

SFWA statement on proposed Google book settlement - SFWA



August 8, 2009

The Science Fiction & Fantasy Writers of America, Inc. (SFWA), in conjunction with outside counsel, has reviewed the terms of the proposed settlement between Google, Inc. and the Authors Guild, Inc., and other class action plaintiffs. On April 19, 2009, SFWA's Board of Directors voted to stay in the claimant group in regard to SFWA-owned copyrights so that SFWA has standing to file a formal objection to the proposed settlement with the court. This decision should in no way be seen as an approval of the proposed settlement, nor construed as advice to either our members or writers with potential claims in general. Put simply, in order to file an objection, SFWA must opt-in as a claimant; should we opt-out, we lose our ability to formally object with the court.

Though it is clear that the proposed Google Book settlement is well-intentioned, the problems are myriad and, in SFWA's opinion, the terms should be reviewed with extreme care by authors, in particular those authors who write fiction. Some of the particular problems we have identified include:

- The proposed Google Book Settlement potentially creates a monopoly by granting Google excessive power to control the market for out-of-print books that are offered to the general public.
- The "opt-out" mechanism proposed for the settlement contradicts the very foundation of copyright.
- The financial impact on authors could be significant because the settlement would effectively thwart any third-party system from competing with Google and offering alternatives to authors of out-of-print works.
- The terminology of the Google Book settlement makes no distinction, nor does it provide a mechanism for discovering the difference, between works deemed out-of-print and works in the public domain.
- The class does not reflect the interested parties, primarily the holders of copyrights in "orphan works" where the rightsholder(s) cannot be identified or found.

- The Authors Guild and the Association of American Publishers are poor representatives of the class as neither represents the types of work perhaps most significantly affected by the settlement, namely scholarly works.
- The class representatives do not include any authors of adult trade fiction, an obvious issue for SFWA.
- The class fails to consider fully licensees of works and fails to account for their interests.
- By settling, Google never fully addressed and litigated the issue of copyright infringement/fair use, which was at the heart of the 2005 lawsuit brought forth by the Authors Guild and the Association of American Publishers. The settlement further obfuscates the issue of how Google's scans and publication of the snippets should be treated under U.S. copyright law.

Obviously, this is not an exhaustive list, but merely a sampling of some of the problems SFWA believes are inherent in the proposed settlement. *SFWA is not advocating a particular course of action nor providing legal advice for individual authors, who should evaluate the proposed Google Book settlement based on their own situation and with the advice and input of their own legal counsel.*

For the record, SFWA believes that the proposed Google Book settlement is fundamentally flawed and should be rejected by the court.

With this public statement, we advise all authors and other writing organizations (in particular those who hold copyrights) to consult with legal counsel to ensure that they understand the precise meaning of the Google Book settlement, and the impact it may have on their own situation, should the settlement be approved.

For the Board of Directors,

Russell Davis

President

SFWA, Inc.