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The Google Book Settlement: 2010 Update

- Caroline Morgan, General Manager Business Services

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Legal Notice

- The information in these slides is intended to provide an outline of the Google Book Settlement (the Settlement) offer, as at January 2010. It is not intended to be legal or business advice. You are urged to refer to the original Settlement documents available from the Settlement homepage: www.googlebooksettlement.com and to consult your legal or business advisers.



The story so far ...

- 2004 - Google announces Google Library Project, to digitise holdings of major US research libraries
- September and October 2005 - US author and publisher groups commence class action
- October 2008 to February 2009 - \$125 million out of court settlement offer announced; CAL members notified
- July 2009 - Draft settlement amended to extend dates for participation and opting out
- November 2009 - Amended again to extend dates, restrict affected works and better protect the interests of rightsholders



The Google Book Settlement

“If you think it sounds complicated... that’s because it is.”



The Basic Deal

- ***Looking back***

Google will be released from all liability for its past scanning, searching and displaying of books - in exchange for a one-off payment of about US\$125 million.

- ***Looking forward***

Google will be able to continue scanning and displaying books published in the US, UK, Canada and Australia in exchange for 63% of revenue it receives from all commercial uses.



Key Changes

Class Definition

- Revised Class now only includes books registered with US Copyright Office and rightsholders of those published in UK, Canada and Australia

Board Composition

- The Google Book Rights Registry Board will now include two Australian directors, one author and one publisher

Revenue Models

- Restricted to Print on Demand, online access, file download (e.g. for e-book reader), US institution/consumer subscriptions and advertising
- Coursepacks not included



Key Changes (cont'd)

Commercial Availability

- 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”.
- “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.”



Key Changes (cont'd)

Unclaimed works

- The Registry will now include a fiduciary (trustee) to represent the interests of rightsholders in unclaimed Books and Inserts.
- After Unclaimed Funds are held for 5 years, the Registry, in collaboration with organisations 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.
- Remaining Unclaimed Funds will be held for at least 10 years, after which the Registry may apply for Court approval “to distribute Unclaimed Funds to literacy-based charities in the United States, Canada, the UK and Australia”.



New Key Dates

- 5 January 2009 - Books published after this date are not covered by the Settlement
- 5 May 2009 - Digitisation suspended until Settlement accepted
- 14 December 2009 - Revised Notice
- 28 January 2010 - File objections/opt-out
- 18 February 2010 - Final Fairness Hearing
- 31 March 2011 - Claim Cash Payment for digitisation
- 5 April 2011 - Request removal from digital database of Participating Libraries
- 9 March 2012 - Last date to remove digitised Books



About Google Book Search

- <http://books.google.com/>
- How did books get there?
 - Google Partner program (publishers only)
 - Google Library Project



Partner Program

- Free to all publishers
- Publishers provide content or Google authorised to digitise
- Publisher decides how much is displayed
- Publisher shares in ad revenue
- Links to publisher website and sales channels



Library Project

- Google scanned books at major US research libraries
- Over 7 million books scanned
- If Google considered the book as in copyright, only snippets displayed
- If book is out of copyright, entire book was able to be viewed/downloaded
- Permission for digitisation was not sought from rightsholders (Google relied on US 'fair use' provisions)



Library Project Participants

Bavarian State Library	Oxford University
Columbia University	Princeton University
Committee on Institutional Cooperation (CIC)	Stanford University
Cornell University Library	University of California
Harvard University	University Complutense of Madrid
Ghent University Library	University Library of Lausanne
Keio University Library	University of Michigan
Lyon Municipal Library	University of Texas at Austin
The National Library of Catalonia	University of Virginia
The New York Public Library	University of Wisconsin - Madison



What is a Class Action Settlement?

Class Action Begins

- A class action is a form of lawsuit where a large group of people collectively bring a claim to court
- Appropriate for a large number of small claims
- Class representatives sue on behalf of others with similar claims
- US court defines/certifies the class, as the Settlement will apply to all members of the class who have not opted out

Parties agree to settle

- Parties agree to settle lawsuit
- Court preliminarily approves proposed settlement on meeting the criteria for a class action



What is a Class Action Settlement?

(continued)

Notice

- Notice describing the class action/settlement must be sent, published, or broadcast to class members
- Must provide opportunity for class members to exclude themselves (opt-out of settlement)

Fairness Hearing

- The Court will consider and hear any objections or comments to the settlement
- The Court will decide whether the settlement is “fair, adequate and reasonable” to apply to all members of the class



Summary of the case

- The class action lawsuit claimed that Google infringed the copyright rights of authors and publishers in books by:
 - digitising (scanning) them;
 - creating an electronic database of books; and
 - displaying short excerpts without permission.
- The class action was commenced by the US Authors Guild and the Association of American Publishers
- Google denied infringement, claiming they could rely on US Fair Use laws for their activities
- The initial out of court settlement was reached after more than two years of negotiations, and further negotiations have continued since October 2008



Definitions and Other Useful Things to Know

Google Book Search

- **Only** Books scanned under the Library Project are covered by this settlement
- Books scanned under the Partner Program **are not** covered by this settlement (nor is bibliographic data)
- Remember this when you search for your works!

Books

- 'Book' means a written or printed work on sheets of paper bound together in hardcopy form that was published by January 5 2009 and is registered by the US Copyright Office or published in UK, Canada or Australia



Definitions and Other Useful Things to Know (continued)

Inserts

- A standalone work contained in a Book that has separate copyright ownership
- Examples: forewords, poems, tables, graphs, letters, quotations, lyrics
- Excludes: artistic works, photographs and illustrations

Commercially available/in-print

- Commercially available means that the Book is offered for sale new anywhere in the world to a buyer in the US, UK, Canada or Australia
- Commercially available works assumed to be in-print



Definitions and Other Useful Things to Know (Continued)

US term of copyright

- Life of the author plus 70 years
- For works of corporate authorship (work for hire) 120 years after creation or 95 years after publication, whichever endpoint is earlier

Work for hire

- A work prepared by an employee within the scope of his or her employment
- A work specially ordered or commissioned for use as a contribution to a collective work



Definitions and Other Useful Things to Know (Continued)

Display Uses

- Uses where text of the book can be viewed
- May involve viewing and annotating the entire book, or printing and copying/pasting portions of the book
- Can be subject to certain page number limitations

Non-Display Uses

- Uses that do not involve displaying any text from a book to the public, e.g. bibliographic information
- If you participate in the settlement, you cannot exclude Books from non-display uses



Participating Rightsholders will Authorise the Following:

Display Uses	Non-Display Uses
Access Uses <ul style="list-style-type: none">- Institutional subscriptions- Consumer purchase- Public access at libraries- Print on Demand- Other commercial uses as approved by the Google Book Rights Registry	Bibliographic information
Preview Use <ul style="list-style-type: none">- Up to 20%, as marketing tool	Full-text indexing
Snippet displays <ul style="list-style-type: none">- 3 or 4 lines of text, 3 times per user	Algorithmic listings of key terms
Display of bibliographic pages	Internal research and development at Google



Display uses in detail

Type of Use	Details
Institutional subscriptions	Educational, government and corporate institutions will be able to purchase time-limited subscriptions to access the full contents of the institutional subscription database
Consumer purchases	Individual users will be able to purchase the right to access books online
Public access at libraries	<ul style="list-style-type: none">- US Colleges get 1 terminal per 4,000 or 10,000 students- US Public libraries get 1 terminal per building- Public access terminals will allow printing for a per-page fee
Other potential commercial uses	<p>The Book Rights Registry and Google may agree to terms for these new revenue models:</p> <ul style="list-style-type: none">- Print on Demand- PDF downloads- Consumer subscription models <p>Note: All rightsholders will be notified of any new models, and be given the opportunity not to participate</p>



Display uses in detail (cont.)

Type of Use	Details
Preview use	<ul style="list-style-type: none">- Primary purpose is as a marketing tool to drive sales, e.g., browse a book before you buy- user may view up to 20% of a book (but no more than 5 adjacent pages) before making a purchase decision- For books of fiction, Google will block the last 5% of the book- Rightsholders may change the preview availability
Snippet displays	<ul style="list-style-type: none">- Display three/four lines of text in response to a user's search- Purpose is so that the user can confirm this is the book they are looking for
Display of bibliographic pages	<ul style="list-style-type: none">- Google may display to users a Book's title page, copyright page, table of contents, and index



One-off Cash Payments

Cash Payment for Digitisation

- Guaranteed minimum pool of \$45 million
- At least:
 - \$60 per principal work - Book
 - \$15 per entire Insert
 - \$5 partial Insert
- **If** scanned on or before 5 May 2009
- Must make claim by 31 March 2011
- No entitlement to payment if opt-out
- No cash payment for Partner Program or inclusion of bibliographic information only
- Payment size may increase depending on number of claimants
- Only one cash payment will be made per Book or Insert, even if Google digitised it more than once



Ongoing revenue streams based on usage

Subscriptions

- Google will pay 63% of subscription revenue (and retain 37%)
- Pricing on an FTE basis with different pricing pools for different categories of institutions (University, K-12, corporate, government)

Consumer Purchases

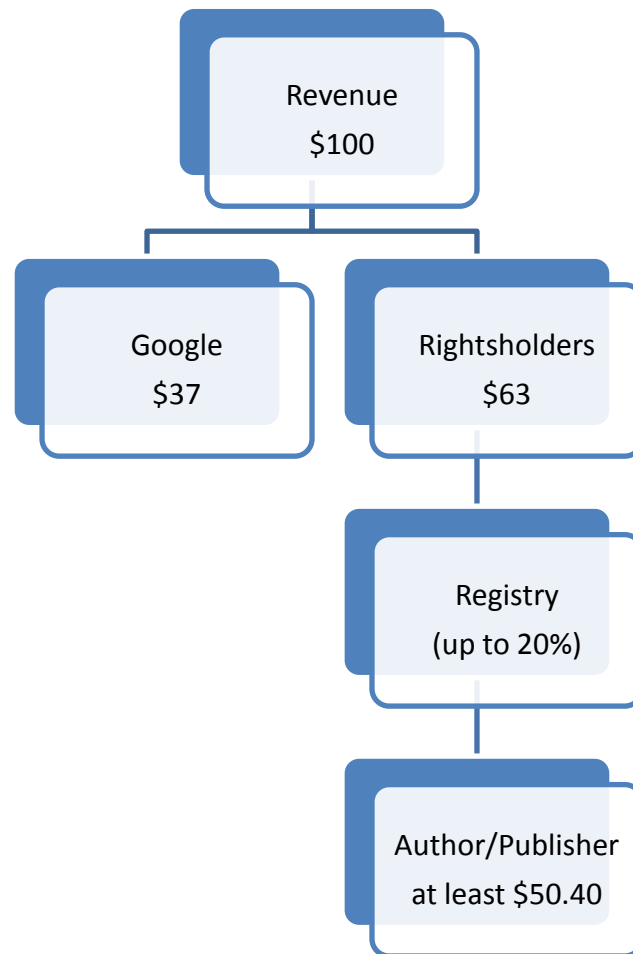
- Google will pay 63% of the purchase price to rightsholders (and retain 37%)
- Two pricing options: rightsholder-set or a price set by a Google algorithm

Advertising Revenue

- Google will pay 63% of ad revenue (and retain 37%) where a web page displays a single book



Settlement Business Model



Default Rules

	Not Commercially Available	Commercially Available
Display Uses	<ul style="list-style-type: none"> - All works in by default - Rightsholder can request that some or all works are removal - Changes possible at any time 	<ul style="list-style-type: none"> - All works out by default - Rightsholder must opt-in for some or all display uses - Changes possible at any time
Non-Display Uses	<ul style="list-style-type: none"> - Must make removal request by 9 March 2012 	<ul style="list-style-type: none"> - Must make removal request by 9 March 2012
Direction to Google on uses	<ul style="list-style-type: none"> - If rights reverted to author, then: author - If rights not reverted to author, then: publisher - If Work for Hire: publisher 	<ul style="list-style-type: none"> - Both publisher and author must direct (unless work for hire) - Process initiated by publisher - Most restrictive direction prevails



Default Rules

	Not Commercially Available	Commercially Available
Pricing	<ul style="list-style-type: none"> - If rights reverted to author, then: author - If rights not reverted to author, then: publisher - If Work for Hire: publisher 	<ul style="list-style-type: none"> - Set by publisher (possible to set different economic terms through Partner Program) - If author disagrees with price set by publisher, author may exclude Book from consumer use
Payment	<ul style="list-style-type: none"> - 100% to author (if rights reverted) - 100% to publisher (if no reversion) - If shared rights: 65/35 in favour of author for publication prior to 1987 - If shared rights: 50/50 split for works published during or after 1987 - Dispute resolution encourages rightsholders to settle, then arbitration 	<ul style="list-style-type: none"> - Payment to publisher with flow through to creator according to the author/publisher contract



The Book Rights Registry:

Checks and balances, and cheques and balances

Objective

- A new body to represent rightsholders in implementing and administering the Settlement
- Will delegate responsibility for unclaimed Books to the independent fiduciary

Corporate structure

- Not-for-profit entity
- All funds received by the Registry will be for the direct or indirect benefit of rightsholders
- Not subject to government or Copyright Tribunal oversight
- Board to include at least 2 Australian directors



The Book Rights Registry:

Funding

- Initial \$34.5 million from Google settlement to establish and maintain the Registry
- Ongoing administrative fee as a percentage of revenues received from Google (estimated to be 10-20%)

Organisational structure

- Equal representation of the Authors and Publishers on its Board of Directors
- Each act of the Board will require a majority of the directors, with such majority including at least one director who is an author or publisher representative



The Book Rights Registry:

What the Registry will do

- Represent Rightsholders in connection with the Settlement
- Maintain a database of who owns what copyright and inclusion/exclusion list
- Exchange data with Google regarding rightsholders' directions
- Assist in resolution of disputes between rightsholders
- Receive and distribute payments from Google to rightsholders
- Locate authors and publishers
- Negotiate the terms of new revenue models with Google

What the Registry will **not** do

- Keep a digital copy of the books scanned
- Mediate disputes regarding ownership and payments between authors and publishers
- Negotiate on behalf of authors and publishers with an entity other than Google, unless it has received the express approval of the rightsholders of the books involved in such other commercial arrangement



Key Dates Revisited

Opt-out of Settlement
deadline

Final Settlement/Fairness
hearing

- To opt-out, you must send written notice to the settlement administrator or via the website by **28 January 2010**
- If you want to object or comment on the settlement, you must file your position by **28 January 2010**
- **18 February 2010**
- The purpose of the hearing shall be to determine whether the Settlement is fair and reasonable, and to certify the Class and Sub-Classes



Key Dates

Claims Deadline

- If your work was digitised on or before 5 May 2009, you have until **31 March 2011** to make a claim for payment

Removal Deadline

- If you have not opted-out of the Settlement but still wish to request that Google remove one or all of your already digitised works from its digital database, you must do so by **9 March 2012**; or by **5 April 2011**, for removal from Library database



Some final points to remember

You can remain in the Settlement, but still exclude all your works – i.e. you can claim your \$60 for a Book, and then remove it from all or some display uses.

Industry positions: The APA supports the new Settlement but encourages its members to make their own decision. The ASA supports the new Settlement, saying that it will “provide income opportunities for authors of out-of-print books”.



Some final points to remember (cont.)

You can lodge an application to the fairness hearing, but not if you opt out – as you are not a member of the Class

If you do nothing, you will be part of the Class and your works will be included by default in all display uses (if your works are not Commercially Available)



Checklist of what to do

Check that your works are on Google Book Search

Determine if they were digitised in the Library Program

Determine whether you control the rights

Claim your works and decide on future uses
OR
Opt out of the Settlement



Examples from the Google Book Settlement Webpage

<http://www.googlebooksettlement.com/>



Google Book Settlement

[INFORMATION](#)

[CLAIM FORM](#)

[MY ACCOUNT](#)

[FIND AND CLAIM](#)

[MANAGE](#)

[FAQ](#)

[OPT OUT](#)

[RECENT UPDATES](#)

Manage your claimed books and Inserts

Below is a list of all of the books and Inserts you have claimed. Click on the title of the book for a detail page. The detail page includes information and also can change claim-related information, including your assertions of rights, [Remove the book](#) or turn off [Display Uses](#). In the future, you will

View: 5 books of 5 books

Title	Author
Annual report	Copyright Agency Limited, Copyright Agency Ltd
Becoming a member of CAL	Copyright Agency Ltd
CALendar	Copyright Agency Ltd
Cal Digital Object Identifier Coursepack Implementation ...	Common Ground Staff, Copyright Agency Ltd
Realising the vision	Peter Meredith, Copyright Agency Ltd

View: 5 books of 5 books

[Download results as a spreadsheet](#)

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[FIND AND CLAIM](#)

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[FAQ](#)

[OPT OUT](#)

[RECENT UPDATES](#)

Book details

[«View all of your claimed books and Inserts](#)

Title: Annual report
Author: Copyright Agency Limited, Copyright Agency Ltd
Imprint or Publisher: Australian Govt. Pub. Service
Year:
Format: Book
Identifier: LCCN:sn99o18381, OCLC:42612835

Digitization status: Not digitized, and will not be digitized on or before May 5, 2009, without authorization

[Commercial Availability:](#)

This book is classified as **not Commercially Available** in the United States.

I challenge the Commercial Availability status of this book.

Please include any information that might aid the Registry in determining the Commercial Availability of your book.

Rightsholders

Copyright Agency Limited - this is your claim

Display Uses:

- [Consumer Purchase](#)
 - Automatically use the [Settlement-Controlled Price](#)
 - Specify a sales price \$ in U.S. dollars

- [Institutional Subscriptions](#) and [Public Access Service](#)

Excluding these services for books classified as not Commercially Available will also exclude Consumer Purchase.

- [Preview Use](#)
 - [Standard Preview](#)
 - [Continuous Preview](#)
 - [Fixed Preview](#)

- [Snippet Display](#)
- [Front Matter Display](#)
- [Advertising](#)
- [Book Annotation Sharing](#)

Removal:

- [Remove from](#) Google Book Search and Library Digital Copies

Hosted Version

Interest in hosted version

- I am interested in a [Hosted Version](#) of the book for my web site. Please contact me when this is available.

Google Book Settlement

[INFORMATION](#)

[CLAIM FORM](#)

[MY ACCOUNT](#)

[FIND AND CLAIM](#)

[MANAGE](#)

[FAQ](#)

[OPT OUT](#)

[RECENT UPDATES](#)

Search Results

If you are claiming a book: please check the box next to the book you wish to claim.

If you are claiming an Insert: please check the box next to the book that contains the Insert you wish to claim. You will be asked to identify the Insert within the book in the next step.

If a book is not listed below, modify your search or, at the bottom of the page, you may add a book to the list.

Finish claim form for selected books (0) »

[Change your search](#)

View: 1 books of 1 books

	Title	Author	Year	Format	Imprint
<input type="checkbox"/>	The Peaceful army	Dale Spender, Flora Eldershaw	1988	Book	Penguin, Penguin Books

View: 1 books of 1 books

Finish claim form for selected books (0) »

[Change your search](#)

[Download results as a spreadsheet](#)

[+ Add a book if it is not listed above](#)



Margaret Preston on Australian women artists; Miles Franklin on suffragist, Rose Scott; Eleanor Dark on Caroline Chisholm; Kylie Tennant on the future. made a mark on Australian history, and they looked to the future. In 1988 we were reassessing the past once again. Kylie Tennant was the youngest contributor in 1988 she reflected on the intervening fifty years. Like mirrors reflecting mirrors, this book shows the precarious position on the intervening fifty years.

More details

The Peaceful Army

By Dale Spender, Flora Eldershaw

Contributor Dale Spender

Edition: illustrated

Published by Penguin, 1988

Original from the University of Virginia

Digitized Jul 24, 2008

ISBN 0140112316, 9780140112313

166 pages

[Write review](#)[Add to my shared library](#)

Google Book Settlement

INFORMATION

CLAIM FORM

[HOME](#) [SETTLEMENT AGREEMENT](#) [NOTICE](#) [SUMMARY NOTICE](#) [FAQ](#) [OPT OUT](#) [RECENT UPDATES](#)

Important Update: The Opt-Out Deadline has been extended from May 5, 2009 to Sep 4, 2009
7, 2009

Opt out of the Google Book Settlement

If you do not want to be included in the Settlement, you must [opt out](#). By opting out, you retain the right to file and take advantage of other Settlement benefits.

In order to opt out, please provide the following information:

Sub-class:

[Author Sub-Class](#)

[Publisher Sub-Class](#)

Person completing this opt-out form

Given/First name:

Middle name (optional):

Family/Last name:

Capacity:

Contact information

Address:

City:

State/Province/Region:

Postal/Zip code:

Country/Territory:

Postal/Zip code:

Country/Territory:

Telephone (optional):

Email address (optional):

Book and Insert information (optional)

To help the Registry identify your books and Inserts, please provide the following information.

Names/pseudonyms under which books and Inserts (if appropriate) were published

One name per line.

Titles of books and Inserts (if appropriate):

One title per line.

Books published between and
e.g. 1980 and 1984

Submit to Google my request that Google not digitize the books identified above or, if Google has already digitized any or all of these books, that it not display material from the books, including snippets. [Learn more](#)

I request that Google contact me to discuss the books and Inserts identified above. [Learn more](#)

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Thank you
Any questions?



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