

3 december 2009 - Google past Settlement aan

OP 13 NOVEMBER is het schikkingsvoorstel van Google met de Association of American Publishers en de Authors Guild aangepast en ingediend bij District Court. De aangepaste schikking heeft gevolgen voor Nederlandse auteurs, aangezien het nieuwe schikkingsvoorstel op een aantal belangrijke punten is gewijzigd.

¶ Een belangrijke verandering voor Nederlandse auteurs is dat Google de reikwijdte van het schikkingsvoorstel nu wil beperken tot de Engelstalige landen Canada, Verenigde Staten, Verenigd Koninkrijk en Australië en boeken van niet- US uitgeverij die zijn geregistreerd bij de Copyright Office in de Verenigde Staten. Alle andere Europese boeken vallen nu dus buiten de schikking. Met de nieuwe schikking valt 95% van de niet- Engelstalige boeken buiten de overeenkomst.

Het District Court buigt zich in op 18 februari 2010 over het nieuwe schikkingsvoorstel.

¶ Lira bestudeert momenteel de inhoud van het nieuwe schikkingsvoorstel en beraadt zich op de te nemen vervolgstappen. Er bestaat wederom de mogelijkheid om bezwaar te maken op dit voorstel en vragen in te dienen. Naar verwachting is er in het begin van het nieuwe jaar meer duidelijkheid omtrent de gevolgen voor Nederlandstalige schrijvers en vertalers en de rol van Lira hierin. Lira houdt u uiteraard op de hoogte.

¶ Klik [hier](http://www.googlebooksettlement.com) voor het aangepaste schikkingsvoorstel. Meer informatie kunt u lezen op www.googlebooksettlement.com.

¶ Hieronder kunt u de email lezen die Lira op 16 november ontving van de IFFRO (International Federation of Reproduction Rights Organisations) over het aangepaste schikkingsvoorstel:

Dear all,

On November 13, 2009, the parties in Authors Guild, et al. v. Google Inc. have filed an amendment to the Original Settlement in response to discussions with the United States Department of Justice and objections to the Original Settlement. The Amended Settlement Agreement, awaiting Court approval, may be found at <http://www.googlebooksettlement.com>.

Also downloadable from this website is the Supplemental Notice, which, if approved, will be sent out by the Notice Provider in early December 2009. It is not designed to replace the original Notice, but to supplement that Notice. We would advise you not to disseminate the Supplemental Notice yet, but wait until it has been approved by the Court to be circulated in early December.

The deadline to claim Books and Inserts for Cash Payments has been extended from January 5, 2010 to March 31, 2011. The Removal deadline as to Google has been extended from April 5, 2011 to March 9, 2012. (The Removal deadline as to the libraries' digital copies remains April 5, 2011.)

Summary of Amendments to the Original Settlement on the basis of the Supplemental Notice:

1. a) Amended Settlement Class: The definition of Books has been narrowed.

For US works, the definition of Books remains largely unchanged: United States works must have been published and registered with the US Copyright Office by January 5, 2009 to be included in the Amended Settlement.

Under the Amended Settlement, however, if the works are not US works, they are only included in the Amended Settlement if they were published by January 5, 2009 and either were registered with the US Copyright Office by that date or their place of publication was in Canada, the UK, or Australia.

b) Former Settlement Class Members:

If the only US copyright interests authors/publishers own are in works that were not either (a) published and registered with the US Copyright Office by January 5, 2009 or (b) published in Canada, the UK, or Australia by that date, these are not members of the Amended Settlement Class, even if these were members of the original Settlement Class. They will not be eligible to participate in the Amended Settlement and will not be bound by its terms. However, they retain all rights to sue Google for its digitisation and use of their copyrighted material without their permission.

The Supplemental Notice advises to visit <http://books.google.com/books-partner-options> in order to learn about Google's current policies with respect to the removal of works from its databases, as well as Google's interest in making works accessible under similar terms. Once the Court has set up a schedule for the Amended Settlement

Agreement, Google will update this page with more information on options available to former settlement class members.

2. *Amended definition of Commercially Available:* The Amended Settlement clarifies that a Book is Commercially Available if it is being offered for sale new by a seller anywhere in the world to a buyer in the United States, Canada, the UK or Australia.

3. *Representation of Canadian, UK and Australian Rightholders on the Board of the Registry:* The Amended Settlement provides that the Board of the Book Rights Registry will, at a minimum, have one author and publisher director each from Canada, the UK and Australia.

4. *Monitoring for Rightholders outside the US:* The Registry will, upon request, monitor Google's use of Books and Inserts to ensure that they conform to the requirements of the Amended Settlement and to Rightholders' instructions.

5. *Dispute resolution:* The Amended Settlement now provides that Rightholders may agree not to arbitrate disputes between or among them under the dispute resolution mechanism.

6. *Representation for Rightholders of Unclaimed Books / Inserts.* The Registry will include a fiduciary who will have the responsibility for representing the interests of Rightholders with respect to the exploitation of unclaimed Books and Inserts.

7. *Unclaimed Books / Inserts and Unclaimed Funds.* The Amended Settlement clarifies that, from its inception, the Registry will use settlement funds to attempt to locate Rightholders. The Amended Settlement also now provides that:

After Unclaimed Funds are held for five years, the Registry, in collaboration with organizations in Canada, the UK and Australia, and in consultation with the fiduciary, may use up to 25% of the funds for the sole purpose of locating Rightholders.

Remaining Unclaimed Funds will be held for the Rightholders for at least 10 years, after which the Registry, subject to fiduciary approval as to timing, may apply to the Court for permission to distribute Unclaimed Funds to literacy-based charities in the US, Canada, the UK and Australia.

8. *Improvement of claiming process and website.* The Amended Settlement provides that the Registry and Google will maintain and improve the Settlement Website to facilitate the claiming of Books and Inserts. Google will also work to correct errors in the Books Database.

9. *Additional revenue models:* The Amended Settlement now limits the potential new revenue models to the following three additional Revenue Models, which must be approved by the Registry:

- 1) *Print-on demand ("POD"),*
- 2) *File download (formerly "PDF Download"), and*
- 3) *Consumer subscription.*

The Amended Settlement limits POD to Books that are not Commercially Available.

10. *Different revenue splits:* For Commercially Available Books, the Amended Settlement provides that either Google or the Rightholder will have the ability to request renegotiation of the 63/37 standard revenue split for any or all revenue models.

11. *Discounting:* Google will now have an unlimited right to discount the List Price of Books for Consumer Purchase, so long as it continues to pay 63% of the undiscounted List Price to the Registry for Rightholders.

12. *Resale:* The Amended Settlement requires that Google allows third parties to sell consumer access to Books offered through Consumer Purchase, with the reseller receiving a majority of Google's 37% share of the revenue split.

13. *Non-discrimination clause (i.e., "Most Favored Nations" clause):* Section 3.8(a) of the Original Settlement has been eliminated from the Amended Settlement.

14. *Settlement-controlled pricing:* The Amended Settlement clarifies that the Pricing Algorithm will be developed to simulate the prices in a competitive market and that the price for a Book will be established without regard to changes to the price of any other Book.

15. *Modification of feature restrictions:* Rightholders may authorize Google to modify or remove the Amended Settlement's default restrictions on Revenue Model features.

16. *Alternative licenses:* The Amended Settlement provides that the Registry will facilitate Rightholders' wishes to allow their works to be made available through alternative licenses for Consumer Purchase, including through a Creative Commons license.

17. *Public Access Terminals:* The Amended Settlement authorizes the Registry to agree to increase the number of public access terminals at a public library building.

18. Pictorial works: The Amended Settlement no longer includes children's book illustrations in the definition of Inserts. The Amended Settlement, however, only authorizes Google to display the pictorial images in such Books if a US copyright owner of the pictorial image also is a Rightholder of the Book. The Amended Settlement also clarifies that comic books are considered to be Periodicals and that Periodicals are not included in the definition of Books.

19. Music notations: The definition of Book excludes books that are primarily used to play music. Also, "music notation" is no longer included in the definition of Inserts.

20. Usage / Inclusion Fees: Usage Fees will now be held for Rightholders who have not yet claimed their Books for at least ten years, and Rightholders will now be eligible for Inclusion Fees if they claim their Books or Inserts within ten years of the Effective Date.

Best regards,

Anita Huss

General Counsel and Deputy Secretary General