

What the Google Book Settlement Means for Authors and Publishers

Replay of April 2, 2009

Teleseminar with Attorney **Joy R. Butler***

(Please read the disclaimer on page 3.)

Replay Information: To access the complimentary telephone replay, call (641) 715-3900. When prompted for the extension, enter 47422 followed by the pound sign (#). (If this is a long-distance call for you, you will pay to your long-distance carrier the fee normally charged for long-distance calls.). The recording is 54 minutes. While listening to the teleseminar, you can press 2 to reverse for 30 seconds, 3 to go forward 30 seconds, and 8 to pause.

Outline of Discussion

I. Overview of Google Book Settlement

If the Settlement is approved, Google will do the following:

- A. pay \$45 million to copyright owners whose books were digitized without permission on or before May 5, 2009
- B. pay to copyright owners 63% of the net revenues earned by Google for the commercial uses of their books
- C. pay \$34.5 million to establish a Book Rights Registry

II. Some Background

- A. Evolution of Google Book Search and lawsuit leading to the Google Book Settlement. *The Authors Guild et al. v. Google*, Case No. 05 CV 8136-JES (S.D.N.Y.)
- B. You can download a copy of the full settlement agreement at www.googlebooksettlement.com
- C. Other Google programs involving books
 - 1. Google Library Project (GLP)
 - 2. Google Partner Program

III. Which Authors, Publishers, and Books Fall Under the Google Book Settlement?

- A. Books and certain other writings published on or before January 5, 2009
- B. Certain inserts (*e.g.*, poems, song lyrics, tables, charts, children's book illustrations)
- C. Impact on photographers, illustrators, and other genres of creators
- D. Impact on authors and publishers who are citizens of other countries

* **Joy R. Butler** is an attorney with a private practice (www.joybutler.com) focusing on entertainment, intellectual property, and business law. She is the author of *The Permission Seeker's Guide Through the Legal Jungle: Clearing Copyrights, Trademarks and Other Rights for Entertainment and Media Productions* and a forthcoming book on internet law issues. Ms. Butler is a graduate of Harvard Law School and Harvard College.

IV. Important Dates

- A. May 5, 2009 is the deadline to opt out of the Google Book Settlement.
- B. January 5, 2010 is the deadline by which to file a claim to receive the cash settlement.
- C. April 5, 2011 is the deadline to request removal of your book from the search program.

V. What Google Can Do with Your Book If You Remain in the Settlement

- A. If Google determines that your book is commercially available, Google will classify your book as “No Display” and will not make any display uses of your book unless you give Google permission to do so. If Google determines that your book is **not** commercially available, it will automatically classify your book as “Display”.
- B. Display Uses. Means Snippet Display, Front Matter Display, Access Uses and Preview Uses
 - 1. Snippet Display. A snippet is 3 to 4 lines of text from a book offered in response to a user search.
 - 2. Preview Use. Similar to amazon.com’s “Look Inside” feature
 - a) Standard Preview is the default setting for most books. Allows access to up to 20% of book but no more than five adjacent pages (15 adjacent pages for fiction).
 - b) Continuous Preview removes the adjacent page restriction and limits the preview to 10% of the book.
 - c) Fixed Preview shows the same pages to every user in response to every search and is the default for reference books.
- C. Access Use. Currently includes Institutional Subscriptions, Consumer Purchase and the Public Access Service
- D. Advertising Uses
- E. Research Corpus
- F. Book Annotation
- G. Non-Display Use
- H. Potential Future Commercial Uses
 - 1. Consumer Subscriptions
 - 2. Print on Demand Books
 - 3. Custom Publishing
 - 4. PDF Downloads
 - 5. Summaries, Abstracts or Compilations

VI. How Can Authors and Publishers Who Stay in the Settlement Control Google’s Use of Their Books?

- A. Removal. If you request removal, no digital copies of your book will be available through the Google book program (with the possible exception of a back-up tape).
- B. Exclusion. According to Section 3.5(b) of the Settlement Agreement, you may request at any time exclusion of your book from Display Use, from Book Annotation, from Institutional Subscription, from Consumer Purchases, from Advertising Uses, and from the Public Access Service.

VII. Payments by Google to Authors and Publishers

- A. Cash settlement payment of \$60 to \$300 (\$15 to \$75 for Inserts)
- B. 63% of net revenues from sales, advertising, and subscription revenues

VIII. Significance of Google Classifying Your Book as Not Commercially Available

- A. Google will classify your book as “Commercially Available” if the book is available for sale new through one or more customary channels of trade in the United States.

IX. Impact of the Google Book Settlement on Relationships between Authors and Publishers

X. Other Factors to Consider When Deciding Whether to Remain in the Settlement

IF YOU HAVE QUESTIONS OR COMMENTS, please post them on my www.GuideThroughtheLegalJungleBlog April 6, 2009 webpage announcing the replay titled “Replay of Google Book Teleseminar Is Now Available”. Although I cannot render any specific legal advice through my blog, I will respond to requests for clarification on the information presented in the teleseminar.

DISCLAIMER: The material in the teleseminar and in this outline is offered for informational purposes only, and should not be relied on as legal advice. Nothing herein constitutes the establishment of an attorney-client relationship between you and the Law Office of Joy R. Butler. While I have attempted to present accurate information, the Google Book Settlement is a complicated document of 300+ pages and the teleseminar presentation may omit a nuance, exception, or interpretation that is applicable to your specific situation.
