

GOOGLE BOOK PUBLISHERS SETTLE. LEAVE UNANSWERED QUESTIONS

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On October 28, 2008 more than three years of settlement talks between Google and The McGraw-Hill Companies and The Author's Guild came to an end. The dispute has been over Google's proposed Library Project.

The History:

The following excerpt is from [Google's December 14, 2005 press release](http://www.google.com/press/pressrel/print_library.html) (http://www.google.com/press/pressrel/print_library.html) regarding the Library Project: "As part of its effort to make offline information searchable online, Google, Inc. today announced that it is working with the libraries of Harvard, Stanford, the University of Michigan, and the University of Oxford as well as The New York Public Library to digitally scan books from their collections so that users worldwide can search them in Google." The press release further stated, "users searching with Google will see links in their search results page when there are books relevant to their query. Clicking on a title delivers a Google Print page where users can browse the full text of public domain works and brief excerpts and/or bibliographic data of copyrighted material. Library content will be displayed in keeping with copyright law."

Under the Library Project, Google scans books into its searchable database. By typing key search terms as a database query, users review the full text of public domain materials and "snippets" of works under copyright. Google claimed they would limit the content that could be viewed of copyrighted works and that they planned to direct traffic toward the libraries and booksellers that offer the books for sale.

Google was never asking permission to scan the

copyrighted materials but was offering an "opt-out" provision to copyright holders. The "opt-out" provision was only instituted after push back from groups representing copyright owners.

In response to Google moving forward with the Library Project, two lawsuits were filed in the Southern District of New York in the fall of 2005. The suits, brought by The McGraw-Hill Companies (*The McGraw-Hill Companies v. Google, Inc.*, 05 CV 8881, (S.D.N.Y. Oct. 19, 2005) and The Author's Guild (*The Author's Guild v. Google, Inc.*, 05 CV 8136 (S.D.N.Y. Sep. 20, 2005), allege copyright infringement by Google's actions of "reproduc[ing] for its own commercial use a copy of some of the literary works contained in the University of Michigan library, which contains the Works that are the subject of this action, and intends to copy most of the literary works in the collection of that library." "Google will infringe the copyrights of Publishers' books by unlawfully reproducing and publicly distributing and displaying copies of such works in violation of the Copyright Act."

The Settlement:

Fast forward three years from filing of the lawsuits. A settlement has been reached that awards payments to copyright owners, sets up a system for indexing public domain and copyrighted books, and makes Google a book retailer.

Please keep in mind there is a good chance that if you are the author, publisher or copyright holder to any book, you may be able to recover under the proposed settlement. [Click here](http://books.google.com/booksrightsholders/notice.html) (<http://books.google.com/booksrightsholders/notice.html>) to review the proposed class notice.

The Settlement Agreement, if approved by the court, sounds like it will be a win-win for everyone involved. This is a much abbreviated look at the

proposed settlement. For complete details [click here](http://books.google.com/booksrightsholders/agreement-contents.html) (http://books.google.com/booksrightsholders/agreement-contents.html).

Google Is In The Book Business:

Google is authorized in the United States to continue to scan books and build a database, sell subscriptions to a book database, sell books, place advertisements on book pages, and make other commercial uses of books. Sixty-three percent of Google's collected revenues will be paid into a settlement registry which will be distributed to rightsholders that opt-in to the settlement. In the end, Google is getting what they started out to create --- a database of in and out of print books. But, they are paying to scan, index and display books under copyright.

Google Pays:

Google pays a minimum of forty-five million US dollars into the settlement fund to pay the qualified settlement class members. Google pays U.S. \$34.5 million to fund the launch and the initial operations of a book registry and to fund other administrative costs associated with the implementation of the settlement plan.

Opt-In System

Rightsholders of in-print, copyright protected books will have to notify the registry if they want Google to make their books available for any or all of the display uses. Out-of-print books will automatically be included in all display uses unless the rightsholder(s) of the book directs Google not to do so. This is what is so very important to rightsholder. The main rub from the beginning was that Google wanted rightsholders to notify Google and then opt-out of the program. Copyright law grants a bundle of rights to the copyright owner including reproduction, distribution and display. In my opinion, opt-out procedures take the power and rights away from the copyright holder.

Questions Unanswered By The Settlement:

Does reproduction of books in digital format without permission constitute copyright infringement? Does indexing and then displaying portions of works still under copyright rise to an act of infringement? Could fair use be a viable defense to actions similar to Google's?

Until someone else attempts to undertake the indexing of works protected by copyright in this manner, we will not have answers to these questions.



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