

**The Authors Guild, AAP, Google Settlement:  
What's Next for Authors and Publishers?  
An update from Lois Wasoff, Esq.**

KENEALLY:

The journey toward a settlement in what's become known as the Google books case began last fall, when the Authors Guild, Association of American Publishers, and Google, released details of a proposal they planned to put before the federal court in New York.

It's summer now, and while the terms of the settlement haven't changed since October, important deadlines for action by authors and publishers have moved. Tracking those changes and making the necessary decisions required is sure to focus the minds of rights holders in the United States and around the world, even as we look to enjoy the best this fair season has to offer.

On behalf of Copyright Clearance Center, welcome, everyone. My name is Christopher Keneally. As Director of Author Relations here at CCC, I have the great pleasure to speak again with Lois Wasoff, who has the very latest updates on this historic piece of copyright infringement litigation.

Lois, thanks for joining me.

WASOFF: Thank you, Chris. It's nice to see you again.

KENEALLY: It is indeed, and we should tell people a bit about your background, Lois. You have participated in numerous meetings and conferences in the U.S. and abroad on copyright issues, and spoken about legal issues and industry practice in book publishing frequently.

Your current clients include non-profit and commercial publishers and others involved in publishing, as well as individuals with questions about copyright and publishing itself.

We were together back in April, April 14, and presented an overview of the Google books settlement, and you're back today to give us an update and highlights on events that have changed all of that information since this original program.

Today, we're going to take a look at the settlement agreement itself, the current status of the agreement including extension of dates for opting out or objecting, as well as a delay of the fairness hearing. We'll look at the reasons for the extension of these key dates. We'll get to understand a bit better some of the comments filed with the court to date, as well as potential implications of the delays and comments for the settlement agreement itself.

And finally, we'll provide a review of rights holder considerations and decision points.

So let's get started, Lois. And key to all of this, and it will be a theme throughout our chat today, is that this is a class action which requires certain formalities be observed. So to give people the – sort of the top headline here, what happened – what has happened since our interview back in April?

WASOFF: Well, Chris, as we discussed then, when a class action is settled, the class members have to be given an opportunity to decide whether they want to opt out of the settlement entirely, or perhaps to stay in the settlement but file objections to some of its terms. The timeframe within which that decision has to be made has changed for this settlement.

Originally there was a May 5 deadline for class members to opt out or to object. Being silent meant, and still means, that you've consented to participation in the settlement. The major recent change that our listeners need to be aware of is that this deadline for deciding whether to opt into the settlement, or to opt out, or to object, has been extended to September 4.

KENEALLY: So that's the first note to take. Cross out May 5, and write in September 4.

WASOFF: Exactly.

KENEALLY: OK. What else, then?

WASOFF: Well, secondly, like all class action settlements, this settlement is subject to court review in what's called a fairness hearing. The purpose of that hearing is for the judge to hear and consider the objections raised, to review the notice procedure that was used to let class members know what the terms of the settlement are, and also, to review the overall terms of the settlement. The judge's options are to either approve the settlement or disapprove it, or perhaps to send it back to the parties for more work.

That fairness hearing had originally been scheduled to take place on June 11. That has now been postponed to October 7.

But I think the key takeaway point here is that all of the other dates in the agreement are unchanged. So just to pick one example that I think will be of particular interest, the settlement agreement included a deadline of January 5, 2010, by which claims had to be filed if the rights holder wanted to be given a payment for past scanning of that rights holder's books, for scanning done prior to May 5, 2009. That date hasn't changed. Those claims still need to be filed by January 5, and they will still only relate to scanning that was done prior to May 5, 2009.

KENEALLY: OK. So we have an idea then of what has changed, but it's important to emphasize that some things have not changed.

And now let's back up, take a deep breath and back up, and go back to the beginning, and give people some overview of the settlement as a way to review the actions that have occurred since the very beginning of all of this, and to give everybody a sense of just how complex a matter this really is. So where does this all start, then, Lois?

WASOFF: Well, I'll just run through this briefly. We'll just flash back for a moment or two to 2004, because that's when Google entered into agreements with major university libraries like the University of Michigan, Stanford, and Harvard, and began to scan books and other materials from those libraries' collections. That was the Google Library Project.

And the understanding was that these digital copies would be maintained by Google, and that a copy of the end digital version would go back to the participating library.

The works in those libraries are – encompass the works of the world. The holdings of these libraries are obviously very, very extensive.

At the same time Google was scanning books taken from these libraries, with the permission of the libraries, Google began a separate, voluntary program for publishers and authors, known as the Partner Program, and acquired more books through that program.

A huge, searchable database exists as a result of all of the scanning activity on the part of Google. Google then made books that are a part of this database available online for various uses, including searching and snippet displays in the results.

Well, when the Google Library Project, which was done without publisher permission, began –

KENEALLY: Publisher and author permission.

WASOFF: Publisher and author position, exactly – permission. Authors and publishers were quite reasonably concerned about the impact that this kind of mass digitization might have on their ability to control, to be paid, and to be paid for the uses of their works.

So in 2005, the Authors Guild brought a suit against Google, and they brought that suit as a class action. Very shortly after, we had a group of publishers, supported by the AAP, brought a separate suit against Google, alleging that its scanning and use of the end copyright books constituted copyright infringement.

Those cases were consolidated in front of the same judge, and settlement negotiations started fairly quickly after that. It took three years of protracted and difficult negotiations, but as you've already mentioned, in the fall of 2008, a settlement was announced.

This settlement is – utilizes the class action mechanism that we've discussed. A class action, just to go back over that ground for a second, is a form of lawsuit in which a group of class representatives can sue on behalf of others with similar claims.

KENEALLY: So in this particular case, the Authors Guild, for example, is suing on behalf of named plaintiffs, but also on behalf of all authors in the United States.

WASOFF: That's exactly correct. And because – although the publishers' lawsuit wasn't originally brought in that format, because this class action mechanism has been adopted, the AAP's part of the action is also being settled as a class action. So, the settlement agreement is binding not only on the five publishers who were named as plaintiffs in the suit, but on all publishers who are members of the publisher subclass.

KENEALLY: So for our purposes, and for the audience's purposes, it's everybody, really. If you've got a published book as an author or a publisher, this settlement has an effect on you in the United States.

WASOFF: Pretty much. That's not an overstatement. There are definitions in the settlement of what a book is, and what an insert is. But if your work falls within those broad definitions, then – and you are a rights holder in the work, you are affected by the settlement.

And then, as we discussed, the – as part of this class action mechanism, there has to be a notice period, class members have to be given an opportunity to find out about the settlement, given an opportunity to make a decision about participating or not in the settlement. That notice period – those notices began to be sent out in January of this year.

KENEALLY: But then, we've had some extensions around the notification period and the time that everyone has to make some important decisions. And how did this happen? I mean, why did we get to the point where we were approaching May 5, and then it moved forward to September 4?

WASOFF: Well, as that May 5 date approached, the public and the private comment on the terms of the settlement agreement increased exponentially. One of the requests actually filed with the court as a formal request was made on behalf of an author group. That request was for a four month extension of the opt out deadline. It was – the formal request apparently had been made after an attempt to work out an

extension period with the proponents of the settlement with the Authors Guild, with AAP, and with Google.

So pretty much simultaneously with the filing of this small subset authors' group, with the filing of their request for a four month extension, the proponents filed papers with the court asking the court to order a two month extension of the date.

The court ultimately granted the authors' request, and granted the four month extension of the date. And that's how we moved from May 5 as the opt out deadline to September 4 as the opt out deadline.

KENEALLY: And so, what people will recognize, and even the proponents of the settlement, as you say, is that some more time was needed. Why would that be the case? Why do people think it was necessary to need more time on this?

WASOFF: Well, different views have been expressed on this. Maybe the simplest thing to do is to report on the reasons that the authors' group gave for seeking the extension. And keep in mind, as I am recounting this, the court granted the four month extension. It didn't necessarily agree or disagree with the reasons that the Authors Guild – I'm sorry, with the authors' group, with the group that were seeking the four month extension, the reasons that they gave for seeking the extensions. What they –

KENEALLY: So in other words, we shouldn't read too much into this. They gave people more time. What the court's reasons for that decision were is unknowable, really – just the fact remains that we have some more time.

WASOFF: That's correct. The – you can't – shouldn't infer from the fact that the court granted a four month extension that the court agreed with everything the – this authors' group that was seeking the extension had to say for its – as its justification.

But what that group of authors – and just so we know who we're talking about, and we don't get confused with the Authors Guild here, that was a group led by – one of the named members of that group was the Steinbeck Estate, so if we call it the Steinbeck Estate Group, it might be a little bit clearer.

KENEALLY: Surely.

WASOFF: And that group argued to the judge that given the complexity of this agreement, the notice provision – the notice process did not provide sufficient time for authors to assess their rights under the agreement. As I mentioned, the worldwide notice period – and worldwide is, should be emphasized here. This settlement is about U.S. uses, but it implicates an enormous number of works of foreign origin as well as U.S. origin.

KENEALLY: Just on that point, there was an article in the *New York Times* that detailed how many different languages and how many different publications around the world were employed to get the word out on this, so we are not overstating that at all. This was a global notification.

WASOFF: This was a global notification process. And it began formally in January of 2009, and was supposed to be completed by the end of February of 2009, a two month period.

In fact, the counsel for the Steinbeck authors' group said that there were – they had heard anecdotally that there were class members who actually didn't receive notice until April or later. And they also argued that even if the notice had been timely given, a two month period to analyze an agreement this complex, an agreement with these kind of broad implications, was in any event inadequate.

The authors' group pointed out that unlike more typical class action settlements that deal primarily with past behavior and with measuring damages for past activities, the settlement agreement in this case has a lot of future implications. It, if approved, will authorize Google to engage in future uses of copyrighted works, potentially in perpetuity.

It's a very broad license of many rights to the books and the inserts that are covered by the settlement agreement. It has provisions for the use of those rights in the future in various forms, primarily digital, but various forms. And it establishes an entirely new entity, an entity called the Book Rights Registry, that's going to manage those rights and disburse payments received from Google in connection with the exploitation of those rights.

So the authors' group, this Steinbeck group, pointed out that this was a very complex, far-reaching settlement that required more time to consider than the time that had originally been provided. They also argued that there were some defects in the original notice, that the actual notice didn't give the recipients of the notice the ability to ascertain with certainty whether their works were necessarily covered by the agreement. The notice was a 30 page document, at least, and it linked to, or encouraged people to go to the settlement set up by the settlement administrator, [googlebooksettlement.com](http://googlebooksettlement.com), where there were and are extensive FAQs.

So this is a complex settlement, and the – in essence, the Steinbeck authors' group said, everybody needs more time to figure out what this means.

KENEALLY: Well, we've got that extra time. So tell us some of the ways that various parties have been using that time. There have been some comments, some objections. What are the issues that people are raising in the court right now?

WASOFF: Well, there isn't much going on, actually, in the court right now. Things aren't being formally filed with the court now. We, I think, can pretty reasonably expect

a flurry of activity in August, in very, very early September, as we approach the deadline.

There were objections filed in advance of the original May 5 date, because the extension didn't come through until the end of April. So there was activity leading up to it. And there has been a lot of public discussion, and we've all seen reports in the media about some of these concerns, objections, explanations of the benefits of the settlement – there's a public debate going on, as well.

KENEALLY: And so, the absence of activity in the court really is, again, not an indication of anything at all. What you're suggesting is that people are going to hold their comments until very close to the deadline itself.

WASOFF: Yeah, I think it's a timing issue. I think that people will file as we get closer to the deadline. It's also probably an opportunity for there to be some informal discussions going on, that may or may not allay some concerns or lead to some other resolutions. But –

KENEALLY: But very broadly, what are some of the issues that have been raised?

WASOFF: Well, this settlement agreement has been getting a lot of attention. The agreement has, as I said, it has enormous reach. It involves not just the private rights of a huge number of individuals and corporate rights holders, but there are very substantial public policy issues represented as well. The libraries have been very active in their comments and concerns about this.

As the proponents of the settlement agreement point out, it may prove to be an invaluable tool for making millions of otherwise obscure or difficult to locate works readily accessible to the public. On the other hand, some of the critics are saying that they are concerned it will provide unprecedented power over the selection and delivery of content to a single commercial entity, that single commercial entity being Google.

So it's not surprising that it's produced substantial public comment. What's particularly interesting is that the comments are coming in from a broad variety of stakeholders, and that some of those stakeholders are taking positions that some may find to be a little bit unexpected.

So to go through some of the specific stakeholders who have raised issues, the library community, as I mentioned, has been very concerned with the implications of the settlement. There was a very important article written by Robert Darnton, who is the Head Librarian at Harvard now, when the settlement – shortly after the settlement was first announced. It was in the *New York Review of Books*, where he expressed some concerns about the settlement, while acknowledging its possible advantages for users in terms of increased accessibility.

The brief that was filed by the library community, the formal brief that was filed before the May 5 deadline, I believe – certainly it is formally a part of the record by now – did ask the court to approve the settlement. So the formal Library Association position did say to the court, please approve the settlement.

But, that same brief also asked the court to very closely supervise the implementation of the settlement – asked the court to stay very active in the management of the settlement, and expressed some very specific concerns about the content of the settlement. Those concerns included a concern that Google and the Books Rights Registry might have too much control over a very sensitive database that could, over time, become what they referred to in the brief as an essential facility for doing scholarly research.

They were concerned that the settlement agreement does not include provisions to protect user privacy, contrasting that with the provisions, the somewhat detailed provisions in the agreement, that deal with security of the database. And also, because the settlement lets Google and the rights holders remove works from the database, the library community expressed some concerns that there may be a threat to intellectual freedom.

So those concerns are before the court, and they're part of what the court will presumably consider in deciding what to do next.

There have been a number of comments filed with the court, and also made in the media, that argue that the agreement would give Google a privileged position with respect to orphaned works. Remember that orphaned works are those works that are still protected by copyright, but for which the copyright owners are not actively managing the rights, or in most cases, just cannot be located any longer.

The – one of the most vocal critics of the orphaned works aspect of this has been the Internet Archive. The Internet Archive, as you know, has a long history of copying and maintaining the history of the Web. Internet Archive has always been a vocal supporter of orphaned works legislation, which would permit the use of these unclaimed, unmanaged works under certain circumstances and with certain limitations on exposure for the user.

The effect of the settlement, because those works are included in the settlement because of the class action nature of this, if their owners – if the rights holders associated with those works do not come forward and opt out, the works will be covered by the settlement, and their future uses will be covered by the settlement. By definition, if the work's an orphan, the rights holder isn't going to come forward. So the Internet Archive and other critics have been arguing that the settlement will functionally give Google an exclusive license to the use of orphaned works in the future, and for the uses licensed under the agreement.

Google denies this. The proponents have been responding to this argument, but it's been a key tension point in the discussion around the settlement, and it hasn't gone away. The judge denied Internet Archive's motion to actually intervene in the action and become a party to the action, but in his denial, the judge said to the attorneys representing Internet Archive, nevertheless, we want to hear your comments.

Brewster Kahle, who is the head of Internet Archive, as recently as a week or so ago, wrote a Wall Street Journal op/ed piece, in which he argued that the settlement was flawed for this very reason.

KENEALLY: So I guess that only emphasizes the point here that is relevant, not only about orphaned works, but all kinds of works, is that a certain amount of silence is a very powerful statement.

WASOFF: That's an excellent point.

KENEALLY: Right. Well, what are some other issues that are being raised by other groups? Certainly foreign authors and publishers have made comment on this as well.

WASOFF: Oh, yeah. There has been a lot of comment from foreign authors, foreign publishers. And again, as we mentioned, the settlement covers uses in the U.S., but the definition of books, of books and inserts that are included in the settlement agreement, is broad enough to include a vast number of works of foreign origin. These libraries who provided the corpus for scanning have in their collections an enormous number of works of foreign origin. Those are in the database – those are included in the settlement.

Formal comments that are generally critical of the agreement have been received from some foreign authors and groups representing foreign rights holders. And we think that concerns have been expressed in other ways, by the foreign rights holder communities. There has been some media coverage that indicates that the European Union, at the request of some European rights holders, has begun to look into the antitrust implications of the settlement agreement.

However, to balance this, we are also hearing that there have been discussions between the proponents of the settlement, between Authors Guild, AAP, Google, and foreign rights publishing groups, and foreign rights authors – foreign authors' groups, and that there are attempts being made to allay some of the concerns that have been expressed.

But this has clearly been a sensitive area for foreign rights holders.

KENEALLY: Well, another area that's gotten attention is one that's been reported in major newspapers earlier in June, and that is that the United States Department of

Justice is evaluating the proposed settlement for antitrust implications, just as you mentioned the European Union is looking at this.

Can you give us your reaction to this news, and can you tell us how the proponents are responding to it?

WASOFF: Well, we now know with a high level of confidence that there is an active Department of Justice investigation going on. It had been rumored for a while, even before the May 5 deadline was extended. But the Department of Justice hadn't made any formal public statements about its intentions. Just on June 9, there was an article in the *New York Times* that confirmed that not only is the Department of Justice thinking about taking action and beginning to look into it, but that it has actually gone so far as to serve what's called a civil investigative demand, a formal request for information, on various proponents of the settlement – major publishers, Google, AAP, and the Authors Guild.

So it appears that the DOJ is interested in looking into the settlement agreement and making an evaluation of its antitrust implications. It also appears, from what we've heard, that a focus of the inquiry may relate to the orphaned works aspect of the agreement that we've spoken of.

But I just want to emphasize here that antitrust laws are extremely complicated. The fact that the DOJ is looking into the settlement agreement does not mean that it violates antitrust laws, nor does it mean that the Department of Justice is likely to ultimately determine that it does violate antitrust laws. What I think is important here is that the fact of this investigation clearly may have an impact on the review and on the ultimate approval of the settlement agreement.

KENEALLY: So there's a degree of due diligence that's being undertaken here, but we should all be aware that it may have an impact further on down the road on various deadlines and so forth.

WASOFF: It may.

KENEALLY: It may.

WASOFF: It may. It's –

KENEALLY: Emphasize may.

WASOFF: It's not possible to predict where that's going to go now.

KENEALLY: Right. Well, thanks for covering that. And tell us, if you will, about how the proponents themselves are responding to some of these points.

WASOFF: Well, the settlement proponents have continued to work very actively to inform rights holders about the benefits of the settlement. And as you and I have discussed before, Chris, when we reviewed the provisions in more detail back in April, there are – the agreement includes potential benefits for rights holders who choose to participate in it. Those include payments for Google's past scanning of books, as we've discussed. The agreement also includes a mechanism for ongoing payments associated with Google's future uses of these works. The sort of basic split is that Google will take revenues that it generates, and give 63% of those revenues to the Book Rights Registry as the rights holder representative, keep 37%.

And then, in addition, the settlement has built into its provisions that will permit – would permit – rights holders to manage the uses of their works under the settlement, to flick the switch on and off for certain of the specific uses that Google is authorized to make.

The defaults – the default positions of those switches varies according to a number of factors, whether a book is assumed to be included in a particular work, or assumed to be – in a particular type of use, rather. Or is assumed to be excluded from that particular type of use, is the subject of a set of default rules in the agreement that's sort of beyond the scope of our conversation today.

But certainly, the proponents are – believe that this settlement benefits rights holders, and are making that case to the rights holders. They also are continuing to argue that the settlement is going to increase the visibility of these works, and it is true that the settlement – that works that would be included – fall within the settlement, are not just in print and copyright works, but there are literally millions of works that are in copyright, and long out of print or otherwise not readily available.

And the argument has been that including those works in the Google database, and making those works available in the various formats authorized by the settlement agreement, will increase their visibility, increase their utility to the user community, and will potentially create new revenue streams for those works.

Among the actions being taken by the proponents are – for example, there was a meeting at Book Expo in late May, to which publishers' representatives were invited, and at which the settlement benefits were discussed. The settlement website remains active, the Frequently Asked Questions there continue to be updated as questions are raised about the settlement.

And perhaps most importantly, progress is being made on the formation and organization of the Books Rights Registry. That's the entity that will be managing the relationship between Google and the rights holders, collecting and disbursing the revenues.

Michael Healy has been named the likely Executive Director of the Book Rights Registry. Michael is currently the Executive Director of the Book Industry Study Group, which is the entity that manages the ONIX system that most publishers are well familiar with.

The Book Industry Study Group is considered to be one of the industry's leading trade associations for policy standards and research. And I think Michael Healy's choice as the potential first Executive Director of the Book Rights Registry has generally been very well received.

And I understand, Chris, that you've had a recent discussion with Michael Healy.

KENEALLY: In fact, we did it just a week ago here in this very room. And I enjoyed that very much. That's available for all of our listeners on [copyright.com](http://copyright.com). They can hear from Michael himself speak about his background as a librarian, and as an expert in the book standards that you mention. And as well, some of the reasons he sees for suggesting that rights holders sign on to all of this. So we do really direct people to listen to that at [copyright.com](http://copyright.com).

But let's continue then, and take a look at some of the activity that Google itself has been involved in. They've just been actively engaging the library community in a couple of different ways. Tell us about that.

WASOFF: Well, that's important, too. When I was talking about the activities that proponents were engaging in to continue to support the settlement agreement and to educate people about the settlement agreement, I was focused mostly on the rights holders' side, the authors and the publishers. But obviously, the libraries are a critically important stakeholder in this process.

Google announced in late May that it had entered into an agreement with the Library of Michigan, the University of Michigan, which as you'll recall, was one of the earliest and most enthusiastic participants in the book scanning project. That new agreement or amendment that Google did is going to give Michigan much more input in the pricing of the institutional database subscription that's contemplated by the settlement agreement. The institutional database subscription is a new form of distribution for these databases, for the Google database, that is an important part of the settlement agreement.

And one of the most significant objections raised by some of the library based commentators on the agreement has been a concern that the pricing of that institutional subscription will be driven more by revenue concerns than by the desire to make the database widely available. In the settlement agreement itself, the formula, the process for determining pricing, specifically incorporates both of those considerations, both revenue generation and availability.

But the library community is concerned that the – there might be an opportunity to price those subscriptions in a way that the library community is concerned about.

So Google has entered into this agreement with the University of Michigan, and according to what we are reading, is interested in entering into agreements like this with other participating libraries. And that seems, aside from what other considerations Google may have had in doing that, it does seem that it is a way of allaying at least some of those concerns.

KENEALLY: Reassuring people, certainly.

WASOFF: Reassuring, yeah. Reassuring the library community.

It's not possible to say whether the settlement agreement is going to be approved or not, or if it is approved, what it's going to look like, how it might be changed. But I think it's good to keep in mind, as we're talking about all the moving parts here, and all the things that might be changing, and all the objectors, and all the comments, that this agreement was the product of a very difficult, very protracted negotiation. It is strongly supported by Google, by AAP, and by the Authors Guild.

Millions of dollars have already been spent on some of the actions that needed to be taken even before the settlement goes through the formal approval process, like the notice process, and the early work being done to establish the Book Rights Registry.

So there's a lot of momentum behind the settlement agreement. All the delays and comments that we've been talking about may complicate the process. But the settlement agreement, for the purpose of our listeners, for the purposes of rights holders thinking about what this means for them, that's – the settlement agreement is very much alive, and I think it's still very much relevant to rights holders, and they need to be thinking about it as these larger questions of approval or disapproval, amendment or not, get worked through the courts.

KENEALLY: Well, we're coming to the end of our special update here on the Google books settlement. This is Chris Keneally from Copyright Clearance Center with Lois Wasoff, who is a copyright attorney and publishing expert.

And I guess the way to wrap this all up for people, Lois, would be to underscore again some things they need to be aware of right now, this summer. So tell us about those points.

WASOFF: OK. I think key points are, you need to keep in mind that only the deadline for objecting or opting out of the agreement and the date of the fairness hearing has been changed. All of the other dates in the agreement remain the same.

And the example I've given, and the one I want people to keep in mind, is that rights holders, if they want to get payments for past scanning, still have to claim their works by January 5, 2010. And those payments will apply to works that were scanned prior to May 5, 2009.

That date hasn't moved, and if there are complexities involved, and – you're only entitled to the scanning payment if you opt in, and so we may be getting a little bit ahead of ourselves here. But I think it's important for our listeners to keep in mind that if there are complexities involved for you in making those claims, if you need to compile your internal information and get your own records in order so that you can provide the necessary information to the settlement administrator, you don't want to be starting that over the Christmas holiday.

The deadline – that deadline hasn't moved, so that work still needs to be done if you are interested at all in making those claims.

KENEALLY: So the critical decision then now is, participate or opt out – review the points there on that.

WASOFF: OK. That's the initial fork in the road. You can decide to participate. If you've decided to participate, you need do nothing, because as we've emphasized several times, silence is consent.

If you participate, your books and inserts will be included in the settlement agreement. Google will have a license to use them as specified in the settlement agreement. You will have a right to control those uses as specified in the settlement agreement.

As I said before, if you participate, you can file a claim if you do it in a timely fashion to get certain payments for past scanning. And you will be able to participate in the other revenue producing programs that are contemplated under the settlement agreement.

If you participate, you will be entitled to file formal objections to the agreement. If you are participating but have some concerns, you will be able to get those concerns before the court, but you will have to file those objections by September 4, in order for them to be considered by the court at the fairness hearing.

And, if you participate, you will become subject to the dispute resolution mechanisms in the agreement, which include arbitration. Again, those are a little beyond our scope today, but they're an important factor. They're something someone should be thinking about, understanding, if they're deciding to participate.

KENEALLY: You're just saying, be aware.

WASOFF: Be aware. If you want to opt out – if you've considered these factors and you decide to opt out, you will not be included in the settlement. You will not receive the benefits conferred by the settlement, and you will not retain – but you will retain, you will retain the right to sue Google and the libraries that provided works for Google in connection with the scanning we've discussed.

If you opt out, you will not be eligible for the payments for past scanning, or to participate in the revenue models under the settlement. You could still participate in the – on a voluntary basis, in the Google Partner Program. That's also something that's a little beyond the scope of our discussion today, but that option could still exist.

You should also be aware that if you opt out, you leave behind any right you have to object to the settlement, the theory being that if you are no longer going to be subject to the settlement, you will no longer be interested in objecting, and the court will no longer be interested in hearing your objection. So you will lose your right to object.

KENEALLY: Put yourself outside of the settlement, literally.

WASOFF: That's very well put. That's exactly right.

The other thing to keep in mind is that if you opt out, you can request that Google remove your works from its database. Google is not obligated to honor those requests, but it has publicly stated, and continues to publicly state on the settlement administration website, that Google's current policy is to voluntarily honor requests, and to not display the works of class members who opt out.

KENEALLY: OK, so finally, let's review these dates here. And again, people with your little notepads out, bear in mind, a few things have changed from our original program back in April. So Lois, very quickly, what are those, again?

WASOFF: OK. Your deadlines in 2009 – your deadline, really, in 2009, is September 4. And that's the date by which you have to either opt out of the settlement, or if you are going to participate in the settlement but want to file some objections, that's the date by which you need to file objections to the settlement. If you have done nothing by – on or before September 4, and you are a rights holder in books or inserts, as those terms are defined in the settlement agreement, you're in the agreement.

The other date to be aware of – it's not really a deadline, but it's a date when lots of interesting things are likely to happen, is that on October 7, 2009, the judge will be holding the settlement fairness hearing. That's the currently scheduled date, and that's when those – the objections and the discussion that we've been having today, that's when those kinds of issues will be formally considered by the court.

The next date coming up for you is in 2010, and that's the January 5 deadline to file claim payments, if you want a payment for any of your works that are covered by the settlement that have been scanned. You can only file those claims and seek those payments if you have not opted out of the settlement – if you're still subject to the settlement.

And then there's another date coming up that we haven't talked about, it's a little beyond our scope today, and that comes up in 2011. The – on April 5, 2011, you'll be facing a deadline to request removal of digital copies of your works from the Google database. This presumes that you haven't opted out of the settlement entirely, your works are in the settlement. You would still have the option up to April 5, 2011 to ask Google to simply take some of your works out of the settlement – out of the Google database.

There are some considerations around that – again, beyond our scope today. But something that people who are thinking about their future as a potential participant in the settlement agreement should be aware of.

KENEALLY: Right. What's interesting about all of that is the long-term implications of making some decisions today in 2009 that will affect your work moving forward for quite a long time.

I've been speaking today with Lois Wasoff, who is a copyright attorney and publishing expert on an update to an earlier seminar we did at Copyright Clearance Center on the Google books settlement, and Lois, thank you very much again for joining us here today.

WASOFF: Thank you, Chris.

KENEALLY: It's a pleasure, and really, it can't be overstated that you helped make a very complex subject at least digestible for this one particular non-lawyer, and I appreciate that – non-lawyer and rights holder, by the way, so I certainly appreciate the work you've put into all of this.

And today's program is the latest in a series of presentations from us at Copyright Clearance Center about the Authors Guild/AAP/Google settlement. Recordings of this and all other sessions can be found online at [copyright.com](http://copyright.com).

And for all of us at Copyright Clearance Center, this is Christopher Keneally, wishing you a very good day.

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