

Office of the Clerk, J.Michael McMahon
US District Court for the Southern District of New York
500 Pearl Street
New York
NY 10007
USA

22nd January 2010

Dear Sir

The Google Book Settlement

The Society of Authors is a trade union with some 9,000 members, mainly based in the UK. In addition to book writers, there are many illustrators and translators (as well as writers for other media) within our membership.

The Society of Authors has no direct links with the Authors Guild in New York, but its role and the services that it provides to members are similar. Over the last year, we have endeavoured to keep our members informed - in broad terms - about the highly complex Settlement, via our journal and our website.

Concern, which we entirely understand, has been expressed to us that the Settlement undermines one of the fundamental principles of copyright law by permitting Google to make certain uses of any copyright work that is out of print, unless a rights holder specifically gives notice that it may not do so. There is also a degree of unease that authors (except those who have opted out) will be legally bound by the application of the Settlement within the USA by virtue of it being the outcome of a class action. Finally, although the rights granted to Google are non-exclusive there is thought to be a danger of Google dominating the market and making it difficult for others to compete.

While some members will be making formal objections to the Settlement, very few have raised objections with us. The great majority seem to take the view that overall it contains potentially significant benefits. In the context of US copyright law with its much broader 'fair use' defence than 'fair dealing' in the UK, the Settlement appears to strike a pragmatic balance between the wish of users to have access to out-of-print works, and the important need for authors to retain as much control as possible over the exploitation of their intellectual property and to be fairly remunerated.

The establishment of the new Book Rights Registry, controlled by authors and publishers and including representatives of British interests, is seen as an important development.

It is reassuring that authors will be free to instruct Google to remove all digital copies of their books. We strongly recommend that there should be no time limit for doing so.

Rights holders can exclude use of books that are not 'commercially available'. There seems to be some doubt whether a work will be regarded as 'commercially available' if it is available only as an e-book. If there is any ambiguity on this point, we consider that it should be made clear that a book will be regarded as not 'commercially available' only if it is available neither in print form nor as an e-book.

We note that the Settlement applies only to works published before 6th January 2009 and only in the US. We would not wish to see it extended more widely without the freshly negotiated consent of both authors and publishers. We have reassured members that authors will continue to have absolute control over any unpublished material.

In conclusion, our Management Committee and most members who have expressed a view consider that at a time when the creative industries are struggling to find 'new models' for the digital age which can satisfy both rights holders and users, the Google Book Settlement offers a reasonable and practical way forward.

Yours faithfully

M. Le Fanu
General Secretary