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# Your guide to the Google Settlement

What every Australian copyright owner should know

**NOTE: This guide is an updated version to the communication sent to all CAL members in February of this year. It includes new dates for opting out of the Google Settlement.**

**Are you an Australian author or publisher that has had Books, or Inserts in Books, published on or before 5 January 2009?**

**If you are, you might be affected by the recent announcement that the Association of American Publishers, The Authors Guild (US) and a number of US publishers have settled a multi-million dollar class action lawsuit against internet search engine Google.**

The class action relates to the Google Library Project, under which Google digitised entire collections of participating libraries' works without the consent of the relevant rightsholders.

Under the terms of the Settlement, Google is offering authors and publishers a one-off payment of at least US\$60 for each Book and US\$15 for each Insert digitised by Google on or before 5 May 2009. You must make your claim by 5 January 2010.

Once approved by the US District Court, New York (the Court), the Settlement will allow Google to do the following:

- digitise most books published on or before 5 January 2009;
- sell subscriptions to an electronic books database to institutions;
- sell online access to individual books;
- sell advertising on web-pages with content from books; and
- make other specified uses.

Google offers to pay all participating rightsholders 63% of the revenues earned from the above schemes. However, in order to receive a payment, a rightsholder must complete certain forms. Further, if you do not want Google to be authorised to include your books in the schemes, then you may have to specifically withdraw your works from the Settlement.

## CAL's role in the Google Settlement

CAL represents the rights interests of more than 12,000 direct and many thousands of indirect author and publisher members. CAL has accepted a request by the Court to communicate the terms of the Google Settlement to its Australian members. This guide aims to inform members of the Settlement and provides directions to more detailed information.

## What you need to do

The decision to make a claim, or opt in to the Revenue Models on offer, is a matter for each individual author or publisher.

CAL recommends you read this guide and summary notice, and then visit the CAL website, [www.copyright.com.au](http://www.copyright.com.au), to view a copy of CAL's *Overview of the Google Settlement*, which provides more information about the Settlement and the options available for authors and publishers.

For full details of the Google offer, the Google FAQ sheet and the text of the Settlement Agreement (including definitions of the capitalised terms used in this guide) visit <http://www.googlebooksettlement.com/>.

## What is the Google Settlement?

### Overview

- The Google Settlement is an agreed settlement of a class action brought by US authors and publishers in connection with the Google Library Project. Under this project Google has, since 2004, digitised entire collections of participating libraries without the consent of the relevant rightsholders. Google has already digitised over seven million books, many of which are still in copyright. Google users can currently view Snippet Displays of those books.
- The Google Settlement will authorise Google to make and license certain uses of participating works – those uses are summarised in this guide under **Your Rights and Consequences**.
- Australian rightsholders in Books and Inserts may be able to claim under the Settlement if their works have been digitised by Google. Australian rightsholders may also choose to participate in the licence schemes Google will offer in the future.

### What is Google offering?

- The Cash Payment: Google offers to make a one-off payment of at least US\$60 for each Book and US\$15 for each Insert that has been digitised by Google up to 5 May 2009. A searchable database of those Books can be viewed at <http://www.googlebooksettlement.com/> (click *Claim Books and Inserts*). If you choose to accept this payment, you cannot subsequently take separate legal action against Google for that digitisation. However, a rightsholder can claim the Cash Payment and exclude their Books or Inserts from the other Google schemes.
- Revenue Model: A share of revenues from the licensed uses Google proposes to offer.

### What works are covered by the Settlement?

The Settlement covers the rights owned by authors and publishers in Books and Inserts published on or before 5 January 2009. Excluded are periodicals, sheet music and pictorial works, other than illustrations in children's books.

The extent of the use to be authorised by the Settlement will depend on whether Google classifies a work as Commercially Available or not Commercially Available. In particular, this classification will affect whether a rightsholder must actively withdraw works for them not to be included in Google's future Revenue Models.

The Settlement does not cover the works of rightsholders who have chosen to enter into separate agreements with Google, under Google's Partner Program.

## Your Rights and Consequences

The authorisations deemed to be granted to Google by the Settlement are set out in Article III of the Settlement Agreement on the Google Book Settlement website.

Below is a brief outline of those authorisations and the consequences for rightsholders. CAL has also included on its website further information on the rights granted and the consequences for rightsholders prepared by the International Federation of Reproduction Rights Organisations (IFFRO), the international peak body representing CAL and other reproduction rights organisations. We urge all rightsholders to read the IFFRO summary closely, which can be found by visiting [www.copyright.com.au](http://www.copyright.com.au).

### 1. If you choose to do nothing

If you choose to do nothing, Google will be authorised to use your Books and Inserts published on or before 5 January 2009 in accordance with the terms of the Settlement. If Google deems a Book to be not Commercially Available, it may be included in both the Display Uses and Non-Display Uses of the Google Revenue Models. Further, if rightsholders do not submit Claim Forms in the time required, Google will not make payments to those rightsholders.

That is, Google will be authorised, in the US, to:

- continue to digitise Books and Inserts;
- sell subscriptions to its Book database to institutions, libraries and other users in the US;
- sell online access to individual Books;
- sell advertising on pages from Books; and
- display Snippets and bibliographic information from Books and Inserts.

Inclusion of Books and Inserts in the Institutional Subscription Database may exclude those works from future payments made to the US reproduction rights organisation [Copyright Clearance Centre – CCC] for licensed course pack use in the US education sector.

### 2. If you choose to remain in the Settlement

Google will be authorised to make the Display Uses listed above.

Google will also be authorised to make Non-Display Uses for the term of US copyright. Participating rightsholders may not exclude Books or Inserts from Non-Display Uses.

Google will pay to the Google Book Registry 63% of the revenue Google receives for those uses. The Registry will distribute that revenue to rightsholders in accordance with a plan of allocation to be developed by it which

complies with the economic copyright usage terms set out in Article IV of the Settlement Agreement. The Google Book Registry will not be subject to the same governance and reporting requirements imposed on CAL.

You can claim the Cash Payment and also exclude your Books or Inserts from some or all Display Uses – see sections III [Books] and IV [Inserts] of the Claim Form. For further information on exclusion please refer to questions 27-32 in the FAQ section of the Google Book Settlement website.

### Special rules for in-print and out-of-print Books

**In-print Books** – Both the author and publisher must opt-in to authorise Google to make Display Uses. In order to authorise one or more of the Display Uses, the rightsholders must complete the relevant sections of Google's Claim Form. The rightsholders can change these instructions at any time, and in the case of conflict the most restrictive instruction will prevail.

**Out-of-print Books** – Google will be authorised to make Display Uses and Non-Display Uses of participating Books that are out-of-print/not Commercially Available unless the rightsholders specifically exclude their Books from these uses in the relevant section of the Claim Form. Google has adopted rules to determine when an author can authorise use and make pricing decisions for out-of-print Books. See attachment A to the Google Settlement Agreement.

### 3. If you choose to opt-out

Rightsholders who choose to opt-out must do so on or before **4 September 2009**, either online or by prepaid airmail addressed to:

**Google Book Settlement Administrator**  
**C/- Rust Consulting**  
**PO Box 9364, Minneapolis,**  
**MN 55440-9364, USA**

## Next Steps and Critical Dates

### On or before 4 September 2009

- If you wish to opt-out, you must send written notice to the Settlement administrator. This applies both to rightsholders whose Books or Inserts have been digitised and to rightsholders whose Books or Inserts were published before 5 January 2009 and had not been digitised by Google by **5 May 2009**.
- If you wish to remain in the Settlement but object to its terms, you must file a statement of your objection in the manner set out under part 16 of the full Notice at <http://www.googlebooksettlement.com/> (*click View the Notice*).

### On or before 5 January 2010

- If you wish to claim a Cash Payment you must complete the Claim Form which can be downloaded or completed online.

### On or before 5 April 2011

- If you have remained in the Settlement, and wish to have your Book or Insert removed from Google's digitised database, you must make a written request to do so.

## Useful Links

**Google Book Settlement website**  
[www.googlebooksettlement.com](http://www.googlebooksettlement.com)

**US class action attorneys**  
Authors - [www.bonizack.com](http://www.bonizack.com)  
Publishers - [www.debevoise.com](http://www.debevoise.com)

**International Publishers Association**  
[www.internationalpublishers.org](http://www.internationalpublishers.org)

**US Authors Guild**  
[www.authorsguild.org](http://www.authorsguild.org)

**Association of American Publishers**  
[www.publishers.org](http://www.publishers.org)

**Australian Society of Authors**  
[www.asauthors.org](http://www.asauthors.org)

**Australian Publishers Association**  
[www.publishers.asn.au](http://www.publishers.asn.au)

**Copyright Agency Limited**  
[www.copyright.com.au](http://www.copyright.com.au)

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The print and mailing costs for this notification program will be reimbursed by the Google Settlement Administrator.

**Disclaimer:** The information provided in this guide is intended to provide an outline of what is offered, with directions to more detailed information. If you need advice on the legal and commercial implications of the offer, please contact your legal adviser, industry association or the class action attorneys (email [bookclaims@bonizack.com](mailto:bookclaims@bonizack.com) for authors or [bookclaims@debevoise.com](mailto:bookclaims@debevoise.com) for publishers).

# Google Book Settlement Summary Notice

## Legal Notice

**Persons Outside the United States:** This settlement may affect you because it covers U.S. copyright interests in books published outside the United States. If you hold such an interest in a book or other material in a book, this settlement could bind you unless you timely opt out.

## If You Are a Book Author, Book Publisher or Other Person Who Owns a Copyright in a Book or Other Writing,

**Your rights may be affected by a class action settlement regarding Google's scanning and use of Books and other writings.**

Authors and publishers filed a class action lawsuit, claiming Google violated the copyrights of authors, publishers and other copyright holders ("Rightsholders") by scanning in-copyright Books and Inserts, and displaying excerpts, without permission. Google denies the claims. The parties have agreed to a settlement. This summary provides basic information about the settlement. "Books" and "Inserts" are described below.

### What Does the Settlement Provide?

The settlement, if Court-approved, will authorize Google to scan in-copyright Books and Inserts in the United States, and maintain an electronic database of Books. For out-of-print Books and, if permitted by Rightsholders of in-print Books, Google will be able to sell access to individual Books and institutional subscriptions to the database, place advertisements on any page dedicated to a Book, and make other commercial uses of Books. At any time, Rightsholders can change instructions to Google regarding any of those uses. Through a Book Rights Registry ("Registry") established by the settlement, Google will pay Rightsholders 63% of all revenues from these uses.

Google also will pay \$34.5 million to establish and fund the initial operations of the Registry and for notice and settlement administration costs, and at least \$45 million for cash payments to Rightsholders of Books and Inserts that Google scans prior to the deadline for opting out of the settlement.

### Who Is Included?

The settlement class includes all persons worldwide who hold a U.S. copyright interest in any Book or Insert. **The meaning of "U.S. copyright interest" is broad. Wherever you are located, please read the full Notice to determine whether you are included in the settlement.**

There are two Sub-Classes:

- The "Author Sub-Class" (authors of Books and other writings, and their heirs, successors and assigns), and
- The "Publisher Sub-Class" (publishers of Books and periodicals, and their successors and assigns).

### What Material Is Covered?

"Books" include in-copyright written works, such as novels, textbooks, dissertations, and other writings, that were published

or distributed in hard copy format on or before **January 5, 2009**. U.S. works must be registered with the U.S. Copyright Office to be included in the settlement. "Books" do not include periodicals, personal papers, sheet music, and public domain or government works.

"Inserts" include any text and other material, such as forewords, essays, poems, quotations, letters, song lyrics, children's Book illustrations, sheet music, charts, and graphs, if independently protected by U.S. copyright, contained in a Book, a government work or a public domain book published on or before **January 5, 2009** and, if U.S. works, registered (alone or as part of another work) with the U.S. Copyright Office. Inserts do not include pictorial content (except for children's Book illustrations), or any public domain or government works.

**The Notice contains a more detailed description of these terms and other essential information about the settlement.**

### What Should I do?

Please read the full Notice, which is available at <http://www.googlebooksettlement.com>. Decide whether you should:

- Remain in the settlement. If you do so, you will be bound by the Court's rulings, including a release of your claims against Google.
- Object to or comment on the settlement. You must object/comment in writing by **May 5, 2009**.
- Opt out of the settlement and keep your right to sue Google individually. You must opt out in writing by **May 5, 2009**.
- File a claim for a cash payment (if you are eligible to do so). You must file your claim by **January 5, 2010**.

The Court has appointed Class Counsel to represent the two Sub-Classes. If the settlement is approved, Class Counsel for the Author Sub-Class will request attorneys' fees and expenses that Google has agreed to pay. You can also hire your own attorney at your own cost.

The Court will determine whether to approve the settlement at a Fairness Hearing on **June 11, 2009 at 1:00 p.m.**

**Get Complete Information, Including the Full Notice:**

**Visit: <http://www.googlebooksettlement.com> Call: +1.612.359.8600**

**Write: Google Book Search Settlement Administrator, c/o Rust Consulting  
P.O. Box 9364, Minneapolis, MN 55440-9364 United States of America**