

## **BRIEF SUMMARY OF THE GOOGLE BOOK SETTLEMENT**

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***Google's mission to organize the world's information:*** In 2004, Google launched an ambitious project to digitize the entire collections of books from several major university libraries, without seeking permission of authors or publishers. It copied not only public domain works, but also works protected by copyright. Google also made a copy of each file for the participating libraries. It made the entire contents of the digitized books searchable through its Google Book search engine. If a user's search terms appeared in a public domain book, the user could view the entire contents of the book. For books still in copyright, Google displayed only "snippets" of text showing the search terms. Google asserted that this practice of scanning copyrighted books and displaying snippets of the text to users was a "fair use" under the U.S. copyright law.

***Class action law suit filed on behalf of publishers and authors:*** In 2005, the Authors Guild and the Association of American Publishers brought a class action lawsuit for copyright infringement. After several years of litigation and negotiations, the parties announced a proposed settlement of the lawsuit in October 2008. Because the litigation is a class action, the proposed settlement affects the rights of publishers and authors even though they are not parties to the lawsuit. The proposed settlement must be approved by the court before it becomes final and binding on all class members.

***Proposed settlement affects all owners of a U.S. copyright interest in books:*** The Google Book settlement affects virtually every U.S. book publishing company, as well as many publishers outside the U.S. It also affects authors and their heirs. The class is broadly defined to include all persons who, as of January 5, 2009, own a U.S. copyright interest in a book (or certain insert material) that is implicated by a use authorized by the settlement (i.e., scanning a book or displaying excerpts). The settlement excludes books not registered with the U.S. Copyright Office, unless the book was first published outside the U.S.

The proposed settlement agreement is extremely complex -- the agreement, appendices and attachments total over 300 pages. The documents can be found at [www.googlebooksettlement.com](http://www.googlebooksettlement.com). The proposed settlement authorizes Google to continue operating Google Book Search without fear of a lawsuit from any member of the class of authors or publishers. It requires Google to pay authors and publishers who choose to participate in the settlement a minimum of \$60 for each book Google has digitized. It also sets up a mechanism for Google to share future revenues with authors and publishers. Google will distribute to rightsholder 63% of all revenues it earns from the sale of institutional subscriptions, online access to books, and advertising; it will retain 37%. All payments and revenue sharing will be administered by an independent not-for-profit entity known as the Book Rights Registry to be set up for the benefit of the rightsholders under the terms of the settlement agreement. In return, authors and publishers release Google from any liability for its conduct of scanning books and displaying excerpts without permission.

***Display of excerpts of in-print and out-of-print books:*** Rightsholders will be able to control whether and how much a book is displayed by the search engine. They will have the option to request that one or more books be removed from the Google Library Project altogether. They will also have the ability to manage the display uses that Google makes of their books.

The majority of the 7 million books scanned by Google are in copyright, but out-of-print. The proposed settlement treats out-of-print books and in-print books very differently with respect to the material displayed to a user. Unless the rightsholder specifically permits it, excerpts of in-print books will not be available for preview. In this way, the settlement departs from Google's previous practice of showing snippets for books in copyright unless the copyright owner instructed otherwise. Previews of out-of-print books, however, will be available unless the rightsholder specifically prohibits it. There are detailed rules relating to what constitutes a preview, but in general a preview will allow a searcher to view up to 20% of a book, though it will not allow the user to print or cut and paste the material.

Publishers and authors might both be rightsholders for a single book, and the proposed agreement has detailed measures for dealing with the allocation of payments between authors and publishers and the possibility of conflicting instructions from rightsholders. This aspect of the settlement raises potentially difficult issues relating to reversion rights.

The settlement is not limited to U.S. authors and publishers. Authors and publishers outside the U.S. can receive compensation for books that have been digitized by Google so long as their country has copyright relations with the U.S. (only a very few countries do not, including Iran, Iraq, Afghanistan, Ethiopia, and a few others).

***Deadline for an important decision is fast approaching:*** All authors and publishers need to make the threshold determination of whether to participate in the settlement very soon. Any rightsholder who believes the infringement of its rights is not adequately addressed by the settlement must "opt out" in order to preserve the right to take action against Google individually. Rightsholders have only until **May 5, 2009** to opt-out. Any author or publisher who does not follow the procedures to opt-out will be bound by the terms of the settlement. In other words, if a rightsholder does nothing, it is governed by the settlement and cannot bring a separate claim against Google for infringement. Rightsholders also have the right to stay in the class and submit objections to or comments on the settlement. Objections or comments must be submitted on or before **May 5, 2009**. A rightsholder claiming a cash payment for books digitized by Google must do so by **January 5, 2010**.

Publishers and authors have many choices to make under the agreement, and some of those choices must be made before specific deadlines. These choices will determine whether a rightsholder participates in the settlement, whether and how its books will appear in Google Book Search, and whether it will receive any payments under the terms of the settlement.

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