

Why I've Decided to Participate in the Google Book Settlement

After reading everything I could get my hands on about the settlement, I think that I have very little to lose by being included and potential future income and exposure to lose out on if I opt out. I probably won't get anything for five years, but after that, who knows?

I like the idea of a readily-accessible digital list of books, and opting in gives me the right to determine how much of my book gets displayed and how much people in the US will pay for it. The settlement also creates a really cool copyright rights registry that I think is worthwhile. Also, by being part of the class, I'll make it legally clear that I actively manage my copyright—and that could become important in the future.

In addition, my publisher has no concerns and both TWUC and Access Copyright recommend participating.

ASJA says they are against the settlement, but a closer reading of their material shows that they want more representation on the Registry board and better privacy protection. As a Canadian, I can't get representation on the board anyway and I'm confident that the privacy issue will be dealt with properly by the participating libraries, which have been very good at representing users all along. I'm also fine with Google getting revenue from their searches as long as I get revenue from the pages about my book and I think 63% of the proceeds is fair.

William Morris' concerns are more credible; they site low fees (I suspect they're talking about the \$60 rate not the 63% figure) and ridiculous deadlines for removing works, but they have an impressive list of clients who can probably negotiate a better deal. I'm not among those authors.

That's the big picture. Before deciding, however, I also answered three specific questions about the Google Book Settlement.

Is it exclusive? If I agree to be part of the class, does that limit further licenses of my book?

The settlement applies only to uses in the United States.

According the settlement website, “under the Settlement, rightsholders authorize Google, on a non-exclusive basis, to:

- Continue to digitize Books and Inserts
- Sell subscriptions to an electronic Books database to institutions;
- Sell online access to individual Books;

- Sell advertising on pages from Books;
- Display portions of Book in a "preview" format to encourage sales of online access to Books;
- Display Snippets from Books; and
- Display bibliographic information from Books.”

According to the agreement, “rights granted to Google and the Participating Libraries are non-exclusive only, and Rightsholders have every right to authorize, through the Registry or otherwise, any individual or entity, including direct competitors of Google, to use their works in any way, including ways identical to Google’s and the Participating Libraries’ authorized uses. Rights and authorizations granted to Google and the Participating Libraries are not transfers of copyright ownership to those works, and nothing in the Settlement Agreement shall operate to transfer any copyright ownership interests in Rightsholders’ works.”

Can I control how much of my work gets released publicly on-line?

Google offers a form to enable me to state how I want Google to use my work. I can remove, exclude or include works.

Display Uses are all limited to uses in the United States and include:

- “Institutional Subscriptions: Educational, government and corporate institutions will be able to purchase time-limited subscriptions (e.g., by semester or by year) for their students and employees to access the full contents of the institutional subscription database. Rightsholders will receive revenue from such subscriptions.
- Consumer Purchases: Individual users will be able to purchase the right to access books online. Rightsholders will receive revenue from such purchases.
- Consumer Purchase Pricing: Rightsholders have two options under the Settlement for setting the sale price of their books sold for Consumer Purchase: they can set the price themselves in U.S. dollars (Specified Pricing) or they can allow Google to set the price based on a multi-factor formula that is designed to maximize revenues for the sale of the book (the "Settlement-Controlled Price").
- Public Access Service: Google will provide, on request, a "Public Access Service" for free through a computer terminal at each public library building and through an agreed number of computer terminals at non-profit colleges and universities located in the United States. The Public Access Service will provide the same access to books as Google offers in the institutional subscriptions, except that users will not be able to copy/paste or annotate any portions of a book.

- **Preview Use:** In response to a user's search, Google may allow the user to view limited portions of a book, in a manner designed to serve as a marketing tool to sell the book for Consumer Purchase or otherwise. Rightsholders will receive advertising revenues from advertisements placed on Preview Use pages for a book. There are three types of Preview Uses, and at any time, rightsholders of a book may choose among the three types of Preview Use listed below for each of their books.
- **Standard Preview:** When a user searches for a term within a book, Google may display up to 20% of the pages of the book, but no more than 5 adjacent pages at a time. For fiction books, Google will block the final 5% of the book, or a minimum of the final 15 pages. For fiction books, Google may also display up to 5% of the pages of the book, or up to 15 pages, whichever is less, adjacent to the user's search term. Standard Preview is the default Preview Use setting and, where Preview Use is authorized, will be offered for most books unless the rightsholder of the book chooses Fixed Preview or Continuous Preview.
- **Fixed Preview:** Google may display up to 10% of the pages of a book. The pages displayed to all users are the same, and do not vary by user or depend on a user's search. Google will choose the pages to be displayed in Fixed Preview unless the Registry developed a mechanism to allow rightsholders of books to select the pages. Where Preview Use is authorized, Fixed Preview is the default setting for the following types of books: dictionaries, drug reference guides; encyclopedias; price/buyer guides; quotation books; test preparation/certification guides; and thesauri.
- **Continuous Preview:** If a rightsholder selects Continuous Preview, Google may display up to 10% of the pages of a book without being subject to the adjacent page limitation (no more than 5 adjacent pages) of Standard Preview.
- **Snippet Displays:** In response to a user's search, Google may display about three or four lines of text from a book (a "snippet"), with up to three snippets per user for that Book. Rightsholders are expected to receive advertising revenues from advertisements placed on web pages devoted to a single book that display one or more snippets from that book.
- **Display of Bibliographic Pages (Front Matter Display):** Google may display to users a book's title page, copyright page, table of contents, and index.
- **Advertising:** Google is authorized under the Settlement to include advertisements on Preview Use pages and on web pages dedicated to a single book, including pages displaying Snippets, bibliographical information (Front Matter Display), and search results from a user's search performed within a single book. Rightsholders of books

will earn revenues from such advertisements. Google may also place advertisements on other Google products and services (e.g., search result pages, Google Maps), but rightsholders of books will not earn revenues from those advertisements.

- For each of their books, rightsholders have the right to direct Google to exclude all advertising on any web pages dedicated to that single book.
- **Book Annotation Sharing:** Google is authorized under the Settlement to allow users to make Book Annotations for the user's own personal use and to share those Book Annotations with a limited number of other users, provided that: (1) Book Annotations may not be shared with the general public; (2) Book Annotations may not be displayed to other users unless those other users have the right to view the book; (3) Book Annotations are only accessible to users who have actively selected the feature or who are participating in a group such as a class for which this feature has been selected; (4) for Consumer Purchase, the user may only share the Book Annotations with 25 individuals or less who are identified; and (5) for Institutional Subscriptions, the user may only share the Book Annotations with other users of the Institutional Subscription who are either instructors and students in a course or employees on a discrete work project.

Rightsholders of books have the right to exclude their books from this Book Annotation Sharing feature.

I can remove books, but if I do so and later decide to be included, I may not be eligible.

What fees will I gain if I participate? How does that compare to the fees Google will earn?

If I agree to participate in the class by making a claim before January 5, I will get a \$60 inclusion for my work if Google has digitized it (but I probably won't get it for five years).

The real earnings will come from sales of institutional subscriptions to a books database, sales to consumers of online access to individual books, advertisements placed on web pages that are dedicated to a single book (e.g., displaying a page from a book), and printing fees. Google will pay the Registry, for distribution to the appropriate rightsholders, 63% of the revenues earned from those revenue models. In addition, books and Inserts that are not excluded by the rightsholder from the books database may be eligible for inclusion fees, which are described in the Plan of Allocation. Then again, none of these fees will be paid to me for five years.

What am I giving up?

The right to sue Google if they have already digitized my work. My book is not listed under Google books now and I have no way of knowing whether they've already scanned it unless I join the class and make a claim. I can't see how I would ever find out about the infringement

since opting out would inform Google to destroy any scanned copies they have of my book anyway. If I did somehow find out, I'd have to sue them to get anything. This doesn't affect me.

By participating in this settlement, I'm giving Google the right to include my book in their database for the current range of copyright protection in the United States (that's 70 years after my death), even if copyright law changes during that time.

After the last decade of lobbying in favour of copyright, I'm not that worried about changes that are likely to benefit creators more than the current law. And if they do, heck, only one book is affected so far.