

Google Books Settlement Agreement Information

Prepared by the Quebec Writers' Federation

SOME HISTORY

In 2004, *Google* announced its Library Program. The plan was basically to go to several university libraries, scan public domain books there, and make these books available for internet use.

Late in 2004, *Google* announced it would digitalize ALL copyright-protected books in their entirety in these libraries for inclusion in their database—without permission from authors or publishers—and make “fair use” snippets available to Google searchers on the net.

The *American Authors Guild (AAG)* was shocked at this blatant infringement of copyright and filed a class-action lawsuit in September 2005. One month later, five U.S. publishers filed separate lawsuits.

In May of 2006, AAG sat down to its first settlement conference with Google as to how it might display books on the internet without infringing copyright. Google proposed an unsatisfactory solution. Then the AAG proposed its own idea for a settlement. So what is known as the “Google Books Settlement” is a document **conceived by writers** in response to Google’s actions and a changing technological world.

Since 2006, there have been many negotiations and some amendments to the Settlement Agreement. To be binding, the Google Book Settlement needs approval by the US Courts.

On November 19, 2009, a judge in NY gave preliminary approval to the Amended Google Books Settlement and set a final settlement-fairness hearing for **February 18, 2010** to determine whether the agreement is “fair, reasonable and adequate,” and whether to approve the Amended Settlement Agreement.

IMPORTANT INFORMATION

As a published author, the first thing you must know is that **you are automatically covered by the agreement unless you opt out on or before January 28, 2010**. Those writers who have formally opted out and want back in must apply on or before January 28, 2010.

What does opting out mean? It means the settlement does not cover you as a writer, and you retain the right to sue Google independently for copyright infringement of your

works. It also may mean that you are making a statement about Google's brazen hubris in the world of cyber print.

How do I opt out or get back in before January 28, 2010? Visit the Google Books Settlement Website (www.googlebooksettlement.com) and follow the instructions laid out there.

What does staying in mean?

It means

- a) you retain the right to see how things go, and if you don't like it, to instruct Google to remove your works from all internet uses by **March 9, 2012**.
- b) You retain control **at all times** over what parts of your work can be displayed by Google, when and how they are displayed.
- c) You will receive a digitalization payment (for books digitized on or before May 5, 2009) and an inclusion payment if you choose to include your book in the institutional subscription (libraries, universities) database.
- d) You may receive a stream of payments, likely small, from specifically authorized commercial users by Google.
- e) Under the settlement agreement, the digitalized works will only be displayed by Google in the U.S.

What is in the Google Book Settlement proposed by AAG and American publishers, and accepted by Google?

1. The most important thing is the establishment of an **independent Book Rights Registry** to safeguard copyright and administer royalties. Google's only involvement will be to supply the cash to set up the Registry. The Registry will be run by an independent board of authors and publishers to control this copyright, check the security of Google's database, check the financial books.

Half the seats on this independent Registry Board are occupied by writers, half by publishers. The four countries in the deal (U.S., U.K., Canada, Australia) will all have representation on this Board (Canada will send one publisher, and one writer representative).

2. Your copyright will be protected. **Out of print books** are treated completely differently from **books in print**.
 - a) Out-of-print books will be completely displayed UNLESS the author objects.
 - b) In-print books need **both author and publisher consent** to be displayed online.
3. **Revenues for Writers & Publishers:** The money for accessing Google books goes to Google first and then is dispersed to authors and/or publishers. Google keeps 37% and passes 63% along to the Books Rights Registry, which is a pure payment

organization and should be very lean (hopefully only around 5% going to administrative costs).

4. **Some payment scenarios:**

- a) ***Out-of-print (OP) book with rights reverted*** back to author: Author gets 100%.
- b) ***Out-of-print book, rights not reverted*** back to author: 50:50 split author & publisher unless it is a pre-1987 book, in which case the split is 65:35 author & publisher.
- c) ***In-print books***: Google pays publisher, who pays authors according to their publishing contract. In case of dispute, author can go to arbitration (except if the book is a textbook).

(NOTE: There is an arbitration clause in the Settlement Agreement: For a modest fee you can take your publisher to arbitration. This is a very useful tool, MUCH less costly, much more efficient than legal action.)

- 5. U.S. display only.
- 6. Images are not included in the deal (so picture books (except for children's picture books), and comics are not included.

Kinds of Display that will be available in near future

- ***Public Access Terminal (PAT)***

At every library and university, you would have a free PAT with view-only access to database of mostly out-of-print books (and in print books only if all rights holders agree to put them in the program). Revenue comes if a printer is attached with a per-page fee.

- ***Google Previews (now available as part of the Google Partner Program)***

Out-of-print (OP) books can be seen up to 20% per viewer per month. Financed by ad revenue.

- ***Whole On-line Book***

Author sets the price here. Once someone has seen a preview and wants the whole text, he/she can pay a fee to access the book from any computer. He/She can print it out, cut and paste and annotate the book and share the annotations with others who have also purchased the book. Not a clean text, so for personal use only.

- ***Institutional Subscription***

Colleges and universities in the U.S., mostly for out-of-print books. Flat fee based on numbers of students and teachers. Annual subscription. Payment to author depends on how often your book is accessed.

Issues for Canadian Writers

1. **CANADIAN BOOKS:** Canadian books are part of the deal. An amendment to the deal on Nov 13, 2009 restricted the agreement to books published in four countries: U.S., U.K., Australia and Canada. Remember that display of the works is only (for the time being) for the U.S. market. Because the settlement is non-exclusive, other parties may ask the Book Rights Registry for a license to use the books in different ways and in other countries subject to the author's approval. Digital uses are inevitable especially as technologies are developed (witness the seven new models of e-Readers introduced at the January 2010 Consumer Electronics Show in Las Vegas, all using the Android operating system that allows access to content on Google).

Recent amendments to the Settlement Agreement also will put two representatives (one author, one publisher) from each of these countries on the Google Books Registry Board. So Canadians will have a say in how books are displayed online, and how Canadian authors are paid.

(NOTE: Canadian, U.K. and Australian authors can at all times check that only the settings they choose are on display in the U.S. Authors will have a portal to check their titles.)

2. **ORPHAN WORKS:** Some writers (The Writers Union of Canada [TWUC] in particular) are concerned about "**orphan works**" or works whose authors cannot be found. This may affect foreign writers, who may not sign up as readily as American writers with the Books Registry. So their books may become "orphans." The task of tracing authors will be left to the Books Registry. Tracing authors in the digitized age should not, in principle, be hugely difficult. However, many foreign writers are concerned on this point.
3. **FREE LIBRARY TERMINALS IN U.S.:** The Writers Union of Canada is also concerned with free library terminals in the U.S. They worry about effects on future copyright legislation in Canada. Will free public access in U.S. libraries mean we will be forced to give library access for less payment in Canada?

Key Dates

January 28, 2010: Supplemental deadline for all authors and publishers to opt out, opt in again or object to the Amended Google Books Settlement Agreement.

February 18, 2010: Fairness Hearing in NY Court as to whether the Google Books Settlement Agreement is "fair, adequate and reasonable."

March 31, 2011: New, extended deadline (for books published on or before January 5, 2009) by which Author or Publisher must submit a claim form for the book to be eligible for cash payment from the Settlement Fund.

April 5, 2011 - Deadline to tell Google to remove a book from the Google Book Project (blocking accessibility by libraries).

March 9, 2012 - Deadline to request that Google remove a Work from the Book Project (blocking access to book by Google, which would have access for its records but not for internet display).

To find out more about this Settlement Agreement, or to join the Google Books Registry

- Go to www.googleregistry.com
- The Writers Union of Canada also has good information in Q&A format. Visit www.writersunion.ca
- To find out more about the Google books settlement agreement in general, visit www.googlebookssettlement.com