development of supply chains, and my work started to become more and more specialized. And really, it was that very close involvement in international standards issues that led me to move to the United States, when I was invited to become executive director of the Book Industry Study Group, which is a nonprofit organization based in New York City, which has been focused for the last 30 or 35 years on improving the efficiency of the supply chain here in the US through standardization, through research, and so on. So that's a very quick snapshot of what took me here to this week.

KENNEALLY: Well, a pioneer, really, but continuing to be a pioneer. It gives you some idea of just how much more we have to go when you consider you've been at this now for 20 years and with the settlement, if it's approved, it's going to take us quite some time into the future, so it must be very exciting for you. What do you see as the promise of the Book Rights Registry, then, given everything in your background?

HEALY: Well, when I look at the things that appeal to me when this opportunity came up originally, a number of things really stood out. The first was that I think I must be attracted to the prospect of building something new from the ground up, and that was clearly part of the appeal, as far as I was concerned. But also, the role as it was described to me seemed to me to be a great opportunity to apply a lot of the experience I'd had from my career earlier. I'd been closely involved in managing large volumes of very volatile metadata in the course of my work with Nielsen for seven years. And in many ways, when you look at the Book Rights Registry, one of the most immediate challenges facing it will be to make it a data-centered operation because to a great extent, its success or failure will depend on its ability to manage very complicated, very volatile data in the interests of rights holders. So I could see for me at least, a very clear thread running from my early experiences as a digital publisher, as a librarian, as something of a standards geek, if you like. I could see all those threads coming together and combining in this opportunity with the Registry, so that was the appeal of it to me.

KENNEALLY: Well, I have to say, speaking for myself entirely, I'm glad there's someone willing to take on volatile metadata because (laughter) I know that's not my area of expertise. But then, for those who are just beginning to understand all of this, and this is very complicated stuff and in a short while we'll speak about the



settlement and the benefits of it, but if you will, then, at a high level, the data challenges of Book Rights Registry are what, exactly?

HEALY: Well, if you think that there are many millions of books that have been digitized by Google and that are covered by the terms of this settlement agreement, you have obviously, one of the largest metadata sets of digital books ever compiled. And it is intrinsically, a complex set of data because there are multiple editions of the same work that have been digitized, there have been multiple copies of individual works that have been digitized, there are inserts within works. It's quite clear even for a layperson to see that the management of this metadata set is going to be challenging. Now, if you layer on top of that complex metadata relating to rights holders, you complicate the situation, if you like, a further stage.

And let's be clear, what we'll be building here is a remarkable and unique resource, the like of which has not been seen in the industry before, which is a very comprehensive data set, which links publications back to works around which those publications are clustered. And then, you'll have those works and publications linked for the very first time to comprehensive metadata records about rights holders, who owns what. Then, layer on top of that again, the opportunity that the settlement gives authors and publishers to express what Google and others do with these digitized books, the display rights, the pricing, etc. Then, you have a very complex mix of data sets, which need to interoperate successfully for the Registry to succeed. And I think that highlights an important point of this settlement, which we may come on and talk about later when we discuss the benefits, but it is important to emphasize that the Registry will be a vehicle through which – and the settlement document underpins this – the Registry will be a vehicle through which rights holders can exercise control on the use made by Google and others of these digitized works. There is a lot of control given back to rights holders by virtue of this settlement agreement.

KENNEALLY: So it's interesting. There's that volatility, but the assumption of control there, that's always the case. In any kind of new invention, if you will, you've got something volatile. You've got gasoline but if you can put it to work in an automobile engine, you can take it absolutely anywhere.

HEALY: Exactly so. That's right.

KENNEALLY: That's fascinating. Well, clearly, there are a lot of moving parts here, to use that clunky, old 20th century image, and it's certainly, probably, making your life fairly complicated. It also changed things just recently. In April, the end of the month, there was an approaching deadline of May 5 for rights holders to participate. That got pushed out to September 4. Why do you think the judge took



that action, and what are you, AAP, and the Authors Guild doing or using this additional time to do in addressing questions, I presume, about the settlement and where it's going to take us all?

HEALY: Well, you know Chris, there's one thing that supporters of this settlement and critics of this settlement can readily and easily agree on, and that is that it's a complex agreement and the settlement documentation is itself, long and complex. And clearly, there was a small number of rights holders who asked the court for some additional time, in which that they could evaluate what the settlement meant for them and clearly, the judge agreed to give them more time by pushing the final fairness hearing back a number of months. So the consequence of that as far as I'm concerned is that we have an extension and it gives everyone just that little bit more time to digest what the settlement means for them and the circumstances that led us to this point in the relationship between the rights holders' representatives and Google.

So for those who brought the action originally, namely the Authors Guild and the Association of American Publishers and others, it gives them and us, this extension I mean, gives them and us an opportunity to explain the benefits of the settlement more clearly and to answer the questions, the legitimate questions, that are coming up in response to the settlement. And very importantly, for those rights holders who choose to opt out of the settlement, which essentially gives them the right to sue Google on their own if they wish, it gives them more time, an extra four months, to make the necessary decisions that they want to make. But I think it just gives everybody a little more space and time to determine what this really means for them.

KENNEALLY: Well, through this podcast, you're speaking to our audience of rights holders, authors, and publishers. And so take this opportunity, then. Tell us about the benefits and give us the pitch, if you will, for coming on board.

HEALY: Well, there's a lot to say and we have relatively little time so I'm going to do it at a very high level, obviously. But the first thing to be said about this agreement and the settlement document that encapsulates the agreement is that for the first time, it's going to give readers, researchers easy access to millions of out of print books. And let's bear in mind that many of these out of print books are difficult, or in some cases, impossible for readers to obtain today. And this settlement agreement is going to make that access possible for the first time in a searchable online environment.

Secondly, because the settlement agreement gives free access to this corpus of works to every public library building in the United States, you have to see the



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revolutionary character of that, in my view, because what it's effectively doing is turning every public library building in this country into, effectively, a world-class research facility by giving them free access to this online collection, if you like, of millions of out of print books. And obviously, as people know, the settlement allows for the creation of a database available under subscription to every library in the United States. Now, and what that effectively does is it permits any college or any university in the US to subscribe to this same, very rich, very complex database of out of print books. So you can see immediately that there are public-facing benefits to this settlement in terms of enriching people's access to this enormous corpus of previously difficult to access books.

KENNEALLY: If I can just say, too, given what you mentioned earlier about your background as a librarian, that must be the librarian's ultimate dream, to have access to all of these works.

HEALY: I think it ought to be.

KENNEALLY: I can see you smiling. You must think so.

HEALY: I think so. We talk about threads with my early career. My career was all about making or harnessing digital technology to put resources more widely available for the benefit of everyone. And to some extent, I see this as a continuation of something I started more than 20 years ago, but let's not lose sight of the other important constituents in this.

KENNEALLY: I was just going to say, so while it makes librarians happy and they might want to be a part of it, why would authors and publishers want to be a part of this as well?

HEALY: Well, I think they should be delighted by this for a number of reasons but because it unlocks, in my opinion, value that was lost to rights holders through these millions and millions of out of print books, in a way, the settlement agreement is breathing new life into out of print books and leaving completely alone the existing market for in print books online. So that's a very important thing to bear in mind and I think what we're really saying is that for this large corpus of out of print books, this settlement is finding new readers for these, and that has to be to the benefit of rights holders. Not least because they'll be receiving a revenue stream for the first time from a collection of books that previously was earning them nothing whatsoever.

KENNEALLY: So we should bring up the question that has been reported in major newspapers nevertheless, and that is that the US Department of Justice is evaluating



this proposed settlement for antitrust implications. Can you give us your reaction to the DOJ's inquiry and whether it has the potential to delay the settlement further? How do you respond to what we've all been reading in the papers?

HEALY: Well, like you, I've been reading the same reports that you've read, Chris, and I'm not personally or, indeed, directly involved in any of that. So it's probably, given that it's an ongoing investigation, it's probably inappropriate for me to comment on that, other than to say of course, that like you, I'm aware that it's going on. But what its ramifications are for things overall, it's really not for me to say, I don't think.

KENNEALLY: Well, certainly the size of what's involved here is a major attraction for absolutely everyone. I think the coverage that we've seen on the settlement goes well beyond simply a business story. This is a story that has an impact for the American public, for rights holders, in fact, around the world. And I know they are asking some questions as well. What kinds of questions are you getting from rights holders outside the United States and how are you answering them?

HEALY: Well, that's a great question because I think it's an underappreciated part of this settlement, that international rights holders are affected by it. The books that Google digitized from collections at Michigan and Stanford and other places included a large number of works, a very significant proportion of works that are owned by rights holders outside the United States. And it's been my great pleasure in recent months to talk to representatives of rights holders in Europe and elsewhere about their issues. And of course, to a great extent, the questions being asked by foreign rights holders are very, very similar to those being asked within the United States. Namely, what does this settlement mean for me? How do I go about claiming my works? What's the difference between opting out of the settlement and opting in? Or opting out and remaining in while removing my books? And so on.

Lots and lots of important questions, which can be, and generally have been, answered quickly and easily because there are a lot of myths and misconceptions about this settlement right around the world, despite the huge program of notification that went on around it. But to answer your question directly, I think foreign rights holders have asked some distinctive questions. For example, it's an important part of the settlement that the determination of whether a book is commercially available or commercially unavailable affects how the books will be displayed within the final services offered by Google. So we've had European rights holders saying to us, well, what resources are used to determine whether my book is available or unavailable? So they've been focusing in perhaps more keenly than US rights holders on issues of that nature.



KENNEALLY: Can you answer that, then? What are the factors involved, perhaps for the European rights holders, but then for the US rights holders, too? Is there a difference?

HEALY: I think there is. Obviously, rights holders in Europe and elsewhere abroad want to be sure that the right databases are being interrogated and used properly to determine that a book is available or unavailable. And they have given Google, and everyone involved in the settlement agreement, a very clear expression of their views on that topic and very clear instructions about the resources that they would like to see consulted and used to determine commercial availability. And I have to say, I think there's been a really productive partnership between those on the one hand, who negotiated the settlement, including Google and rights holders overseas, about those issues. I think there's been a real spirit of cooperation, if you like, and a real willingness to solve what are often very complex issues, indeed.

KENNEALLY: For you, as rights holders though, is there a definition of commercial availability that you can put on a bumper sticker? Is it easily summarized?

HEALY: No, it's not easily summarized I don't think but as I say, the picture in the United States is a lot clearer because there's generally consensus around what resources you want to look at to determine whether a book is available or unavailable. It's not such a contentious issue here as it is, rightly, elsewhere.

KENNEALLY: Right. And the complication, perhaps, in other countries is that what may be true of France, say, would be not so true in terms of resources in Spain or Germany or for that matter, Eastern Europe, wherever. Well, it's been a great opportunity to get an idea of your background, your professional background. You've witnessed, obviously, a lot of changes in the business not only from the way books are catalogued for libraries but the way they're sold online and to, in fact, how they're being published in all manner of digital formats. And so look ahead for us, use the crystal ball you brought to our offices here, and tell us what you think all of these changes, but particularly the settlement and the creation of the Book Rights Registry, is going to mean for authors, publishers, and their audiences. What's going to happen in 2014? What's it going to look like?

HEALY: Well, in some respects, it'll look somewhat similar to today in the sense that we've witnessed in the last two years, I would say, the beginnings of maturity for the digital publishing marketplace, if you like. In the last couple of years, we've seen e-books really start to take off, even though we talked about their promise for many, many years. It's really been only the last couple of years where some degree of real growth and real maturity has started to appear. We've seen a proliferation of



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devices on which to read electronic content, from the iPhone to the Kindle to the Sony eReader, and we're going to see more of that. But it's from the consumer's perspective, I suppose, that I'm most fascinated with all of this because it's clear that we're going to see a continuation going forward of a phenomenon that we've seen only relatively recently, which is the customer, the reader wanting content to be available and distributed when they want it, how they want it, and combined with other materials and so on, and also priced the way they want it.

So I think we're going to see continuing change and the involvement of Google in this marketplace and others is going to be part of the transformational character of the next few years. I don't think you can have a situation where organizations like Amazon and Google are making their presence more keenly felt in the digital book world and not expect to see transformation. And the critical thing, I think, about this settlement, and particularly about the Book Rights Registry, is that it introduces into the environment a new organization, which is really determined to give an unprecedented degree of control for authors, publishers, and others, rights holders, on how their copyrights are exploited and distributed in this new digital world. I think it's been a very exciting situation for a long time and it's only going to get more so, and I think the settlement is part of this new landscape.

KENNEALLY: Well, I agree with you that consumers, content consumers – we used to call them readers, Michael, but now they're content consumers – they don't think about the product so much as the content, today. If they want to get something to read, they could consume it, as you say, on the phone, in an e-reader of any sort, at their desk at the laptop, or they might even buy a book. And they still buy plenty of books but they don't think about the content holder so much as they think about the content itself, it seems.

HEALY: I think so. And I think that's the great challenge for tomorrow's publisher. I was talking to a graduate student at NYU recently and I asked her how she finds her news. Does she buy a daily newspaper? No, she doesn't. Does she access the Web site of the New York Times or the Washington Post every day? No, she doesn't. So I asked her, how do you find news items of significance? And she said to me, if a new story is important enough, it will find me. And I think there's a lesson there for publishers, too. There is such a massive universe of content being put at the disposal of these hard-pressed consumers and readers every day that publishers have a tremendous challenge just grabbing the attention of these readers and recognizing that they want to consume content in a different way. They want it delivered in the most flexible ways to suit their lifestyles. They want it available when they want it. They want it in chunks if that's the way they want it, and they want it priced in a different way, too. So the consumer, the reader is changing, and



I suspect the successful publishers tomorrow will be those who recognize the extent to which the landscape for the consumer is being transformed.

KENNEALLY: Well, it certainly sounds like there's a lot of challenges there but a lot of potential as well. And getting through all of that will be your job, Michael, if everything comes to pass. We have been speaking today with Michael Healy, who is currently executive director of the Book Industry Study Group, and who is expected to serve as the Book Rights Registry's first executive director. Thank you for joining me here at the offices of CCC, Michael.

HEALY: Well, thank you for inviting me. I enjoyed it very much.

KENNEALLY: So did I, and it's been a pleasure seeing you again. Today's program is the second in a series of presentations from Copyright Clearance Center about the Authors Guild-AAP-Google settlement. Recordings of this and all other sessions can be found in the education section of our Web site at copyright.com/education. For all of us at Copyright Clearance Center, this is Christopher Kenneally wishing you a very good day.

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