

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Supplemental Notice To Authors, Publishers And Other Book Rightsholders About The Google Book Settlement

The parties in *Authors Guild, et al. v. Google Inc.* announced a settlement of the litigation in October 2008 and sent out a Notice of that settlement (the “Original Settlement”). The parties have now amended the Original Settlement in response to discussions with the United States Department of Justice and objections to the Original Settlement (the “Amended Settlement”). The Amended Settlement Agreement (“ASA”), as well as the original Settlement Agreement and the original Notice, may be found at <http://www.googlebooksettlement.com> or obtained from the Settlement Administrator, using the contact information on page 6.

This Supplemental Notice is not designed to replace the original Notice, but rather, to supplement that Notice. This Supplemental Notice identifies:

- 1) The material amendments to the Original Settlement,
- 2) Your rights under the Amended Settlement (see ASA page 4), and
- 3) The date of the fairness hearing scheduled to determine whether the Amended Settlement should be granted final approval (see ASA page 5).

IMPORTANT UPDATE: The deadline to claim Books and Inserts for Cash Payments has been extended from January 5, 2010 to March 31, 2011. The Removal deadline as to Google has been extended from April 5, 2011 to March 9, 2012. (The Removal deadline as to the libraries’ digital copies remains April 5, 2011.)

Summary of Amendments to the Original Settlement

1. Amended Settlement Class. The definition of Books has been narrowed. As a consequence, many class members under the Original Settlement are no longer class members under the Amended Settlement.

Rightsholders Who Are Included in the Amended Settlement Class

- For United States works, the definition of Books remains largely unchanged: United States works must have been published and registered with the United States Copyright Office by January 5, 2009 to be included in the Amended Settlement.
- Under the Amended Settlement, however, if the works are not United States works, they are only included in the Amended Settlement if they were published by January 5, 2009 and either were registered with the U.S. Copyright Office by that date or their place of publication was in Canada, the United Kingdom (“UK”), or Australia.

As a result of the narrowing of the definition of Books, the scope of Inserts has been narrowed as well.

Please note that you may be a member of the Amended Settlement Class even if you do not reside in the United States, Canada, the UK or Australia. If your work meets the criteria above, then you are a member of the Amended Settlement Class regardless of where you reside and regardless of where else your work may also have been published. (ASA Section 1.19)

A work will be considered to have a place of publication in Canada, the UK or Australia if its printed copy contains information indicating that the place of publication was in one of those three countries. Such

information may include, for example, a statement that the book was “Published in [Canada or the UK or Australia],” or the location or address of the publisher in one of those three countries.

Rightsholders Who Are Not Included in the Amended Settlement Class

As a result of these amendments, if the only United States copyright interests you own are in works that were not either (a) published and registered with the United States Copyright Office by January 5, 2009 or (b) published in Canada, the UK, or Australia by that date, you are not a member of the Amended Settlement Class, even if you were a member of the original Settlement Class.

If you are not a member of the Amended Settlement Class, you will not be eligible to participate in the Amended Settlement and you will not be bound by its terms. You retain all rights to sue Google for its digitization and use of your copyrighted material without your permission. If you wish to sue Google for such digitization and use, you must do so in a separate lawsuit. Your rights may be affected by laws limiting the time within which you may bring such a suit. **If you are interested in bringing a lawsuit against Google, you should consult your own attorney.**

If you were a class member under the Original Settlement, but are not a class member under the Amended Settlement, you should visit <http://books.google.com/books-partner-options> in order to learn about Google’s current policies with respect to the removal of your works from its databases, as well as Google’s interest in making your works accessible in models similar to those in the Amended Settlement under similar terms.

2. Commercially Available. The Amended Settlement clarifies that a Book is Commercially Available if it is being offered for sale new by a seller anywhere in the world to a buyer in the United States, Canada, the UK or Australia. (ASA Section 1.31)

The Amended Settlement now provides that Google will not display any Book it classifies as not Commercially Available for at least 60 days after the date of that classification, or the Effective Date, whichever is later. The Amended Settlement also now provides that, if a Rightsholder asserts that a Book is Commercially Available, Google will not display the Book unless Google successfully challenges that assertion in a dispute. (ASA Sections 3.2(d)(i) and 3.3(a))

3. Representation of Canadian, UK and Australian Rightsholders on the Board of the Registry. The Amended Settlement provides that the Board of the Book Rights Registry (the “Registry”) will, at a minimum, have one author and publisher director each from Canada, the UK and Australia. (ASA Section 6.2(b)(ii))

4. Monitoring for Rightsholders Outside the United States. Because the services authorized by the Amended Settlement will be unavailable to users outside the United States, the Registry will, upon request, monitor Google’s use of Books and Inserts to ensure that they conform to the requirements of the Amended Settlement and to Rightsholders’ instructions, and will attempt to provide a means for such Rightsholders themselves to monitor and verify their claimed Books and Inserts. (ASA Section 6.1(f))

5. Dispute Resolution Optional For Rightsholders. The Amended Settlement now provides that Rightsholders may agree not to arbitrate disputes between or among them under the dispute resolution mechanism in the Amended Settlement. In addition, Rightsholders (but not Google) can elect to participate in any arbitration by teleconference or videoconference in order to save travel costs. (ASA Sections 9.1(a) and 9.3(a))

6. Independent Representation For Rightsholders of Unclaimed Books and Inserts. The Registry will include a fiduciary who will have the responsibility for representing the interests of Rightsholders with respect to the exploitation of unclaimed Books and Inserts. (ASA Section 6.2(b)(iii))

7. Unclaimed Books and Inserts and Unclaimed Funds. The Amended Settlement clarifies that, from its inception, the Registry will use settlement funds to attempt to locate Rightsholders. The Amended Settlement also now provides that funds owed to Rightsholders of unclaimed Books and Inserts (“Unclaimed Funds”) will not be used by the Registry for general operations or reserves and will not be distributed to claiming Rightsholders. The Amended Settlement makes the following changes to the Original Settlement: (a) after Unclaimed Funds are held for five years, the Registry, in collaboration with organizations in Canada, the UK and Australia, and in consultation with the fiduciary, may use up to 25% of the funds for the sole purpose of locating Rightsholders; and (b) remaining Unclaimed Funds will be held for the Rightsholders for at least 10 years, after which the Registry, subject to fiduciary approval as to timing, may apply to the Court for permission to distribute Unclaimed Funds to literacy-based charities in the United States, Canada, the UK and Australia, upon notice to Rightsholders, the attorneys general of all states in the United States, and Fully Participating and Cooperating Libraries. (ASA Section 6.3)

8. Commitment to Improving Claiming Process and Website. The Amended Settlement provides that the Registry and Google (for as long as Google continues to provide operational support for the Registry) will maintain and improve the Settlement Website to facilitate the claiming of Books and Inserts. Google will also work to correct errors in the Books Database. (ASA Section 13.3)

9. Additional Revenue Models. The Amended Settlement now limits the potential new revenue models to the following three additional Revenue Models, which must be approved by the Registry:

- 1) Print-on demand (“POD”),
- 2) File download (formerly “PDF Download”), and
- 3) Consumer subscription.

The Amended Settlement limits POD, if approved, to Books that are not Commercially Available. In addition, the Amended Settlement specifies that the revenue split between Google and Rightsholders as to the additional Revenue Models will be the same as for the existing Revenue Models.

Finally, the Amended Settlement provides that Rightsholders of claimed works (and the fiduciary for unclaimed works) will be given timely advance notice before an additional Revenue Model is launched, with an opportunity to exclude works from that model. (ASA Section 4.7)

10. Agreeing to Different Revenue Splits for Commercially Available Books. For Commercially Available Books, the Amended Settlement provides that either Google or the Rightsholder will have the ability to request renegotiation of the 63/37 standard revenue split for any or all revenue models. If they cannot reach an agreement, then neither of the parties is obligated to offer the Rightsholder’s Books in the revenue models. (ASA Section 4.5(a)(iii))

11. Discounting off Consumer Purchase List Price. Google will now have an unlimited right to discount the List Price of Books for Consumer Purchase, so long as it continues to pay 63% of the undiscounted List Price to the Registry for Rightsholders. The Registry may also authorize Google to make special offers of Books for Consumer Purchase at reduced prices from the List Price and pay 63% of the discounted List Price to the Registry for Rightsholders. Claiming Rightsholders (and the fiduciary for unclaimed Books), however, will be notified of this reduced price proposal and can disapprove it for their (or unclaimed) Books. (ASA Sections 4.5(b)(i) and (ii))

- 12. Resale of Consumer Purchase.** The Amended Settlement requires that Google allow third parties to sell consumer access to Books offered through Consumer Purchase, with the reseller receiving a majority of Google's 37% share of the revenue split. (ASA Section 4.5(b)(v))
- 13. Non-discrimination Clause (i.e., "Most Favored Nations" clause).** Section 3.8(a) of the Original Settlement has been eliminated from the Amended Settlement.
- 14. Settlement Controlled Pricing.** The Amended Settlement clarifies that the Pricing Algorithm used to establish the Settlement Controlled Prices for Consumer Purchase will be developed to simulate the prices in a competitive market and that the price for a Book will be established without regard to changes to the price of any other Book. The Amended Settlement also clarifies that the Registry will not disclose the Settlement Controlled Price for a Book to anyone other than the Book's Rightsholders. (ASA Sections 4.2(b)(i)(2), 4.2(c)(ii)(2) and 4.2(c)(iii))
- 15. Modification of Feature Restrictions.** Rightsholders may authorize Google to modify or remove the Amended Settlement's default restrictions on Revenue Model features, such as copy/paste and print. (ASA Section 3.3(g))
- 16. Registry Support for Alternative Licenses (Including Creative Commons).** The Amended Settlement provides that the Registry will facilitate Rightsholders' wishes to allow their works to be made available through alternative licenses for Consumer Purchase, including through a Creative Commons license. For information about Creative Commons licenses, visit <http://www.creativecommons.org>. The Amended Settlement also clarifies that Rightsholders are free to set the Consumer Purchase price of their Books at zero. (ASA Sections 1.44, 4.2(a)(i) and 4.2(b)(i)(1))
- 17. Public Access Terminals.** The Amended Settlement authorizes the Registry to agree to increase the number of public access terminals at a public library building. (ASA Section 4.8(a)(i)(3))
- 18. Pictorial Works.** The Amended Settlement no longer includes children's book illustrations in the definition of Inserts. (ASA Section 1.75) The Amended Settlement, however, does not change the inclusion of pictorial works, such as graphic novels and children's picture books, in the definition of Books and provides that the Amended Settlement only authorizes Google to display the pictorial images in such Books if a U.S. copyright owner of the pictorial image also is a Rightsholder of the Book. The Amended Settlement also clarifies that comic books are considered to be Periodicals and that Periodicals (as well as compilations of Periodicals) are not included in the definition of "Books," and thus are not in the Amended Settlement. (ASA Section 1.104)
- 19. Music Notation.** The definition of Book was amended in the Amended Settlement to better achieve the parties' goal of excluding books that are primarily used to play music. (ASA Section 1.19) Also, "music notation" is no longer included in the definition of Inserts. (ASA Section 1.75)
- 20. Deadline to Claim Usage and Inclusion Fees.** Usage Fees will now be held for Rightsholders who have not yet claimed their Books for at least ten years and Rightsholders will now be eligible for Inclusion Fees if they claim their Books or Inserts within ten years of the Effective Date, instead of five years, in both cases as had been provided in the Original Settlement. (Plan of Allocation Sections 1.1(c), 1.2(c) and 2.2)

Your Rights Under the Amended Settlement Agreement

Members of the Amended Settlement Class have the following options:

If you...	Then...	Deadline
Wish to remain in the Amended Settlement Class (if you did not previously opt out of the Original Settlement)	You need not do anything at this time.	N/A
Wish to remain in the Amended Settlement Class and wish to be eligible to receive a Cash Payment for any Book or Insert scanned on or before May 5, 2009 but haven't yet claimed your Books and Inserts	You must submit a claim by using the Claim Form, available at http://www.googlebooksettlement.com or from the Settlement Administrator.	March 31, 2011
Have already claimed Books and Inserts using the Claim Form	You need not take any additional steps at this time with respect to those Books and Inserts.	N/A
Opted out of the Original Settlement, and wish to remain opted out of the Amended Settlement	You need not – and should not – opt out again. Your opting out of the Original Settlement will serve as an opt-out of the Amended Settlement as well.	N/A
Did not opt out of the Original Settlement but wish to opt out of the Amended Settlement	You may do so by following the instructions in the original Notice and at http://www.googlebooksettlement.com .	_____, 2010
Opted out of the Original Settlement and wish to opt back in to the Amended Settlement	You may do so by notifying the Settlement Administrator or Class Counsel or by filling out the "Opt-Back-In Form" at http://www.googlebooksettlement.com .	_____, 2010
Wish to file an objection to the terms of the Amended Settlement	<p>So long as you remain in the Amended Settlement (that is, you have not opted out), you may file an objection by following the instructions in the original Notice.</p> <p>If you are objecting to the terms of the Amended Settlement, however, you may object only to the provisions amending the Original Settlement.</p> <p>All objections filed in connection with the Original Settlement are preserved unless withdrawn and should not be refiled.</p>	_____, 2010

Rescheduled Date of the Fairness Hearing

The Court will hold a Fairness Hearing on _____, 2010 at ____ in Courtroom ____ of the United States District Court for the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY 10007, to consider whether the Amended Settlement, as set forth in ASA, is fair, adequate and reasonable. Please review the original Notice for further information concerning participation in the Fairness Hearing.

If you have any questions concerning this Supplemental Notice or the Amended Settlement, please contact Class Counsel, or the Settlement Administrator, whose contact information may be found in the original Notice or at <http://www.googlebooksettlement.com>. You may also contact the Settlement Administrator at:

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