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IPA COPYRIGHT SYMPOSIUM

MARCH 1 2010

Abu Dhabi, U.A.E.

**PANEL: THE FUTURE OF DIGITAL PUBLISHING AFTER
THE GOOGLE BOOKS SETTLEMENT**

Presented by Lois F. Wasoff





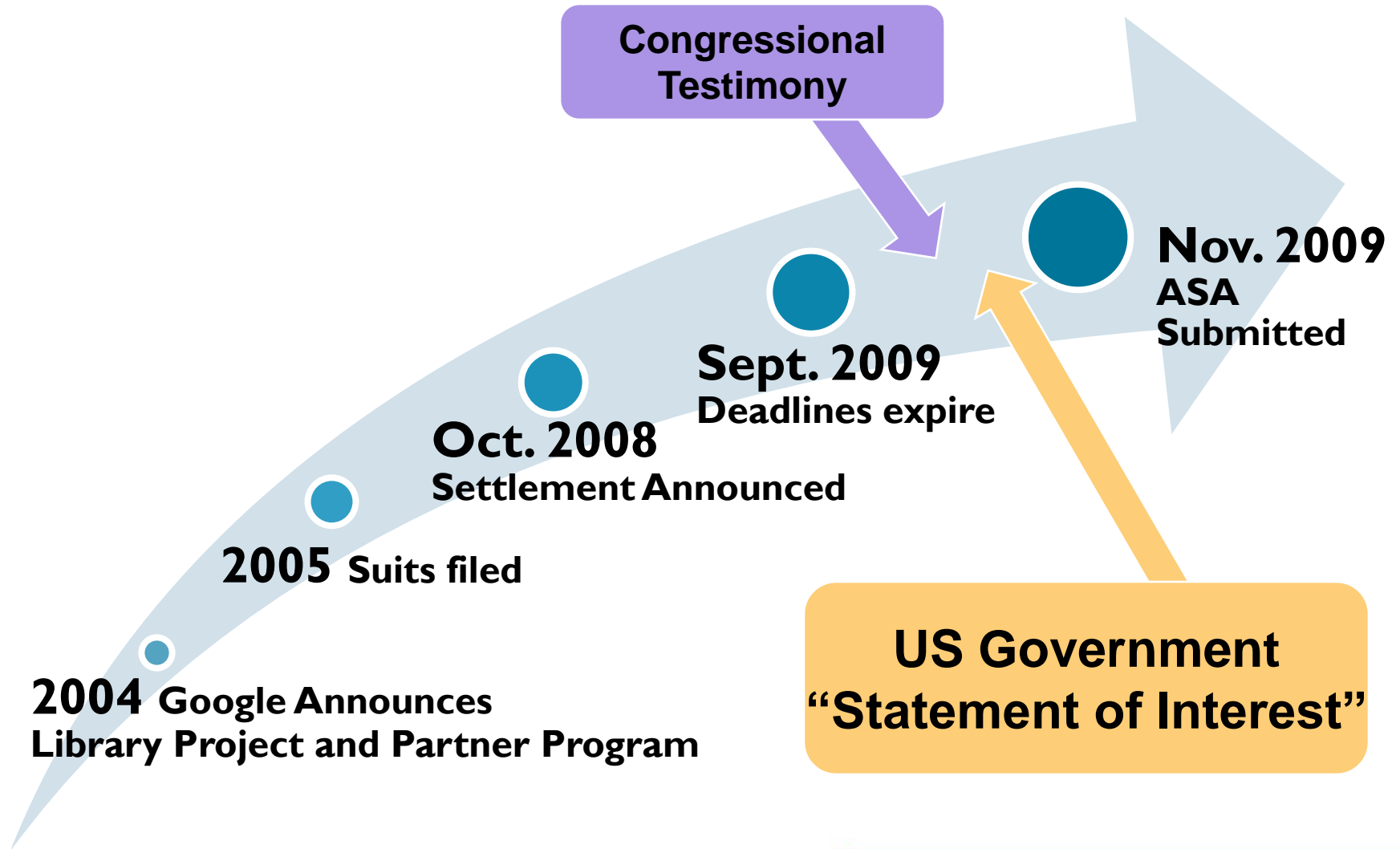
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AAP, Authors Guild and Google Amended Settlement Agreement

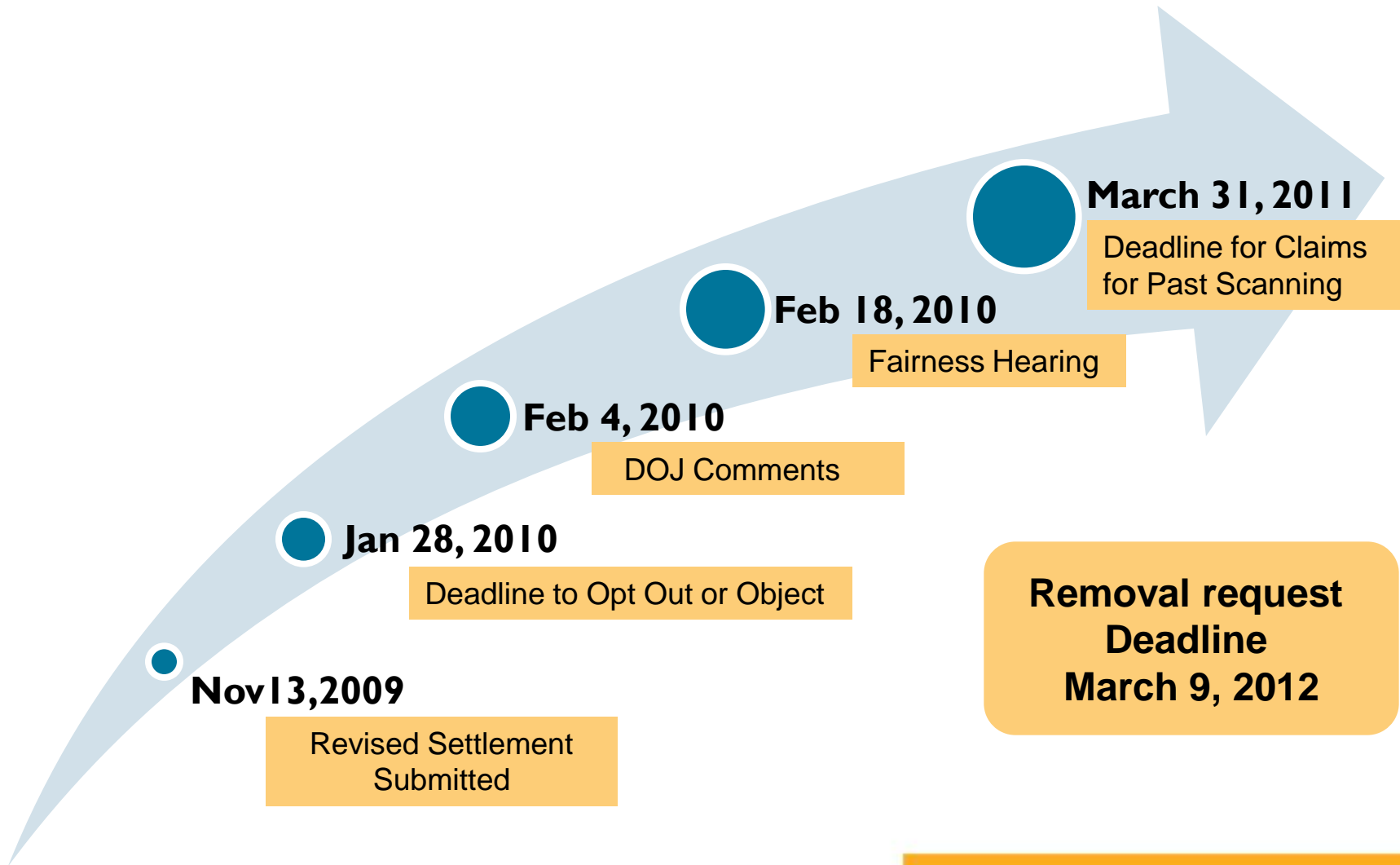
This presentation
does not constitute
legal advice.



HISTORY OF THE SUIT



RECENT EVENTS FUTURE DEADLINES



Nov 13, 2009

Revised Settlement
Submitted

Jan 28, 2010

Deadline to Opt Out or Object

Feb 4, 2010

DOJ Comments

Feb 18, 2010

Fairness Hearing

March 31, 2011

Deadline for Claims
for Past Scanning

**Removal request
Deadline
March 9, 2012**

WHO IS INCLUDED ?

If you hold a **Copyright Interest**

in a **Book**

or **Insert**

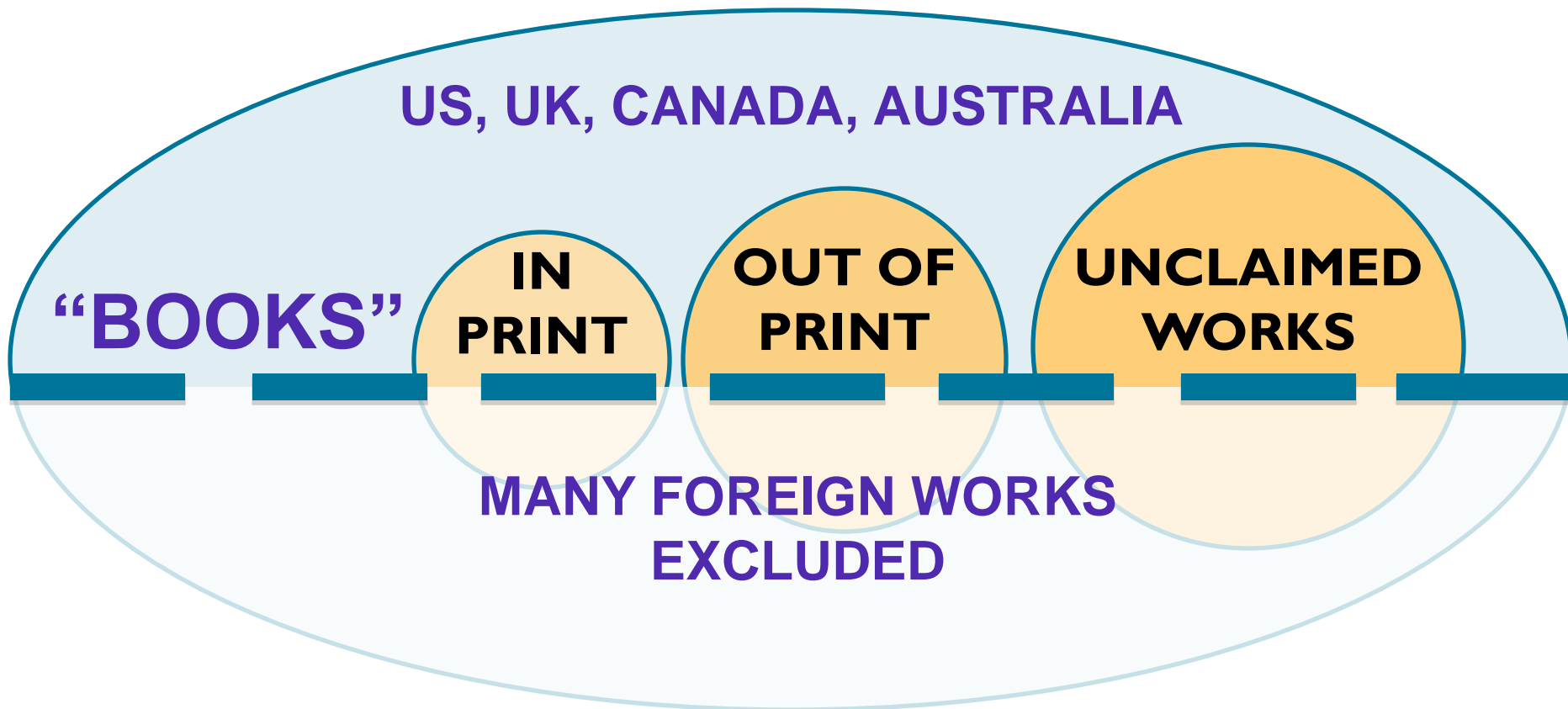
and you don't **Opt Out**

you become a **Rightsholder**

SETTLEMENT CLASS MEMBER

SCOPE OF WORKS COVERED

According to Google: 12 Million works both US and foreign



Key Terms of the ASA

- Authorizes future use by Google of Books and Inserts
 - Distinction between “commercially available” and other works
- Creates a “Book Rights Registry”
 - Representation issues
 - Treatment of Unclaimed (“Orphan”) Works
 - Authorization of “Additional Revenue Models”
- Economic issues
 - Payments for past scanning
 - Payments for future uses
 - Provisions for setting prices to users
- Control mechanisms for rightsholders

DISPLAY USES

Access Uses

Preview Uses

Snippet Display

Front Matter Display

ACCESS USES

Consumer Purchase

Institutional Subscription

Additional Revenue Models

Public Access Uses

NON DISPLAY USES

Bibliographic Data

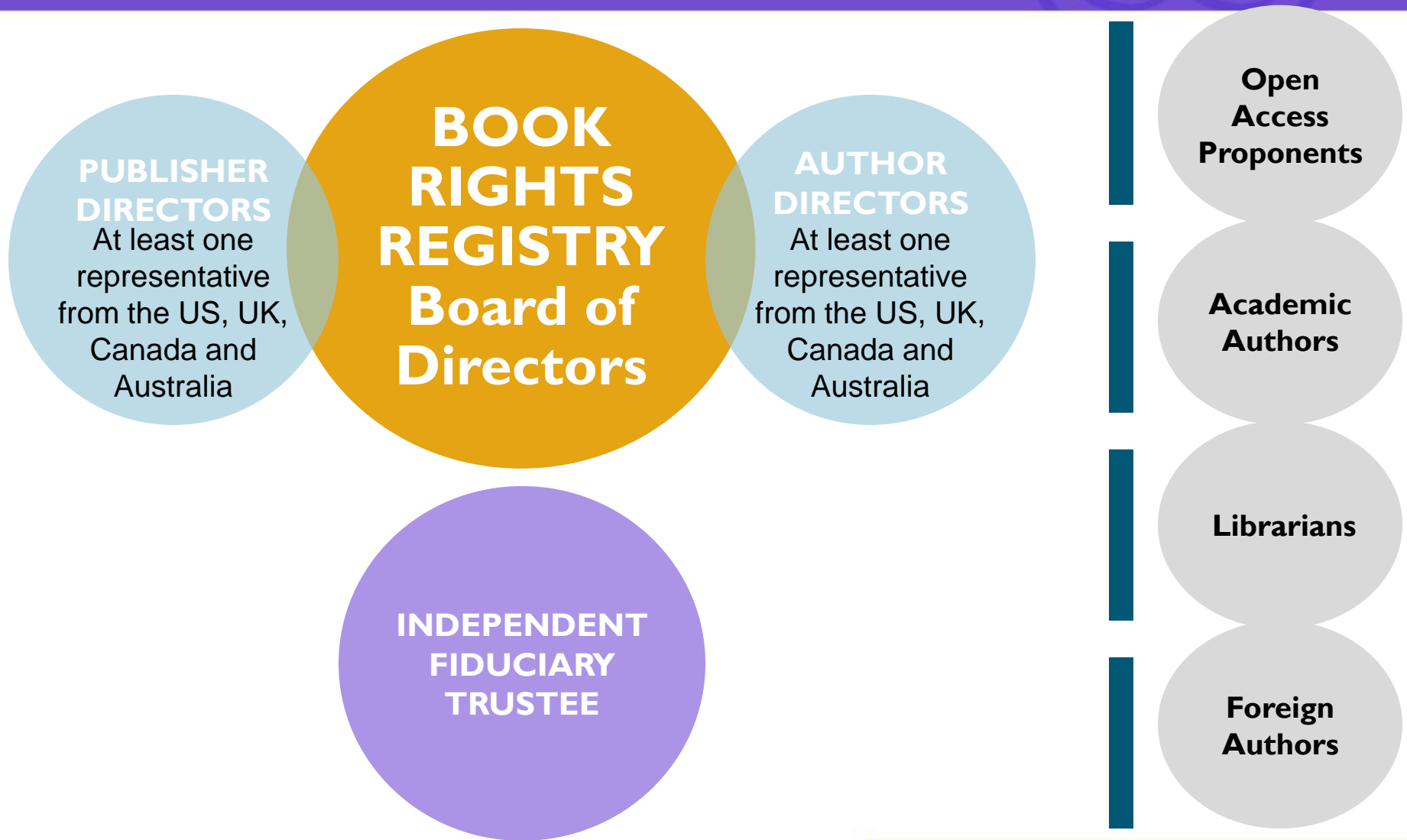
Full-text Indexing

Internal Research and
Development

BOOK RIGHTS REGISTRY

- Maintain a rights information database
- Assist in locating rightsholders
- Track the permissions given or denied to Google for the use of the Books
- Collect and disburse payments
- Negotiate pricing of institutional subscriptions
- Assist in dispute resolution
- Initially funded by Google, then by deductions from payments to rightsholders

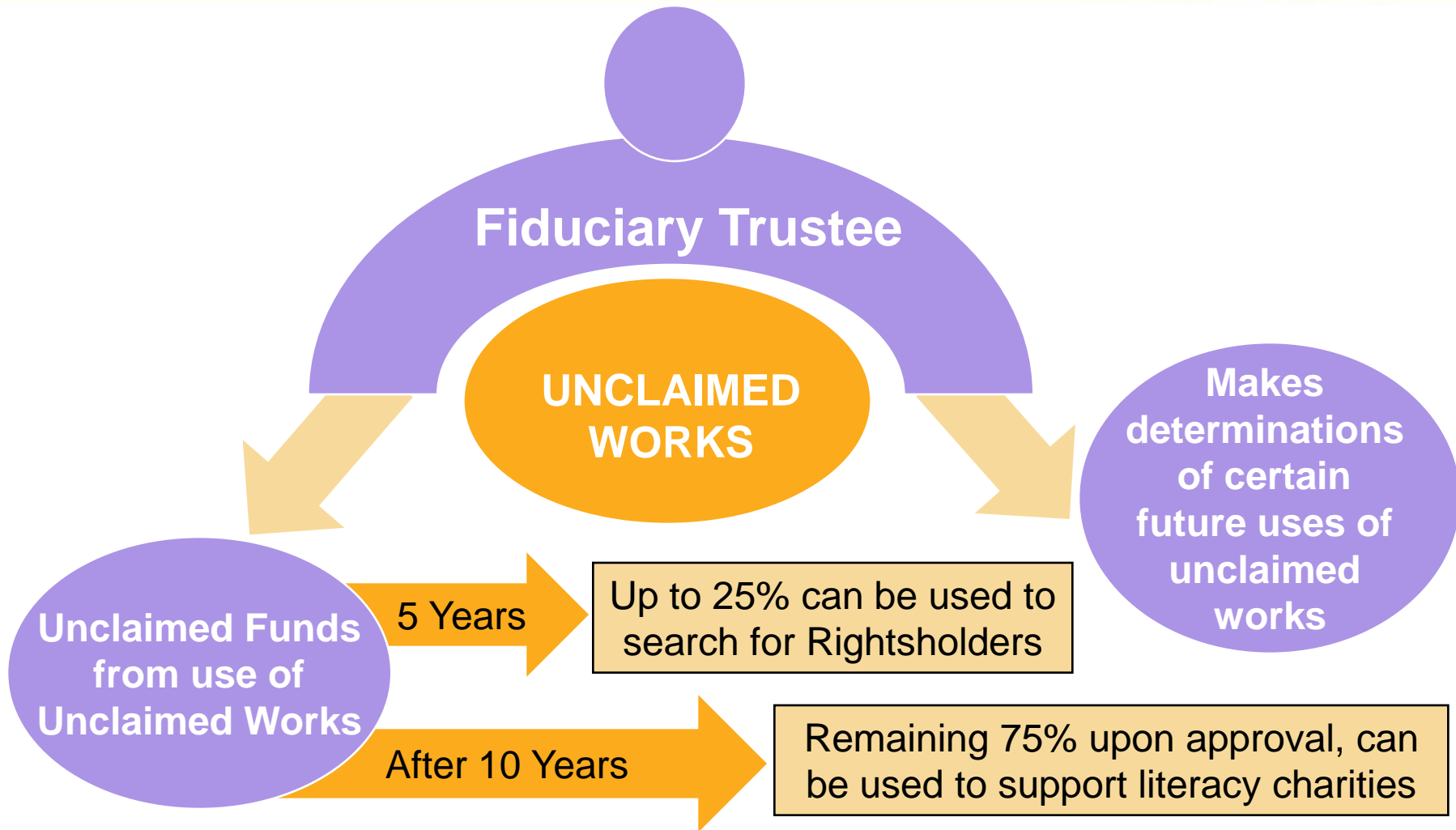
RIGHTSHOLDER REPRESENTATION WITHIN THE REGISTRY



BENEFITS TO THE RIGHTSHOLDERS

- Payments for prior activities
- Ongoing payments from revenue generating programs (63%/37% split)
- Some individual negotiation between Google and rightsholders now contemplated in ASA
- Control over level of participation in programs (removal; exclusion)
- Pricing (consumer purchase; institutional subscription)

TREATMENT OF UNCLAIMED WORKS



OVERVIEW OF KEY OBJECTIONS AND RESPONSES

- Antitrust Concerns
- Class Action Rules
- Copyright Law and Policy
- Public Policy

ANTITRUST CONCERNS

Procompetitive

Non Exclusive

No Monopoly

Rightsholder
flexibility in
pricing

Proponents of the Settlement

Google™

Opponents of the Settlement

Anticompetitive

Only Google can
use Orphans

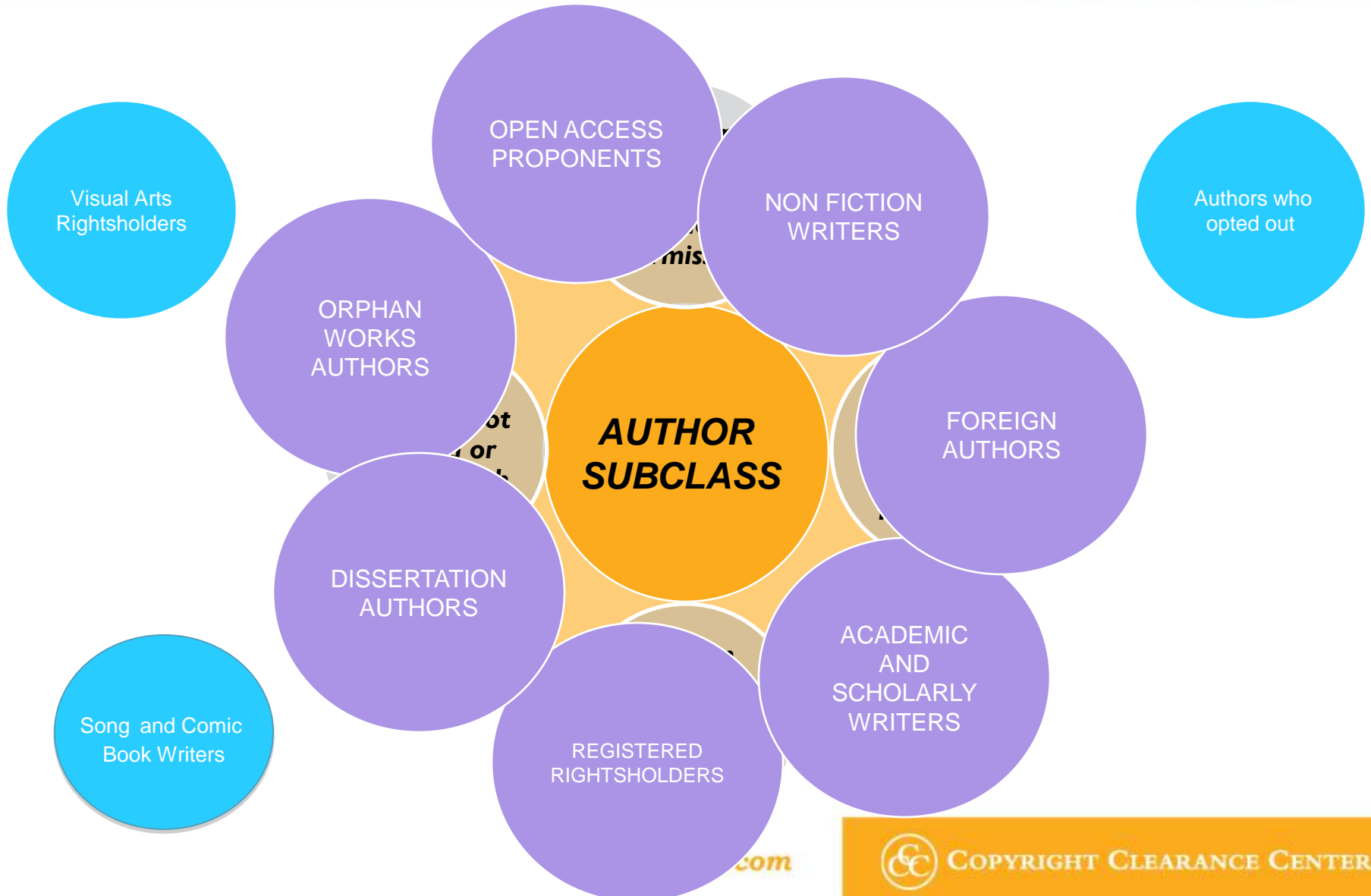
Monopoly

Price Fixing
by horizontal
competitors

CLASS ACTION-PROCEDURAL CONCERNS

- Opponents:
 - Predominantly a commercial transaction
 - Two distinct parts (past and future conduct)
 - Notice requirements have not been met
 - Class is not provided adequate compensation
 - Class cannot be certified
- Proponents:
 - Addresses actions ongoing or likely to occur
 - Class actions can address future conduct
 - Notice was adequate
 - Settlement must be “fair” not perfect
 - Class members can be ascertained from criteria in ASA

SCOPE AND DIVERSITY OF AUTHOR SUBCLASS



SCOPE AND DIVERSITY OF PUBLISHER SUBCLASS



WHO'S RESPONSIBILITY IS IT?



U.S.
Congress

Copyright Law and Policy

The
Judiciary



PUBLIC POLICY ISSUES



PRIVACY
AND
SECURITY

PUBLIC
ACCESS

CREATIVE
COMMONS
LICENSING



Fairness Hearing and Beyond

- Fairness Hearing held 18 February
 - Presentations by supporters and objectors
 - Arguments presented by U.S. DOJ
 - Arguments presented by proponents
- Judge Chin will review all oral and written submissions and issue a decision
- Whatever the Judge's decision, there will probably be an appeal

FOR MORE INFORMATION

- Settlement Website –
<http://www.googlebooksettlement.com>
- Other information sources:
 - AAP <http://www.publishers.org>
 - Authors Guild <http://www.authorsguild.org>
 - CCC <http://www.copyright.com>