

**The Authors Guild, AAP, Google Settlement: What Authors and Publishers Need to Know as May 5<sup>th</sup> Approaches presented by Lois Wasoff, Esq.**

OPERATOR: I would now like to turn the presentation over to Christopher Kenneally, Director of Author Relations for Copyright Clearance Center. Please go ahead.

KENNEALLY: Thank you very much, Brianna, and on behalf of Copyright Clearance Center, I want to welcome everyone to this important program today.

As I reflected earlier on the global nature of our audience of authors and publishers, I realized that I should greet those on the Pacific Coast with good morning. To those on the East Coast who may be listening to us while they're having their lunch, good afternoon. To our colleagues in the publishing world, authors and publishers alike, who listen in from Europe and South Africa, as well as even Australia, good evening.

We are here today to discuss what authors and publishers need to know as May 5 approaches. It's an important milestone related to the AAP/Authors Guild/Google settlement. And there's quite a lot of information to be covered here.

As we move through this hour long program, we suggest you follow along with pencil and paper. But we want you to know that we will make the slides available very shortly on our website, [copyright.com](http://copyright.com).

As the operator explained, we will be taking questions via the Chat box in the lower right corner of the screen. If you would please pose your question to us as we progress, and if you can, let us know whether you are an author or a publisher.

This free informational seminar is one of many educational programs that Copyright Clearance Center offers to help individuals and organizations gain a better understanding of their rights and responsibilities, and to promote respect for intellectual property. I am sure that many of you are familiar with Copyright Clearance Center, and at the same time, I'm sure that given the nature of this program and the viral aspect of this, we've been able to gather an audience here of well over 500. And with the idea in mind that many of you may not be so familiar with Copyright Clearance Center, let me tell you that we were established 30 years ago by publishers and authors as an independent, not-for-profit organization. Our roots are in the licensing of book and journal content.

Today, CCC currently sells institutional licenses to corporate and academic clients, all together managing more than 300 million rights. We are a member of an established network of global collective licensing organizations, selling licensing rights around the world.

At CCC, we are advocates for rights owners, and we are passionate about ensuring that rights owners are fairly compensated for their work. And to that end, in just the last 15 years, we have distributed over \$1 billion to U.S. rights holders.

Like other international rights licensing organizations, CCC has been participating in the notification process for this settlement. I am joined today by Lois Wasoff. Lois, welcome to our program.

WASOFF: Thank you, Chris.

KENNEALLY: It's good to have you here, and let's tell the audience briefly about your background. You have served at the invitation of the Library of Congress as part of a study group put together to look at issues related to copyright law and libraries. You have been, indeed, an attorney in that field for many years. You were past Chair of the Copyright Committee for the Association of American Publishers, and formerly Vice President and Corporate Counsel at Houghton Mifflin Company.

It's pretty clear to people that you're quite an expert in this field, and you've participated in numerous meetings and conferences in this country and abroad on copyright issues, speaking about legal issues and industry practice in book publishing. Your current clients include non-profits and commercial publishers alike, as well as other organizations involved in publishing. And as well, you work with individuals who have questions about copyrights and publishing.

So I'll tell everybody right now about the agenda that you're going to be covering, Lois.

We're going to review who's included in the settlement. We're going to speak to what the differences are between participating or choosing to opt out. We'll review the settlement benefits to rights holders, including revenue generating programs and payments, how they'll be made. We'll discuss the entity that is to be created if the settlement is approved – that's called the Book Rights Registry.

We're also going to point out and highlight some important facts about the settlement, and most importantly for everyone on the call who is a rights holder, we're going to call out some important dates for you to bear in mind.

And we also want you to be aware of some important questions that you need to reflect upon as these deadlines approach.

Finally, we're going to provide you with some resources that can direct you to more information about the settlement. Now, I do have to say, of course, that what we do today is not intended as legal advice, and if you have further questions of a legal nature, we recommend that you consult your own counsel to get full answers with them.

But let's get started here, as I'm sure the audience is eager to find out more. And Lois, what in fact is getting all the attention here? We've got, as I said to everyone earlier, well over 500 people attending. Why is this so important to this audience of publishers and authors?

WASOFF: Well, the reason that this is so important, Chris, is that literally hundreds of thousands of rights holders, publishers and authors alike, are likely to be covered by the terms of this settlement. That to understand how this settlement can have that kind of scope, it's important to understand the scope of the activities that Google has engaged in.

The estimates that we're hearing is that Google has already scanned more than 7 million books, as part of its Google Library project, which we'll be discussing in a minute. About a million of those books are in copyright and in print. About a million are clearly in the public domain. And about 5 million are probably protected by copyright.

Since the settlement not only includes provisions that deal with Google's past scanning activities, but also creates authorization for Google to do future scanning of books that fall within the scope of the settlement, and makes future continued use of the works that it has scanned, the implications of this settlement are huge.

KENNEALLY: So we have a timeline here that gives people an idea of how we wound up to be aware of May 5 approaching, and the concerns we have there. So review that for us.

WASOFF: Well, as I mentioned, Chris, this settlement process grew out of the Google Library project. The Google Library project was announced in 2004. That's when Google entered into agreements with significant university libraries, libraries in places like the University of Michigan and Stanford and Harvard, and began to scan books and other materials from those libraries' collections.

Those libraries store within their walls the accumulated knowledge of the world, and their collections are massive and far reaching.

As I mentioned, the result of the scanning process was the digitization of over 7 million works. Now at the same time that Google was doing this in 2004, it began a separate program for publishers and authors to voluntarily participate in scanning. That program, which is still in existence, is the Google Partner Program. Under that program, Google scanned many more works, combined the scannable databases, and therefore a huge, searchable database now exists that Google uses to deliver search results.

Authors and publishers were quite reasonably concerned about the potential impact of the mass digitization being done by Google under the Library program – that

was the digitization being done without authorization – on their ability to control and to be paid for the uses of their work.

So in 2005, the first lawsuit was brought by the Authors Guild, and that lawsuit was brought as a class action. Very shortly afterward, a group of publishers, supported by AAP, brought a second suit against Google. Both of the lawsuits allege scanning and use of the in copyright books constituted copyright infringement.

The two lawsuits were consolidated in front of the same judge in New York City. Google defended against both suits by claiming that the scanning and the subsequent delivery of snippets, as part of a search result, constituted fair use.

Three years went by, but they weren't a quiet three years. There was a lot of activity going on, in the course of very difficult and very protracted negotiation. Finally, on October 28 of last year, a proposed settlement of both suits was announced.

All of the issues in both suits are addressed in the settlement agreement. And what's critical for our purposes is that the settlement agreement adopted the class action mechanism of the Authors Guild lawsuit.

KENNEALLY: OK, well, clearly then, the implications for what Google was doing is extensive. That's, again, what attracts the global audience to this program. And we understand why the Authors Guild and AAP brought the litigation. So what is the mechanism, this class action, that brings so many people into the settlement? Explain that.

WASOFF: A class action is a form of lawsuit in which a group of class representatives can sue on behalf of others who have similar claims. And it's a very useful mechanism in American jurisprudence, because it gives – it provides a methodology for addressing a situation where there are a lot of small claims, claims in the sense that they involve relatively small amounts of money, so that they might not individually justify a lawsuit.

But because there are common threads that run across the different claims, when a class action is brought, through the use of a group of class representatives to sue on behalf of themselves and others with similar claims, the cumulative effect is to make the action one that's significant enough to be considered by the court, and to reach a resolution.

Because the class action mechanism was used, the settlement agreement, if it's approved by the court, will be binding on all members of the settlement class – all members of the class represented by these class representatives, except those that opt out. And the opt out deadline has been set in the preliminary order and in the settlement agreement. It's May 5, 2009.

As part of this class action process, there's a notice procedure. The notice – a notice has to be sent out to all of the members of the class, or to as many members of the class who can possibly be reached, describing the terms of the settlement. And that notice is intended to give the class members enough information to decide if they want to participate in the settlement or to opt out.

A class action settlement is then subject to court review. There's a procedure called a fairness hearing, and the fairness hearing in this settlement is now scheduled for June 11, 2009. At that hearing, the judge will hear and consider any objections that have been raised. The judge will review the notice procedure, and determine if it was adequate to reach the class members. And the judge will review the overall terms of the settlement.

The judge doesn't have unlimited options here, and it's important to note that the judge has the choice of approving the settlement, disapproving the settlement, or perhaps sending it back to parties for more work – to the named parties for more work, before considering it again. The judge is going to conduct this hearing on June 11, and at that time, the judge's considerations will be informed by any objections that were raised in the course of an objection period that will also end on May 5, 2009.

KENNEALLY: OK, then. So if this class of authors and publishers exist then, and we need to ask the question, who are the members of this class? I'm an author myself. How am I going to determine if in fact I am included in this settlement?

WASOFF: Well, there's very specific defined terms in the settlement agreement that will let you know whether or not you're included. The first criteria is that you have to hold a copyright interest, and you have to hold that copyright interest in a book or an insert. So let's go back for a minute and look at those terms.

A copyright interest, for this purpose, means a U.S. copyright interest that covers rights that are implicated by the uses authorized by the settlement agreement, and we'll be talking about those uses a little later.

You hold that copyright interest if you hold the entire interest, or you hold the interest jointly with another person or entity, or if you're the exclusive licensee of a copyright interest.

Now, books and inserts are also specifically defined. Books are defined as printed works. So the book has to have had an existence as a hard copy in order to be covered, printed works that were registered with the Copyright Office as of June 5, 2009. Books specifically do not include periodicals, including scholarly journals, unpublished diaries, notes or letters, or sheet music. That doesn't mean that these materials weren't scanned by Google. We'll talk about a little bit later. There's

material in the Google database that isn't covered by the settlement. But the terms of their past scanning and future use are not covered by the settlement.

And inserts are content that appears within a book that's owned by the copyright holder other than the owner of the book. And those are things like text, children's book illustrations, musical notations and tables, charts and graphs, permissions materials that many of our listeners would be familiar with. Specifically excluded from the settlement, though, are some permission materials that our listeners will also be familiar with. Photographs, illustrations except for children's book illustrations, maps and paintings, are all excluded. They are not inserts for the purposes of the settlement.

KENNEALLY: OK, well, there's obviously a lot to absorb here, and as I mentioned at the top, I hope that people are following along with pencil and paper. Rest assured, though, we will provide the slides shortly after the program.

But I wonder if I can sort of hone in a bit more on what you mean by U.S. copyright interest. As we've been saying, this is a global audience on the call here, and the U.S. piece of that is probably very important. Can you explain that again?

WASOFF: OK, I will – I'll give you an example. The publisher of a book, unless all rights to the book have reverted to the author, has a copyright interest in the book. The author of the book, who's entitled to receive royalties on the book, unless the author of the book – if the book is a work, say, for hire, for example, or is also a rights holder for that particular book. So a particular book can have more than one rights holder, and in many, many instances, there will be more than one rights holder claiming rights to a book.

And although the settlement applies to U.S. copyright interests, and importantly, the settlement only authorizes Google to use the works within the U.S., a work of foreign origin may have a U.S. copyright interest associated with it. The libraries included many, many works of foreign origin, and many works of foreign origin in many languages are included in the Google database, and are included in the settlement.

Those works of foreign origin are subject to a slightly different rule. Most of them will be covered by the settlement even if they were not registered with the Copyright Office by January 5, 2009, so long as they were published prior to January 5, 2009.

KENNEALLY: OK. So let's say I am a rights holder, and it sounds like according to those definitions, in my case, I am. What do I need to do now?

WASOFF: If you meet these criteria, it's important to know that you have to affirmatively opt out by May 5 if you do not want to participate in the settlement. Simply ignoring the notice is not an opt out.

If you wish to participate in the settlement, and we'll talk in a minute or two about the consequences of the decision to participate, you don't need to take any action before May 5. You will have some other important choices facing you, but you won't need to make an affirmative choice to opt out, because your silence will constitute your participation, which brings up another issue.

The people on this call are evidencing their interest in this settlement, and in managing the rights they owe, in part by being on this call. They're obviously aware of the settlement agreement and concerned about its implication.

But there are many, many thousands of punitive rights holders, who will not be actively participating. And that's why the importance of an affirmative opt out is important here. This settlement will end up controlling the works – controlling the use of many, many – what we think of as orphaned works, works that don't have active rights holders even though they are still subject to copyright, because those inactive rights holders will not have opted out, and therefore, their works will be subject to settlement.

KENNEALLY: Well, as you say, people who have joined us certainly have made an affirmative choice of interest at least in all of this, and I'm sure they're going to ask this question, and that is, well, if I am a participating rights holder, what does that mean for my work? How can Google then use my books if the settlement is approved?

WASOFF: Well, as you said, Chris, the settlement covers past activities on the part of Google, and very importantly, it covers future uses of the work. And the settlement breaks those uses up into two major categories – display uses, and non-display uses.

Among the display uses that Google will be permitted to make under this settlement of all works covered by the settlement, all works for whom the rights holder is participating in the settlement, are preview uses, which will allow a user of the Google database to view a portion of the book before making a purchase decision, and the agreement provides certain specific different defaults about limits of how much can be seen at a given time.

Snippet display – that's the use that people are familiar with already, if they've used the current Google book search. Preview display is now going to be specifically an authorized display use under the Google settlement agreement, and that will be the display of a few lines of text around a search term. So the use that we're used to seeing now, for the current database.

Pragmatic (sp?) display is also a display use, and that's the display of bibliographic information as it appears in the book – title page, copyright page, table of contents, index, all those will be covered. Access uses also will be authorized by the

settlement, and those are important, because those are newer, and they're not something that we're used to seeing if we've used Google book search before.

Those access uses include consumer purchase, and that's where individual users will be able to purchase the right to access the full text of books online. The book will reside on the Google host computer, but the user will be able to purchase the right to go to the work and see it in full text.

Google is creating an institutional subscription, and the expectation is that educational government and corporate institutions will be able to purchase time limited subscriptions that will give them the right to access the full content of the database.

Both of these access uses, both consumer purchase and institutional subscription, will allow users to copy and paste and print portions of the work, and perhaps ultimately print up to the entire work, though, in most cases, it wouldn't be a convenient way to print the work. You'd have to do it in stages.

It's also important to note that both of these uses would allow users to access the scanned copy posted by Google, but not to download the (inaudible).

(inaudible) also contemplates a new revenue model, new in the sense there would be new to settlement agreements – they won't be new to our listeners. The settlement agreement contemplates that there may be a negotiation that permits Google to do print on demand, deliver print copies of full works, PDF downloads, and perhaps create individual consumer subscription opportunities similar to the institutional subscription.

In addition, there are free public access uses contemplated by the agreement. Google is going to make one terminal available upon request at each public library building. Google is also going to make one terminal per a specified number of full time equivalent students available at college libraries. And those public access uses are going to allow printing at a per-page fee.

And then the final use, I think it's worth noting here, even though it isn't technically an access use, is that Google is going to share ad revenues. When Google does provide preview access for similar access to a user, and there are ads associated with a page that relates to a particular book, Google will share the ad revenues generated by those advertisements with the rights holder.

KENNEALLY: Well, we've been hearing a lot about what Google can do, and so again, thinking of the rights holder – I'm sorry, we have even more uses, if possible.

WASOFF: Well, just briefly, there are also non-display uses authorized by the agreement. And those are uses that are defined as uses that don't actually display the expression that's included in the book, but they use other associated

information, or use the content, but don't replicate the expression. And those are things like full text indexing, bibliographic data, and internal research and development at Google.

And it is important to touch on those, to distinguish between display and non-display uses, because of the rights that we will talk about that rights holders will have to control certain uses made of their work.

KENNEALLY: Right. Well, then I suppose I could be forgiven for jumping the gun, because I want to know what this means to me as a rights holder. As I say, we are hearing just now a lot about what Google can do. What's going to be the benefit to the rights holder from all of this?

WASOFF: Well, the settlement agreement includes a lot of potential benefits to rights holders. Some of them are economic. There are payments associated with what Google has done and what it will do. So there is a provision for rights holders whose works were scanned – and the key date there is works that were scanned prior to May 5, 2009. Those rights holders will be able to claim a payment associated (break in audio) their work by January 5, 2010.

The payment – Google is allocating at least \$45 million to cover those past scanning activities, and the payments will be made on a per-book or per-insert basis, \$50 per book, and either \$5 or \$15 for inserts.

There are also going to be ways for rights holders to share in the ongoing payments from the uses that we were just describing. And as a general matter, those are going to be split – those revenues are going to be split 53% to the rights holders, and 37% to Google.

KENNEALLY: OK. Well, we're just about halfway through the program. This is Chris Kenneally from Copyright Clearance Center, speaking with Lois Wasoff about the AAP/Authors Guild/Google settlement, and what authors and publishers need to know as May 5 approaches.

And so Lois, I want to turn now to one of the reasons that publishers and authors challenged Google about all of this was that they were concerned about their ability to control their works, and maintaining that ability as we move into the digital future. How does the settlement address those issues?

WASOFF: I think one of the key benefits to rights holders in the settlement, and one of the key goals of the Authors Guild and the AAP in negotiating the settlement, was to give rights holders the ability to exercise control. And simply stated, rights holders can grant or refuse permission to Google to make particular uses of the book.

Now the – this comes up in several contexts. The ultimate control is that a rights holder can instruct Google to remove any or all of its books from the database. And that's another important deadline that's coming up – that removal request needs to be made by April 5, 2011. Even if you ask – if your work was scanned before May 5, 2009, even if you subsequently remove it, you'll still be entitled to that payment for scanning. But obviously, you wouldn't be sharing in the revenues associated with future uses.

If you miss that deadline of April 5, 2011 to ask that your book be removed, Google will only honor a removal request if it hasn't yet scanned the book. If the book has already been scanned, a request after that date won't be honored.

You can also make, as a rights holder, decisions about excluding your book from certain uses. You might determine, for example, that you want the book to be available for snippet use and preview use, but you don't want it to be available for consumer purchase. There are mechanisms in the settlement that let the rights holder flip the switch – change the level of authorization that it's giving Google.

But what's very important here is that certain default rules apply to those decisions, and that's where the concept of commercial availability comes in, in the settlement. And it's an important definition.

A book is commercially available under the settlement if it's for sale, new, through normal channels, in the U.S., with the authorization of the rights holder. If the book is commercially available, Google can make non-display uses of the book, but it can only make display uses if it gets the affirmative permission of the rights holder.

If the book is not commercially available, Google can make both display and non-display uses, but one of the rights holders can instruct Google to stop making display uses, and Google has to comply with that instruction.

It's – the contest is two to hire, one to fire. The more restricted instruction will control in each instance if the rights holders don't agree amongst themselves how they would like to see a particular book that they jointly control used.

There is also some restriction on – so that rights eternal (sp?) uses is not completely unfettered. There is a concept in the agreement called the coupling requirement, and that essentially says that with some exceptions, if you are taking advantage of the consumer purchase display uses that generate direct revenue for you, you can't simply exclude your book from the institutional subscription use unless your book is commercially available. That's a limitation on the complete, unfettered right you have to control your work.

In addition, rights holders get control over pricing. In the case of the consumer purchases, the rights holder can choose to either let Google do the pricing – there's

a default mechanism outlined in the agreement in some detail for that – or, the rights holder (inaudible) specific price.

For institutional subscriptions, the pricing hasn't been determined yet, but Google is going to set that price in the first instance, and then the price is going to be – have to be approved by, they'll have to be negotiated with the Book Rights Registry.

If this sounds complicated, it's because it is. And it is going to be extremely complicated to manage all of these rights.

KENNEALLY: Well, certainly – and some things are becoming clearer. You just highlighted then the importance of display and non-display. We're learning about commercially available, all these terms that are going to be very important moving forward.

How is it all going to work? How will these rights be managed, and how will the money, the benefits for all of this, get into the hands of rights holders? Lois, tell us about the structure, the mechanism for this, that the settlement contemplates.

WASOFF: Well, the settlement – acknowledging, I think, the complexity of this and also to create a way for Google to deal with a single entity rather than the many, many, many thousands of individual rights holders that are implicated by the settlement – the settlement agreement creates an entirely new entity called the Book Rights Registry. The Book Rights Registry has many roles in the implementation and management going forward of the agreement. But its key role is to act as the representative of all the rights holders in their future dealings with Google under the agreement.

The Book Rights Registry is going to be a non-profit entity. It's going to have a Board of Directors. It's equally divided between author representatives and publisher representatives.

Its creation is going to be initially funded by Google - \$34.5 million has been set aside as part of the monies paid under the settlement to both pay the cost of the notice procedure we discussed earlier, and to fund the initial creation of the Book Rights Registry.

Subsequently, when that initial creation investment is run through, the Book Rights Registry is going to be funded through deductions from the fees that it collects from Google, before it distributes the remainder to the rights holders.

So what – among the key tasks for the Book Rights Registry is going to be to create and maintain a rights information database, and that's going to be a monumental task. As you know, Chris, rights information is a moving target.

KENNEALLY: Well, absolutely. That's something that we live with every day at Copyright Clearance Center. There's, as you mentioned, shared rights holders in many cases. The status of rights can change over time, and certainly will, in the case of the books involved here. It is very much a complex undertaking.

And what is the way that the Book Rights Registry is going to distribute money?

WASOFF: The Book Rights Registry is going to take the money from Google, and distribute it out according to the provisions of the settlement agreement that cover both the relationship between publishers and authors, and that deal with the allocation of certain kinds of payments amongst rights holders. This is among the more – most complicated parts of the settlement. The – because some of the money generated will apply to an individual work, some of it will apply to the use of the institutional database, which will be a database comprised of many, many works. It's going to be a complex process.

The Book Rights Registry is going to take the money in, then allocate it out according to these instructions. There is also, as one would expect, going to be disputes over who controls the rights of a particular work, how the money will be allocated among the rights holders. There may be disputes about how works are characterized, whether works characterized as commercially available are not commercially available.

All of these kinds of disputes are going to be handled through arbitration procedures and through a dispute resolution mechanism that's outlined in the agreement, and managing that, assisting in that, is going to be one of the important roles of the Book Rights Registry.

KENNEALLY: OK, well, we've told people that they need to be very attentive to this approaching deadline of May 5, and there are some decisions that the authors and publishers on this call, and everyone involved in the class, are going to have to make ahead of May 5.

So if you would, then, Lois, can you review, what are the considerations we need to take into account as we prepare to make those choices?

WASOFF: Well, there's a fork in the road coming up on May 5. And there's a choice presented to rights holders. The first choice is, do you want to participate? If you choose to participate, as I said, you don't need to do anything. By default, you are a participant if you don't notify Google, (inaudible) the settlement administrator otherwise.

If you choose to participate, you're a rights holder, and you have the rights and the benefits that we just outlined. You are authorizing Google to make the uses of your works that we just outlined. You will be entitled to those payments.

You're also entitled, because you've chosen to be within the umbrella of the settlement agreement, to file formal objections to the settlement if there are aspects of the settlement that trouble you. And the deadline for filing objections is also May 5.

To release any claims you'd otherwise have against Google, and against the libraries that provided the book to Google for scanning, and you become subject to the dispute resolution mechanisms in the agreement that I outlined.

The other choice that's before you is to opt out. There is – we'll be discussing the book settlement website in a moment, but the procedure on the book settlement website is the easiest way to opt out. It is literally a tab to click on that brings you to a form that you can fill out.

If you make that choice, you will be receiving no payments under the settlement agreement. You will not be participating in the revenue models established. You will have reserved your right to sue Google. You will also have waived your right to object to the settlement, because you will have put yourself outside of it, benefits and burdens.

Know also, though, that if you opt out, you can request that Google remove your books from the Google database. There is literally a checkmark on that claim form. Google is not obligated to honor the requests for removal made by parties that opt out, but according to what Google's public statements on the settlement administration website and elsewhere, Google has stated that it is Google's current policy to voluntarily honor such requests for removal, and not display the works of class members who opt out.

KENNEALLY: OK, then. So for everyone that's been following along and concentrating, as I have, on all of this, we need to ask the really important question about the practical reality here. What are the next steps I must take immediately, with only two or three weeks left?

WASOFF: Well, each rights holder is going to want to get a sense of whether its works are – have already been scanned, to get a sense of the potential benefit from the payments for prior scanning. So I think the first step is going to be to go to the website. It's [www.googlebooksettlement.com](http://www.googlebooksettlement.com) – easy to remember. And it's googlebooksettlement.com – there's only one S in there.

And you're going to want to see whether or not your works are listed in the database. You should be aware that the database was constructed to be broader than the number of works scanned. And you should also be aware that by participating in the settlement, you're giving Google the right to scan your books published prior to January 5, 2009, after May 5. You will be entitled to payment for works scanned prior to May 5. But Google can scan works after May 5 that falls in that definition of books without making a payment for the scanning.

You'll want to look and see if the information is correct about your books. You'll want to consider claiming your books and your inserts. You need to be aware that the claims process is going to be a little bit complicated. There are – there's information you're going to need to give Google in order to claim your work.

You're going to have to identify yourself as either a publisher or an author. You're going to have to decide what subclass you're part of. You're going to have to indicate on the claim form is or is a work for hire, and that's important, because work for hires have no author interest associated with them. They are – only the publisher will control the use and can get the payment for works for hire.

You're going to have to understand the reversion characteristics of your work. You're going to have to understand whether or not your – the rights, if you're an author, have the rights reverted to you. If you're a publisher, have you reverted the rights? You need to understand the relationship between the author and the publisher.

You're going to need to provide information to identify the book – title, ISBN if it has one, works from the – older works may not have ISBN. You're going to have to identify the U.S. – whether or not the work is a U.S. work. If it is a U.S. work, it will need to have been registered. If it's a foreign work, it may not need to have been registered.

So you're going to have to do your homework. And the slide we've got up now outlines some of the things that you're going to have to think about. If you don't have copies of your contracts, get them. If you're not aware of what the reversion status is of your works, whether as a publisher or as an author, look into it. Because these are all questions that you're going to need to answer if you're going to get full advantage of the settlement. And depending on the answer to these questions, you may or may not decide that you want to affirmatively opt out.

KENNEALLY: OK, well, we've been focusing on May 5, because obviously, that's the first of a series of deadlines coming up. But let's lay out for people a calendar that takes us well into the next couple of years, Lois. What are some important dates moving forward?

WASOFF: Well, we've gone over some of them, and I think it's a good idea, Chris, to emphasize from now. May 5 is the immediate date (inaudible), and that's a date by which, if you're going to opt out, you have to do it. It's also the deadline to file objections to the settlement.

June 11 is the fairness hearing – that's when that is scheduled to take place now. Depending on what happens at the fairness hearing, subsequent dates may move a bit, but the dates that we're looking at now are that by January 5, 2010, if you want to be paid for the past scanning of any of your works that were scanned as – on or

before May 5, 2009, you have to have filed your claim then. You have to file, claim your books prior to that date.

By April 5, 2011, if you want to remove certain copies, certain of your books from the Google database, you have to notify the – at that point, the Book Rights Registry, that you want those books removed. After that, as I mentioned, removal will be – Google will agree to remove a book only if it hasn't already included the book, if it hasn't already scanned the book.

So I think those are the key dates coming up, the key decision points.

KENNEALLY: OK. Well, again, this is a process that isn't a guaranteed dateline here, but if all goes according to plan, this is where we're moving.

Right now, let's move to some questions. We have been speaking with Lois Wasoff, copyright attorney of great respect around the world. My name is Chris Kenneally, from Copyright Clearance Center. We have some time left to take some of the questions that many of the several hundred – in fact, more than 600 people involved on this call, this global call, from across North America, Europe, South Africa and Australia, have been writing in to us on the Chat box. You can continue to do so.

And as we sort of sort out some of those questions here, I do want to thank everyone for joining us. As we mentioned, this is clearly an important case settlement proposed here, and what we are trying to do is to give you the information you need to make some important decisions.

We have a question here, Lois, from an author, who asks, when I check the database of the settlement website, I saw that some of my works have been scanned, or appear to have been scanned multiple times. Do I get paid for each scan, or for each book?

WASOFF: You get paid based on the scanning of the principal work included in each book. So, just to give you an example, if your book was published in both hardcover and softcover form, and both formats were scanned, there will be only one payment associated with the book. If the book exists in different editions, perhaps, with different forewords or afterwords, that's still one principal work, and it implicates one payment.

And then it's also useful to keep in mind that that one payment, that at least \$60 payment, will be divided among the various rights holders to that principal work. So if the book in our example were an in-print trade work, to which both the author and the publisher have a copyright interest, then the \$60 payment would be allocated between them as set out by the procedures in the settlement agreement.

KENNEALLY: OK, that's important, and that then brings back this important distinction we've been making about having a copyright interest here. And it may include more than one party – in fact, probably does, in the case of commercially available books.

WASOFF: It often – it very often will. And the settlement talks about that at some length. Books fall into different categories. Author controlled works would be trade works to which all rights have reverted. Work for hire materials always are publisher materials. And there are materials that is anticipated will be in the grey area. But it will be very common for there to be more than one rights holder for a particular book, and this is a good question to ask, because it will also be very common to find the same work having been scanned on more than one occasion. It was obviously overlap between each library collection. And it is not at all hard to imagine multiple copies of the same work (inaudible) database.

KENNEALLY: And so, I'm thinking about benefits to me as well, again, as an author. If I think I've got ten books that I've written, it's not necessarily going to be \$60 times ten, that's my payment. It could be far different from the \$600.

WASOFF: That's correct.

KENNEALLY: All right. We have another question here about books published after January 5, 2009. Again, we've been trying to make a point about all the various dates involved here. Here's one that's important – January 5, 2009. What about books published after that?

WASOFF: The settlement doesn't cover books published after January 5, 2009. It doesn't authorize Google to scan books published after that date. It doesn't authorize Google to make use of the books published after that date.

It's certainly possible, even probable, that books published after that date will be included in the Google Partner Program. And the Google Partner Program, as I mentioned, I think, at the beginning, is a voluntary program. It's a contractual agreement between Google and either a publisher or an author, and it provides for certain uses.

And that Partner Program may be a little bit of a moving target. It may change and evolve over the next year or two. I think we can expect that it will. But that's how books after January 5 would come into the Google structure.

KENNEALLY: We have a question here that a lot of people have been asking. What happens if the settlement is not approved? What's the likelihood of that? And have there been any objections made so far?

WASOFF: There's been a couple of formal objections filed so far. In addition, there's been a public request by a consumer advocacy group for the Department of Justice

to intervene in the settlement on behalf of consumers, and intervention is different than objecting. You can only object to the settlement if you are a member of the class. You can ask the court's permission to intervene in the settlement process, to be heard at the fairness hearing, if you are affected by the settlement. And that decision about whether or not to permit a third party to intervene will be with the judge.

We've also heard that a number of amicus briefs that are going to be filed. Those briefs will be information for the judge to consider in reviewing the settlement, and there are amicus briefs that may be filed on behalf of library groups, or some academic groups.

So there's certainly a lot of discussion about this. Remember, though, the court itself can't change the agreement, so it will be interesting to see what effect those and other objections and other submissions have on the court's ultimate decision.

If the court does decide not to approve the settlement in its current form, the question is going to be whether the agreement could be modified by the parties to address that basis for rejection. I'm not saying the court will reject it, but that's going to be the question, whether it will – the court is fundamentally changing the terms of the agreement so the parties no longer have a consensus, no longer can come to agreement.

There will also be a question about whether or not the terms are – the court is suggesting changing the terms in a way that requires re-noticing, then you add a new notice to the class.

We don't know yet what's going to happen. We'll know a lot more after the fairness hearing on June 11.

KENNEALLY: OK, thank you. You know, we've been talking about rights management here – we've got to do some time management, too. We've got about five minutes left, so we're going to go to just one more question, and then wrap up the program. We appreciate everyone being with us for this time. We want to respect your valuable time as well.

And the question is from a publisher here, who asks, if we participate in the settlement, and we don't remove or exclude books from access uses, what will end users be able to do with them?

WASOFF: Well, the access uses allow Google to make the full text scan hosted by Google available online to purchasers. That would be one book at a time for consumer purchase, and the entire database for institutional subscriptions. And as we said earlier, purchases will be able to copy and paste, print portions, perhaps up to the entire book using multiple commands.

There's also a tool, that I don't think we discussed, a book annotation tool that can be turned on for certain books – will actually allow users to make and maintain their own annotations on their copy of the book.

What the agreement doesn't currently do is give Google the authority to allow downloading. It doesn't give Google the authority to allow any reuse of the materials, any republishing or redistribution of copies of the books. Those uses might be separately negotiated later as part of the new revenue models I mentioned, and those negotiations would be between Google on the one hand, and the Book Rights Registry on the other, representing the interests of rights holders.

KENNEALLY: Right. Well, those interests of rights holders – I mean, that has been the theme we've been hearing, I think, throughout this whole hour with you, Lois. Thank you so much for that.

And understanding how works are being used, and the value of your rights as an author or a publisher, is something that Copyright Clearance Center is obviously very interested in. We are the rights licensing experts. As we say, we are global licensing agents, currently managing over 300 million rights, and currently selling institutional licenses to academic and corporate clients, including rights from many organizations, many publishers, many authors on this call right now.

We at Copyright Clearance Center are available to help you understand how your works are being used, and as well, to understand better the value of the rights associated with those works. We are urging you, suggesting that you get more information today from Sue Kesner, who is our Director of Rights Holder Experience. She is available to answer any questions you may have, and to help with your licensing needs.

Those on the call who recognize the name Sue Kesner will remember her as the President, just last year, of SSP, the Society for Scholarly Publishing. She has been with Copyright Clearance Center for a number of years, and is actually a trained librarian. So she's very able to help you with any questions you may have.

She can be reached at [suekesner@copyright.com](mailto:suekesner@copyright.com) – that's [S-U-E-K-E-S-N-E-R@copyright.com](mailto:S-U-E-K-E-S-N-E-R@copyright.com). Her telephone line direct is (978) 646-2727.

We have been speaking with Lois Wasoff today, and I want to, again, thank you so much for all of the information and your expertise, Lois. It's been a pleasure.

WASOFF: Thank you, Chris.

KENNEALLY: It's been a little hard work, actually, following along, but that's OK – I need to do that. You are an attorney in copyright and trademark, publishing, licensing and Internet. You've been past Chair of the Copyright Committee for the

Association of American Publishers, and formerly Vice President and Corporate Counsel at Houghton Mifflin Company.

We will just direct our audience to several online resources – tell you again that the settlement website itself is at [googlebooksettlement.com](http://googlebooksettlement.com). You can find there settlement information, claim forms, and you can do a search of the database to determine whether your books are there.

Some other important sources of information would be the AAP website, at [publishers.org](http://publishers.org), the Authors Guild website, [authorsguild.org](http://authorsguild.org), and our own Copyright Clearance Center website at [copyright.com](http://copyright.com).

Again, I do want to thank everyone involved on the call here. I want to thank Lois for her help and expertise. I want to thank the audience for joining us, for sharing their time with us, for being patient as we have sorted out this hundreds of pages of the settlement proposed, and tried to give you the kind of information that you can use moving forward, again, knowing that May 5 is bearing down on us quite quickly.

If, again, you have any questions and would like to learn more about how to manager your rights, you can direct those questions directly to our Director of Rights Holder Experience, Sue Kesner. She can be reached at [suekesner@copyright.com](mailto:suekesner@copyright.com).

We hope that you have found it helpful, and of some value to be in on this call. And I want to say, I've enjoyed it very much. My name is Chris Kenneally, Director of Author Relations.

And on behalf of everyone at Copyright Clearance Center, we wish you a very good day.

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