

## Legal Updates & News

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#### Google Book Settlement Update: DOJ Pursues Formal Investigation

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Since being unveiled last October, the proposed class action settlement to resolve copyright infringement claims arising out of Google's digitization of millions of books without authorization has been closely watched by the author and publisher community. Due to the complexity and potential impact of the settlement, which would give Google certain rights to continue to use the digitized books, the court overseeing the settlement has extended the original May 2009 deadline to opt out or object to September 4, 2009. The fairness hearing for final approval of the settlement is now scheduled for October 7, 2009.

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In the meantime, the U.S. Department of Justice has launched a formal antitrust investigation into the settlement, issuing demands for information to Google and other parties involved. A primary focus of the inquiry appears to be that under the settlement, Google, unlike its competitors, would be given free rein to exploit so-called "orphan" works -- that is, books that it has digitized that are still in copyright but are unclaimed by their owners. Although the DOJ investigation does not necessarily mean that the U.S. will oppose the settlement, it is perceived by many as an obstacle to final approval. In response to a July 2, 2009 letter sent by the DOJ to the court as official notification that the government was assessing the "competitive impact" of the settlement, the court responded with an order indicating that the government could submit its views in writing prior to the fairness hearing on October 7.

While the fate of the settlement remains uncertain, authors and publishers are still required to decide by September 4 whether they wish to opt out or object. Authors and publishers with a U.S. copyright interest in one or more books (or in copyrighted material contained within a book) should make sure they are sufficiently familiar with the settlement to make an informed decision as to whether they wish to be included in the event it is approved. Those who have significant business interests in the marketing and distribution of books in the U.S. may wish to seek legal advice in contemplating their options.

For those unfamiliar with the matter, the proposed Google book settlement is the result of a class action filed in 2005 against Google in the United States District Court for the Southern District of New York, *Authors Guild of America v. Google Inc.*, No. 05 CV 8136 (JES) (S.D.N.Y.), as well as a related case filed by five publisher plaintiffs, *The McGraw-Hill Cos. v. Google Inc.*, No. 05 CV 8881 (JES) (S.D.N.Y.). The cases grew out of the Google Library Project, announced by Google in 2004, pursuant to which Google

entered into agreements with a number of libraries to digitally copy the books in their collections.

The complete settlement and class notice summarizing its terms are available at [www.googlebooksettlement.com](http://www.googlebooksettlement.com). The settlement website also includes general information about the settlement process, a form for opting out, access to claims forms, and contact information for the settlement administrator.

For a more detailed discussion of the settlement terms, please see our earlier Legal Update on this topic at <http://www.mofo.com/news/updates/files/15452.html>.