

WHY THE GOOGLE SETTLEMENT MATTERS TO YOU

Nearly every book published before January 5, 2009 is covered by the Google settlement agreement.

As a copyright owner, you should understand how the Google Book Settlement may affect you.

We strongly urge you to review the short summary below and sign-up for one of our information seminars (details in the accompanying email). We will take you through this complex settlement agreement and provide you with guidance as to why the settlement matters to you.

Where did it all begin?

Google first announced its intention to undertake a massive project to digitize books and make them available to users in 2004. Academic libraries, including Harvard and Oxford, entered into partnerships with Google to digitize the libraries' collections of works. However, in many cases the digitization was done without permission from the copyright owner.

In 2005, the Authors Guild, Inc. and certain authors and publisher representatives of the Association of American Publishers separately sued Google for copyright infringement.

In 2008, the parties reached a settlement agreement, which, if approved by the court in a hearing scheduled for June 11, 2009, may affect almost every book in the world, and consequently, almost every copyright owner (creator, publisher, heir or other rightsholder) who has copyright in one or more books. In fact, the settlement notice advises copyright owners to "assume that you own a U.S. copyright interest in your book". If this applies to you, you are considered part of the settlement class for this agreement.

What does the Settlement Agreement cover?

The settlement would allow Google, on a non-exclusive basis, to digitize nearly every book ever published before **January 5, 2009**. This is literally millions of works, and most likely will include **your** works.

If you are part of the settlement class for this agreement, you have two options.

Option #1: Be Part of the Settlement:

As a part of the settlement, Google must pay out a total of US \$125 million.

This includes US \$34.5 million to fund and establish a Book Rights Registry, a non-profit entity established to create and maintain a database of copyright owners and their works, locate and distribute payments to copyright owners, assist in resolving disputes between rightsholders, and represent the interests of rightsholders with respect to the settlement and other commercial arrangements.

Google must also pay a minimum of US \$45 million to the Registry to fund cash payments to eligible rightsholders, of at least US \$60 per book digitized by Google by **May 5, 2009**. To be eligible for a cash payment, you must file a claim for your books by **January 5, 2010** (a claim form is available online at www.googlebooksettlement.com).

You are not eligible for the cash payments if you opt-out by **May 5, 2009** or remove your books from the settlement by **April 5, 2011**, unless your work has not yet been digitized.

The settlement enables Google to:

- index your work;
- display up to 20% of your work;
- display short excerpts of your work;
- display bibliographic content; and
- allow printing, copying and pasting, and annotations of your entire work, at a fee, and all subject to varying limitations.

Through the Book Rights Registry, Google will pay copyright owners 63% of all revenues earned for specific commercial uses. To receive revenues from these future income streams, you must submit a claim form for your books, although this may be done at a later date.

Google can sell subscriptions to the digital library to institutions, such as colleges and universities, sell online access to books to individual consumers, sell advertising on pages from books, and make other uses or create new revenue models, such as a print-on-demand service. Google's commercial projects may provide you a new distribution channel and income stream. Depending on the circumstances, either the author, the publisher or both together will be able to instruct Google as to whether a book is to be part of all, some or none of Google's commercial offerings and, at times, set some pricing options for the use of the book in Google's programs.

Google will also be able to provide free public access to the digital library to libraries and colleges, on a restricted basis, and allow your work to be used for non-consumptive research, again with certain limitations.

Option #2: Opt-Out of the Settlement:

If you do not want to participate in the settlement, you must opt-out of the settlement by **May 5, 2009**. By opting-out, you will retain control over your works and you will have the right to sue Google for any infringement of your copyright. If you want to participate in Google's Book Search program even though you have opted-out of the settlement, you may still be able to do so through Google's Publisher Partner program.

Please visit www.googlebooksettlement.com for more information on opting out.

If you make neither a claim nor opt-out of the settlement agreement, your works will automatically be bound by the settlement.

What isn't covered?

The settlement agreement does not cover the works of copyright owners who have chosen to enter into separate agreements with Google, through Google's Partner Program. The settlement does not cover works that were first published in the United States but were not registered with the U.S. Copyright Office as of January 5, 2009. The settlement also does not cover works in the public domain, U.S. government publications, pictorial works, such as photographs, illustrations (except illustrations in children's books) maps and paintings contained in books. If your books are published after January 5, 2009, or you are a copyright owner of periodicals or sheet music, your work is not covered by the settlement agreement.

Access Copyright, The Canadian Copyright Licensing Agency, is mandated to protect and advance the interests of Canadian authors and publishers who have legal rights in copyright protected works that are subject to reproduction. We also educate and provide information to authors and publishers about copyright issues.

As part of our continuing responsibility to you, Access Copyright has volunteered to work with the notice providers for the Google settlement to ensure that you receive proper notice of the settlement.¹

IMPORTANT DATES:

January 5, 2009: Nearly every book published before January 5, 2009 is covered by the settlement agreement.

May 5, 2009: Google must pay a cash payment for every work digitized before May 5, 2009, or which Google reasonably anticipates will be digitized in the near future.

May 5, 2009: If you wish to preserve your rights to sue Google for infringement, you must opt-out of the Google settlement by May 5, 2009.

January 5, 2010: If you wish to claim a cash payment for works already digitized by Google, you must complete a "cash payment-books" form by January 5, 2010.

April 5, 2011: If you want Google to delete your book from all servers, you must make a removal request by April 5, 2011.

RESOURCES:

Access Copyright's Google Settlement Seminars:

Access Copyright is offering seminars on the settlement and what it means for Canadian copyright owners.

Dates, information and details on how to participate in our seminars are available in the email that accompanies this summary.

Google Book Settlement Site **(www.googlebooksettlement.com):**

Use this site for more information on the settlement including:

- Notice of Claim Settlement;
- a summary of this notice;
- a claim form; and
- a place to provide your own contact information to ensure the receipt of timely updates on this issue by email.

¹Important: Nothing in this document is intended to be legal or business strategic advice. You are encouraged to consult the official Google Book Settlement documents, which are available at www.googlebooksettlement.com, and to consult with a lawyer for advice on your rights.