

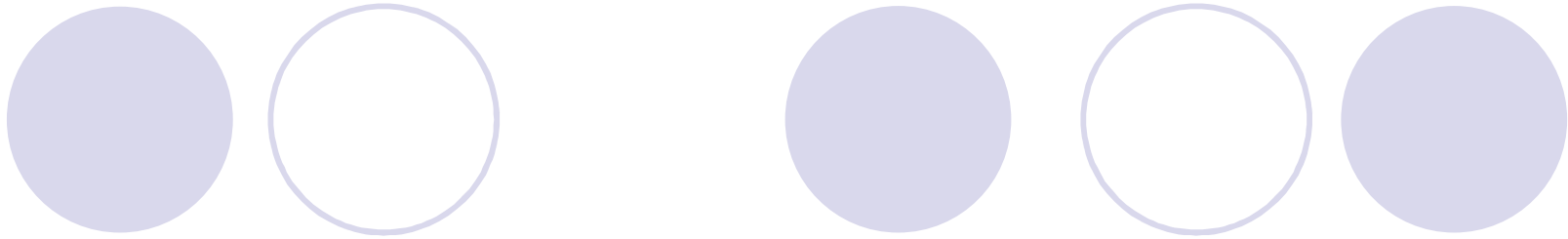


Google Library: Major Concerns and Legal Issues in China

Dr. Zhang Guangliang

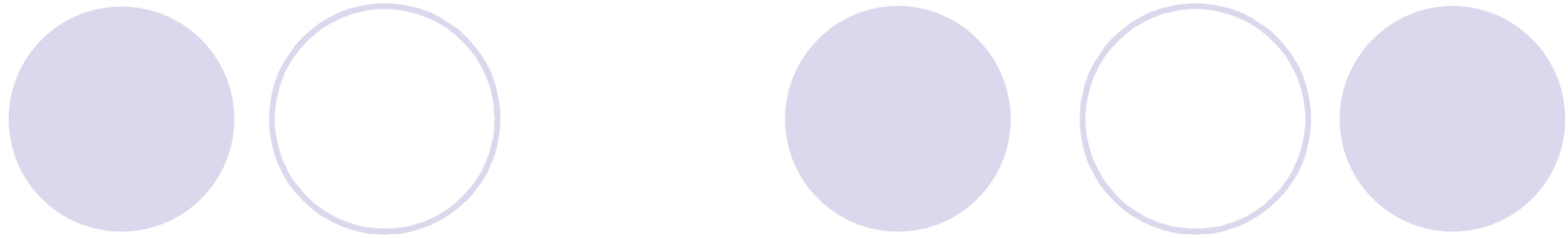
Nov. 13, 2009

Beijing



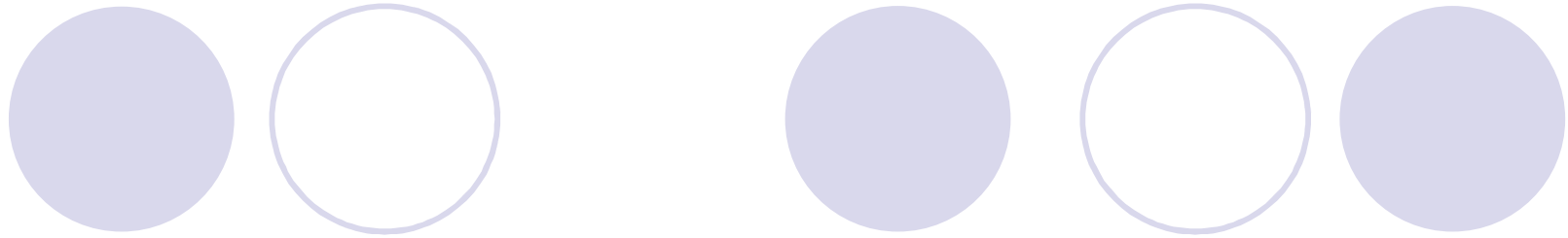
CONTENTS

- I. Background
- II. Major Concerns In China
- III. Legal Issues Concerned
- IV. Possible actions



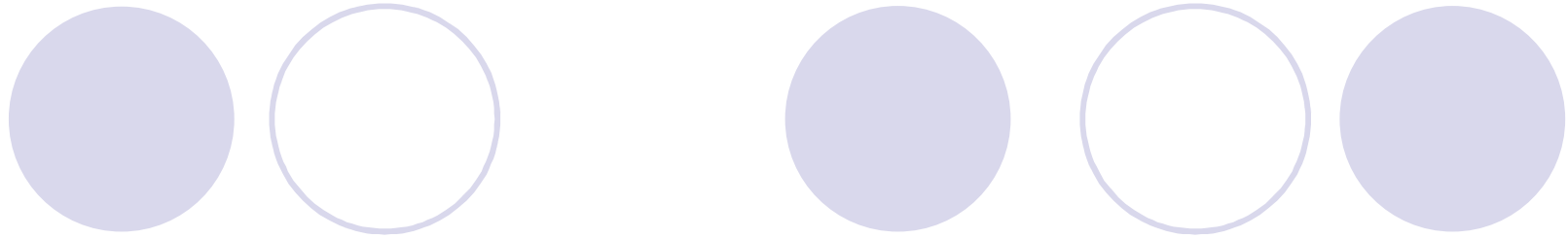
I. Background

In December 2004, Google Inc. announced its Google Print Library Project (“Google Library”), and began to scan millions of books provided by research libraries to make them available in a web search.



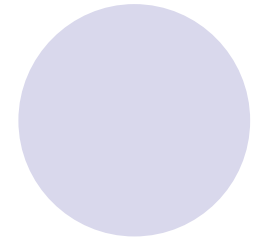
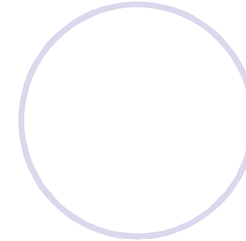
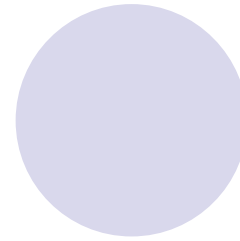
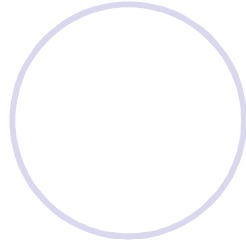
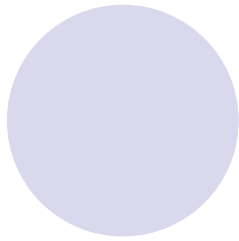
In 2005, American Association of Publishers and Authors Guild sued Google for breach of Copyright.

In 2008, the parties reached a settlement, in which Google offered to compensate authors \$60 per title, provided they allow Google to continue using their books online, and 63% of revenues generated from reader downloads will go to the authors.



On Nov.9, 2009, Google submitted a new settlement proposal, which is awaiting the court's final approval.

China Written Works Copyright Society (CWWCS) found that 17,922 books by 570 Chinese authors had been scanned by Google and included in its library. 75 among those 570 authors are members of CWWCS, and 1961 works are related. CWWCS has urged authors to “bravely stand up and adamantly defend their legal rights.”



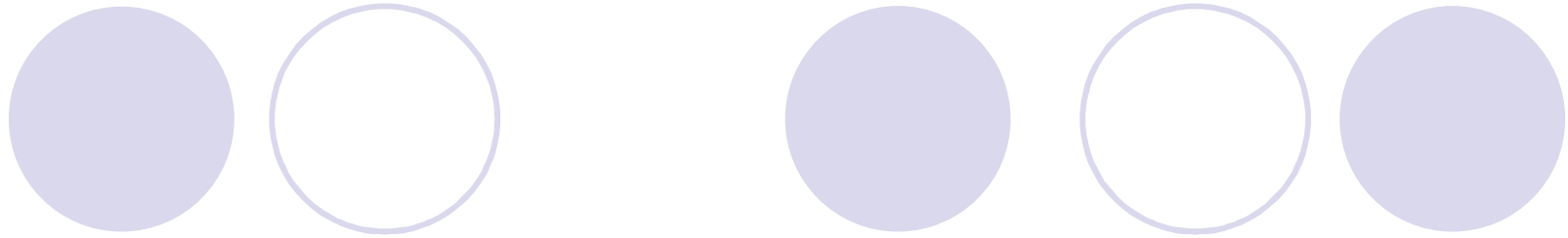
II. Major Concerns In China

i. the rights and interests of the authors and publishers

ii. the control of information

iii. the privacy of readers

iv. the antitrust issues.

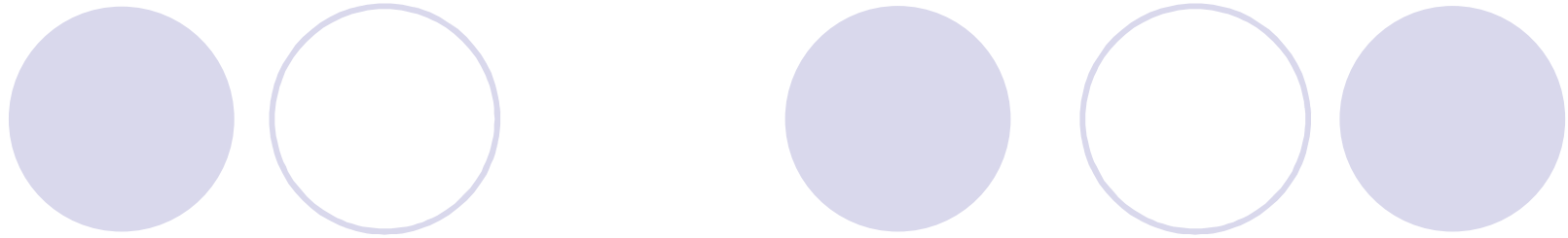


III. Legal Issues Concerned

I. the legality of the settlement reached in USA and its effect on the Chinese authors.

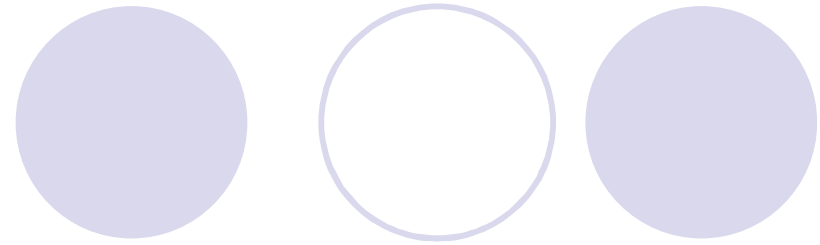
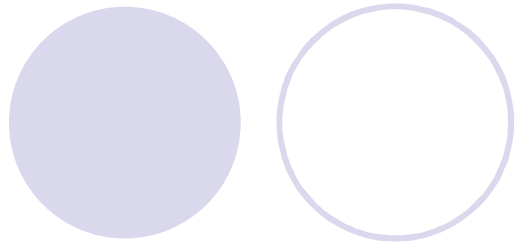
ii. Whether the Chinese rights holders can sue Google in China

a. Jurisdiction



“In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People's Republic of China, if the contract is signed or performed within the territory of the People's Republic of China, or if the object of the action is located within the territory of the People's Republic of China, or if the defendant has distrainable property within the territory of the People's Republic of China, or if the defendant has its representative office within the territory of the People's Republic of China, the people's court of the place where the contract is signed or performed, or where the object of the action is, or where the defendant's distrainable property is located, or where the torts are done, or where the defendant's representative office is located, shall have jurisdiction”.

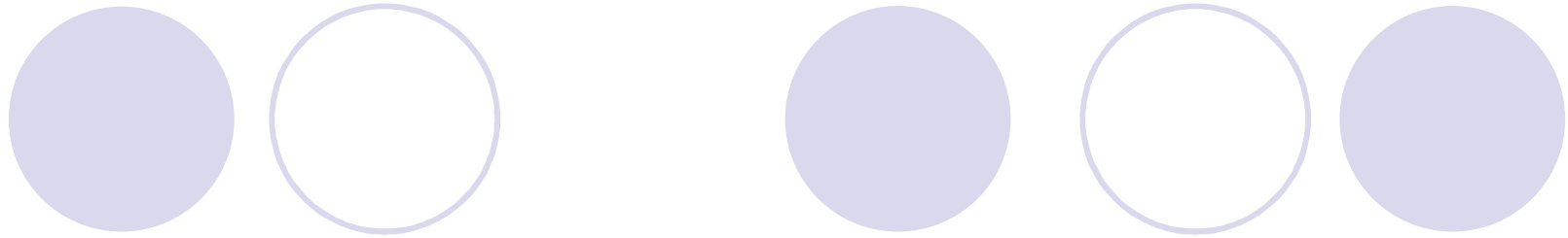
--Art. 243 of the Civil Procedure Law of PRC



b. Evidence

c. Remedies

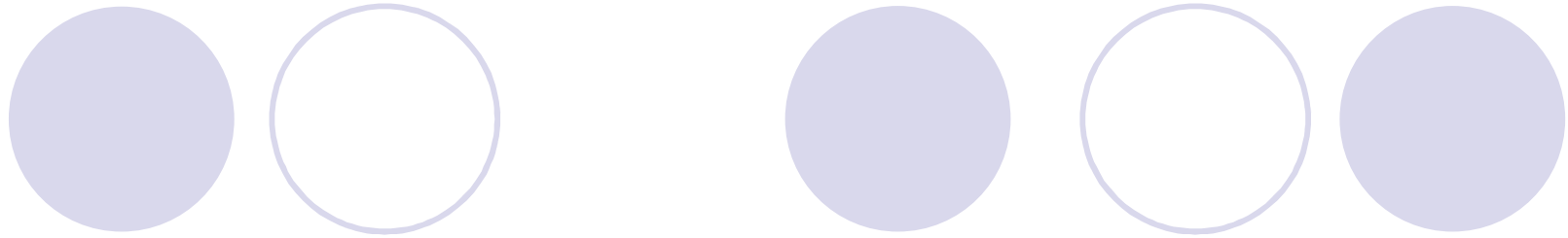
**d. the Standing of CWWCS to bring the
action in China.**



IV. Possible actions

i. International communities

a. within USA, Non-profit organization, Libraries, Major antagonists of Google such as Microsoft, Yahoo and Amazon, Department of Justice, are against the Settlement.

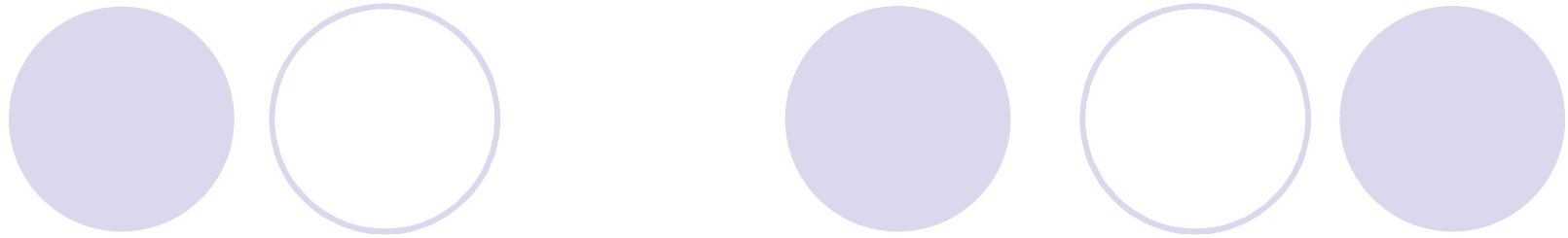


b. EU

German government filed a submission to the American court, arguing that the settlement would violate the copyright law of German.

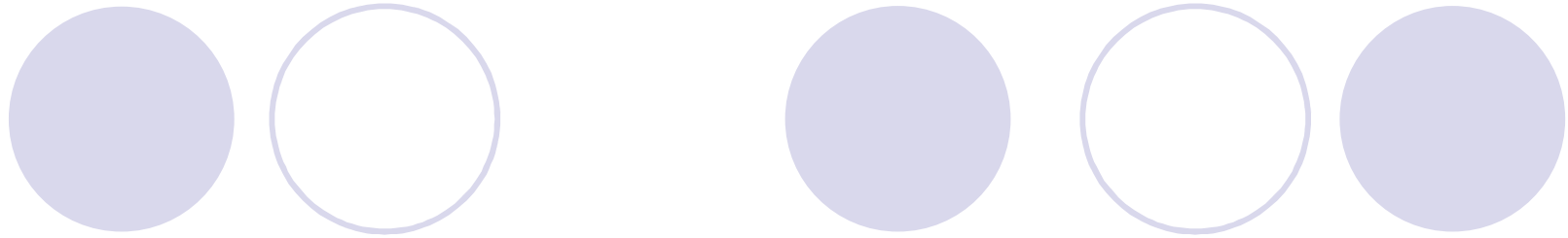
French government is against Google Books Projection.

On Sep. 7, 2009, Google expressed that it would remove European books from its for-profit digital library.



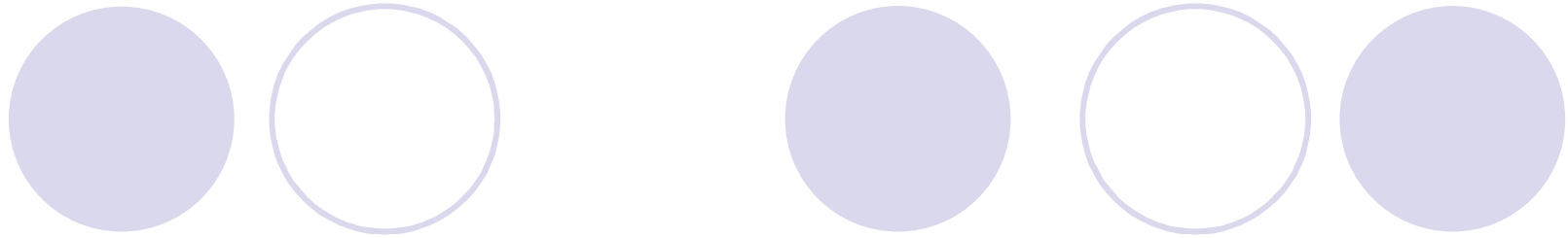
c. Japan

Two Japanese noted writers filed a complaint with local authorities of Google's action.

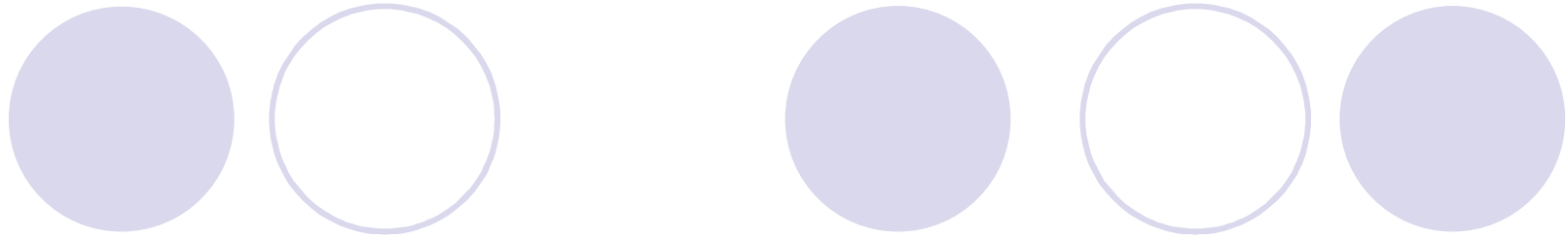


ii. Reactions in China

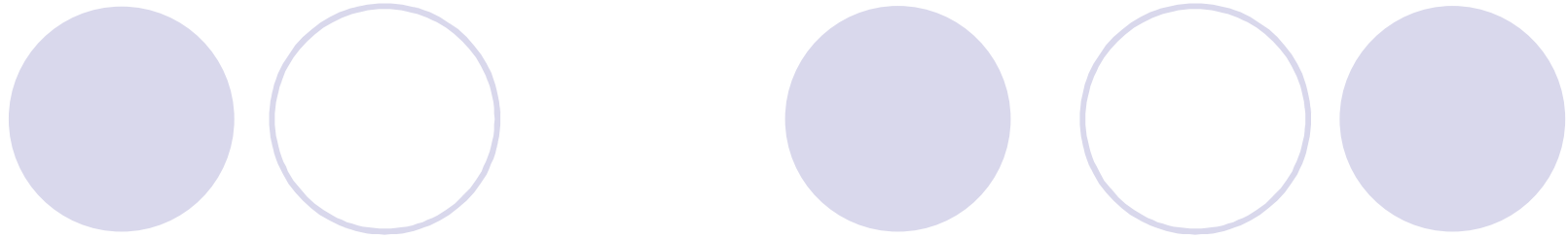
a. Disputes over Google library has attracted the attention of relevant authorities of Chinese government, it was said that representatives of China would discuss this issue with their US counterparts at the conference of China-US Joint Commission on Commerce held on October, 2009.



- b. Notice on the Strengthening Copyright Protection by Libraries, issued by National Copyright Administration, Ministry of Culture, Ministry of Education and the Office of National “Anti-pornography” Working Group, requires the libraries to respect the rights of copyright holders and should not copy or disseminate copyrighted works via internet without authorizations.



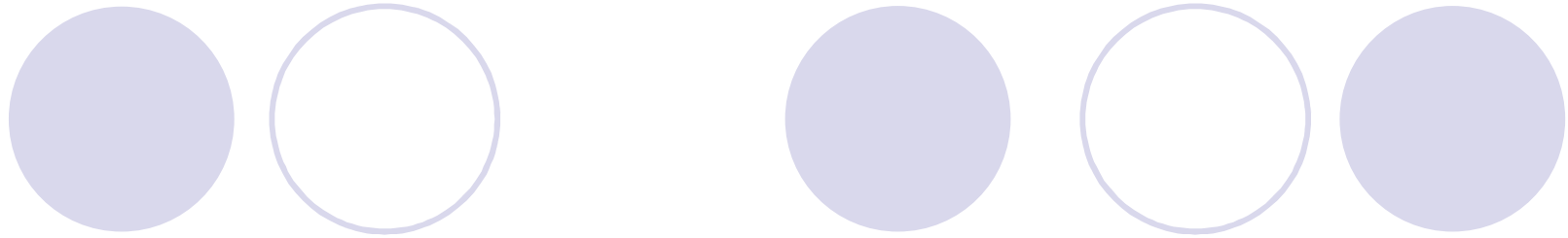
c. The negotiations between CWWCS and Google, the second round negotiation will begin on Nov. 16 or 17, 2009. CWWCS has established an expert group to tackle this issue.



d. Litigations in China are inevitable

Even CWWCS and Google will reach a settlement, Chinese authors which are not members of CWWCS are likely to bring actions against Google.

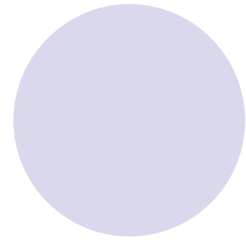
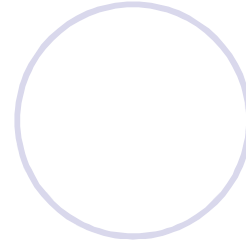
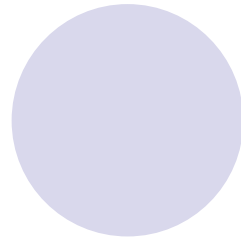
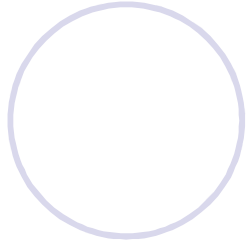
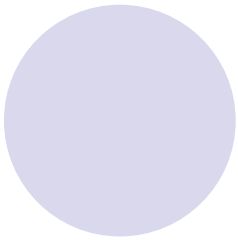
Injunctions will be awarded if infringement is found, and legal costs will be reimbursed, however the damages awarded by the court will probably not be very big.



e. Chinese government should consider to establish Chinese Digital Library, to face the Challenges by digital technologies and commercial digital library such as Google Library.

European Digital Library

Japanese Digital Books Search System



Thank you!