

UC and the Google Book Settlement: Frequently Asked Questions

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- Does Google alone benefit from legal protection for orphan works?
- What if the price of the institutional subscription becomes unaffordable?
- How can libraries be for open access and support restrictive access?

What will the Settlement mean for UC?

The current UC-Google digitization agreement would have to be amended to bring it into compliance with provisions of the Settlement. The details are still to be negotiated, but UC **expects** at least the following will be included in a revised agreement:

- As a fully participating library (i.e., one that digitizes in-copyright material and will retain a local digital copy), UC will
 - Digitize an increased number of UC volumes; currently 2.5M volumes.
 - Receive full-text access to all of UC's digitized books at no charge via a Limited Subscription
 - Obtain a substantial discount on the Institutional Subscription fee should we choose to subscribe.
 - The Institutional Subscription will contain many more books contributed by other libraries, going far beyond access to just UC's own in-copyright books.
 - Receive a UC digital copy of all of the books in our collections that we are willing to allow Google to scan which we can use for:
 - Long term preservation (via HathiTrust¹)
 - Building indexes and finding tools (along with books from other HathiTrust members)

¹ HathiTrust is a collaboration between UC Libraries, the University of Michigan, Indiana University and other CIC libraries to create a shared digital library, including long term preservation. At present, UC is contributing its digital books scanned by Google and Internet Archive. (see <http://hathitrust.org>)

- Displaying front matter for online browsing purposes (e.g., title page, tables of contents)
 - Providing full access to users with print disabilities (via enlargement, voice and/or Braille output, etc.)
 - Replacement copies for items that are damaged, deteriorating or lost if an unused copy can't be purchased at a fair price
 - Any other use permitted by the Book Rights Registry or individual rightsholders
 - For orphan works, any other use permitted by law, if orphan works legislation is enacted by Congress
- Under the Settlement, rightsholders have the option to remove their works from library-oriented services such as the Institutional Subscription and to restrict libraries from receiving copies of those same works that were scanned from their collections. This is a time-limited option that expires 27 months from the effective date of the Settlement.
 - Since we do not know how many rightsholders are likely to exercise this option, it is impossible to assess the impact on UC at this time. Rightsholders who choose to remove their books from the designated library services forfeit the right to place these copies into other revenue-generating services such as consumer purchases due to a Settlement provision called "Coupling." This is expected to act as a disincentive to removal of books.

What happens to public domain works?

- Public domain works are not covered by the Settlement, so our uses of those books will be covered by our digitization agreement with Google and will allow much broader usage, with no restrictions on general academic or scholarly use.
- As in our current Google digitization agreement, we anticipate that there will be some limited restrictions on wholesale sharing with non-academic organizations, but we also anticipate that these restrictions will eventually lapse over time.

What happens to in-copyright works that are in-print?

- By default, books that are in-print will have their display characteristics turned off in the Google services. This means that:
 - They will continue to be available for full text searching in Google Book Search with links to libraries and booksellers, but previews will not be available.
 - They will not be included in the Institutional Subscription or other library services.
- Rightsholders can override these default settings, allowing Google to make previews available and/or to include in-print works in the various subscriptions, library services, and other business models. If in-print books are made available for consumer purchase, they must also be included in the Institutional Subscription and other library services.
- UC will receive copies of these works if they were scanned from our collections and can use them in the same way that we can use other books in our library digital copy.

What are the benefits to faculty as users?

- Immediate benefits:
 - Broad discoverability of and improved access to major research library holdings across the U.S.
 - Indexing of full text of over 7 million books via Google Book Search
 - Full view (including option to download .pdf) of public domain books (estimated at about 15% of the entire corpus)
 - Links that allow you to locate physical copies in a UC or other library, or to request an interlibrary loan through UC-eLinks
 - UC plans to build its own full-text searching and public domain full view capability through its participation in the HathiTrust shared repository, which is not subject to Google control
- If the Settlement is approved:

- Display of up to 20% of in-copyright, out-of-print works via the Google Book Search 'preview' function
- Access to a Non-consumptive Research Corpus for textual analysis, linguistic analysis, automated translation, etc.
- An Accommodated Service that will make books available to visually-impaired users
- A Public Access Service that will allow a single terminal in all public library buildings, including public higher education library buildings, to have full text access to books in the Institutional Subscription

What are the benefits to faculty as authors (rightsholders)?

- Works are fully searchable and can more easily be discovered by potential readers via Internet search engines
- Depending on terms with the publisher, you (if you are the rightsholder) may have an opportunity to realize revenues from commercial uses of your books.
- Through a Settlement provision called 'Coupling,' if any commercial uses of a work are made, Google *must* include those books in the Institutional Subscription, the Research Corpus, and other library-oriented services (e.g. Public Access Service, free search and 'find in a library'). Google cannot make commercial uses without also making works fully available to library users under the Settlement.
- **If you hold the rights to your books, you can**
 - Control how your books are used under the Settlement
 - Rightsholders can **authorize broader uses** of their work than those provided for in the Settlement.
 - Conversely, rightsholders can **further restrict access** to their books; for example, stipulate that a book is available only for full text searching but not for viewing; or remove it from the Google services entirely.
 - **If you remove your books, they will not be available to libraries via the institutional subscription or other library services, and the libraries at which the copies were digitized will be required to destroy their local copies.**
 - Register your rightsholder status with the Book Rights Registry so that the copyright status of your books is recorded and publicly disclosed in the Registry's database. This would, among other things, **prevent your books from being treated as orphan works.**
 - Benefit from Settlement provisions without interacting with Google on an individual basis, since your rights will be administered by the Book Rights Registry. The Registry is an organization that will be established to administer the terms of the Settlement, collect revenue from Google, monitor compliance with the Settlement by Google and others, and negotiate financial and other terms for Google services on behalf of rightsholders. The Registry will also be able to negotiate with organizations other than Google for the use of books covered by the Settlement, but it may not offer another organization better terms than it makes available to Google. The Registry will be established as a non-profit entity, and the fees for its operation will be deducted from revenues received from Google. Google will provide a significant amount of start-up funding to establish the Registry.

What are the implications for authors (rightsholders) of opting out of the Settlement, and why might I want to do this?

- Rightsholders might want to opt out of the Settlement if:
 - They want to retain the right to sue Google for copyright infringement
 - They want to strike their own 'deal' with Google to make their works available under different financial terms than those established by the Settlement
 - They do not want to be represented by the Book Rights Registry.

- Opting out of the Settlement does *not* mean that Google will remove your books from the Google services, or that Google will not scan your books.
 - Even if you opt out of the Settlement, you must still explicitly ‘opt out’ of the Google services if you wish to prevent Google from scanning your books or making them available.
 - If rightsholders opt out of the Settlement but choose to negotiate a separate commercial deal with Google, the Settlement’s **‘Coupling’ rules will not apply to their books**. Rightsholders will be able to strike a commercial deal with Google and at the same time, if they so choose, **prevent their books from being made available to libraries**, by excluding them from the Institutional Subscription and Research Corpus (and other library services) and **requiring libraries from whose collections those works were scanned to destroy their digital copies**.
 - If you opt out of the Settlement but take no further action, Google may or may not continue to scan your books from library collections, make them available for online searching, and provide digital copies to the fully participating libraries from whose collections those copies were scanned. If your books are out of print, Google may or may not choose to include them in the Institutional Subscription and related services. We do not know what decisions Google will make on any of these matters; opting out of the Settlement per se does not preclude Google from taking any of these actions.

What if I want to provide broader use rights for my books – for example, to make them freely available?

It is possible to convey broader use rights under the Settlement via the Book Rights Registry. If you opt out of the Settlement, you can also ask Google to provide broader terms of use for your books, including making them freely available to Google and to libraries. That is, you can do this regardless of whether you remain in or opt out of the Settlement.

Libraries own these books in their collections – shouldn’t the libraries be able to make the digital versions available to users everywhere, for free, just as the books themselves are?

- Although libraries own the physical copies of these books, many of the works themselves are still protected by copyright. A copyright holder has exclusive rights under the federal Copyright Act, including the rights to reproduce the work or prepare derivative works based on the original. The exclusive rights are tempered by certain statutory exceptions, such as fair use, interlibrary loan, reproduction for use by persons with disabilities, etc., but none would allow the libraries to make whole print or digital copies for users for their free use.

If Libraries can’t make the digital versions of in-copyright books available for free under the Settlement, what can they do with them?

- The Settlement allows libraries to build full text indexes and finding tools for all of their digitized books, including display of front matter for previewing purposes (such as title pages and tables of contents). Other uses libraries may make of their digital copies are outlined above in the first question of this FAQ. UC plans to make such services available via HathiTrust.
- We will also be able to make digital versions of public domain works available for full text viewing and downloading by individuals, and to share these copies with other research libraries.
- The primary restrictions on availability that will be imposed by the Settlement concern full text viewing of works that are still under copyright by users at another library (including access by UC users to in-copyright works digitized at other libraries). For these categories of works, an Institutional Subscription will be required.
- It may be possible to negotiate with the Settlement’s Book Rights Registry for other uses of in-copyright books.

Will libraries discard books that have been digitized?

- One of the benefits to libraries is the opportunity to make collection management decisions, especially in light of dimming prospects for increasing physical space, whether on campus or in shared library facilities.
- Libraries are studying the best approaches for taking advantage of digital copies, but it is extremely unlikely that all physical copies will be discarded. It is more likely that the digital copies will work synergistically with their physical counterparts, enhancing and extending access to the originals. For example, by making the digital copies accessible through the Institutional Subscription or on a more limited preview basis through Google Book Search or HathiTrust, the millions of volumes already in storage at one of the two UC regional library facilities or located at another UC campus will be able to be consulted online before deciding whether to request a copy for physical delivery, saving users' time and reducing wear and tear on the physical volumes themselves.
- Just as there were experiments and investigations about usage patterns when digital journals became available, there will likely be similar studies to understand how best to meet faculty needs for books, both print and digital.

Why did Harvard “pull out”?

- Harvard allowed only its public domain materials to be scanned. To our knowledge, Harvard is completing its public domain digitization. Consequently, the Settlement has little direct impact on them, either positive or negative.
- Harvard made its own determination about the relative pros and cons, as will each institution. Their chief concerns appear to center on three main issues:
 - That Google will have a monopoly in making out of print books available online
 - That Google will obtain legal protections for digitizing orphan works that are not available to others
 - That market forces may not ensure that pricing for the Institutional Subscription is affordable
- Other informed observers have taken a more moderate position with respect to these concerns. The Association of Research Libraries, for example, has filed a brief asking the court to monitor several aspects of the Settlement if it is approved but has not recommended scuttling it.

What would be the consequences for UC if we “pulled out”?

- For UC, “pulling out” would mean either that we would cease making copyright-protected works available to Google for scanning, or that we would cease making copies available to Google for scanning altogether. In either case, since UC is one of Google's major scanning partners for in-copyright material, the corpus of in-copyright books digitized by Google and available through Google Book Search, the Institutional Subscription, Research Corpus, and the other Google library services would be less comprehensive than it will be with UC's continued participation.
- UC would have to return to Google the digital copies of ca. 1.5 million in-copyright books digitized from UC collections thus far. UC would forfeit the right to retain these files as a preservation asset in case of catastrophic loss or damage.
- UC would lose the opportunity to build full-text indexing tools and other services for its in-copyright books independently of Google via the HathiTrust – tools and services oriented toward the needs of academic users.
- Should UC wish to undertake large-scale digitization of its library collections through other means, millions of dollars in funding would have to be sought, and obtaining such funding would be extremely difficult if not impossible.
- UC would no longer qualify for a discount for the Institutional Subscription because UC would not be a fully participating or cooperating library.

What about the view that Google will have a monopoly?

- New publications are not covered by the Settlement but contribute the majority of revenues in the book market. Thus, Google has many competitors in the online book distribution industry. Google can scan new works only if rightsholders permit them to do so.
- A significant portion of the out of print works is in the public domain and no organization is prevented from competing with Google to provide access. In fact, many libraries now engaged in mass digitization of public domain material, including UC, are offering or preparing to offer print-on-demand services for their public domain content
- The main concern appears to be that Google has a monopoly on the provision of orphan works since others will not have the same protections, absent legislative action. However, Google took a significant business risk in digitizing works regardless of copyright status. Most organizations involved with mass digitization, other than Google, have chosen to avoid digitizing works that are still in copyright. Nothing in the Settlement precludes another organization from scanning works and establishing a comparable service.
- The Settlement creates an incentive for rightsholders to register their works with the Books Rights Registry, thereby aiding in a reduction of “orphan” works. The Book Rights Registry can strike comparable business deals with other organizations, an opportunity that Google’s competitors can choose to exploit if they wish to do so (although the Registry cannot give another entity a better deal than it makes available to Google – a ‘most favored nation’ clause that has come under fire from some quarters). Because rightsholders can deal directly with other distributors, it is in the Registry’s best interest to make it easy for rightsholders to work with them.
- Google would, in fact, benefit from open access to the widest range of books because its revenues will come primarily from other services, such as print-on-demand, advertising, etc.

Does Google alone benefit from legal protection for orphan works?

- The Settlement explicitly provides for the use of orphan works to be governed by future legislation if it is passed; thus, the apparent protections offered by the Settlement may lapse with time.
- A common complaint is that the Settlement could make fair use of orphan works more difficult because there will now be a revenue-generating model for such works, arguably tipping the balance in favor of the unknown rightsholder because the effect on the market for a work is one of the four fair use factors. However, that factor alone is not the determining one, and other factors, such as the amount of the work used, will remain important.
- Another complaint is that the unknown rightsholders will not receive financial benefits; rather, the Registry, the known rightsholders, and selected nonprofit institutions will receive the income if a rightsholder remains unknown (either by name or by address). UC would prefer that all royalties from orphan works go to nonprofit organizations, but we were not a party to the lawsuit. While arguments can be made about the relative fairness of the revenue-sharing scheme, the fact that orphan works will be accessible and usable is beneficial.
- By creating a Registry database to record and publicly disclose rightsholders’ claims, the scope of orphan works may become better known than it is at present. This may have a positive impact on future policy development.
- The attention being focused on orphan works may lead to a more rational legislative solution in the future.

What if the price of the institutional subscription becomes unaffordable?

- It is not in Google’s or the rightsholders’ interest to make the product unaffordable. The “twin objectives” stated in the Settlement of realizing revenue at market rates and providing the broadest possible public access are intended to provide a balance.

- Google presumably is motivated to keep the institutional subscription affordable in order to increase their income through such avenues as revenue from advertising in the subscription. It is our understanding that Google is not looking to sales of the subscription *per se*, as noted above, as a revenue-generator.
- Many believe that market forces will be brought to bear on the pricing including the availability of a potentially competing consumer product that may keep prices on the Institutional Subscription low.
- Libraries have extensive experience in licensing full text products and are well positioned to evaluate the “fairness” of the pricing. The fact that the institutional subscription will be a new product without pre-existing demand will make it easier to ‘just say no’ if the price is not reasonable. Libraries could also create demand for an alternate product, such as subsets of works, or choose to subsidize individual purchases on behalf of library users.
- There will be opportunities to challenge the pricing both initially and over time through a formal arbitration process governed by the Settlement.

How can libraries be for open access and support restrictive access?

- The Settlement will increase access to library collections, in practice, rather than restrict it. Books in our libraries have become increasingly invisible in the Internet age. Digitizing the full text of these books will make them more discoverable and more accessible than ever before to library users and the general public.
- Access is restricted only in the sense that one might have to pay to get a print-on-demand copy or to view full text via a license. This is the same situation that exists for journals and for current academic monographs, most of which are written by academic authors but made available through university presses and other publishers under standard purchase and licensing terms.
- For materials that are still protected by copyright, full open access is a choice that can be made only by the copyright holder. Copyright for books may be held by authors as well as publishers. If copyright is held by authors, they have the option to allow greater access under the Settlement. The Libraries are available to provide information to UC rightsholders about how to convey broader rights under the Settlement.
- Absent the Settlement, the suit against Google might have resulted eventually in a fair use ruling by the courts. In the best possible case, that ruling would have allowed Google to continue to make the full text of books available for searching via Google Book Search, with display limited to snippets of text. In the worst case, Google’s large scale book digitization might have been stopped completely. While the Settlement is not perfect, on balance the subscription and purchase models it offers, as well as the provisions for determining the public domain status of scanned books, will make far more content available to far more users both in and outside of academia than ever before. Hundreds of thousands, if not millions, of public domain books will be fully available for reading and downloading. Many more in-copyright books will be available for searching and limited browsing at a minimum, with links to library copies and to copies available for purchase, placing access to out of print books that are still protected by copyright on an equal footing with very current material.
- The UC libraries worked with Google and the other library partners while the Settlement was being negotiated to advocate for the broadest possible access and dissemination of the works in our collections consistent with copyright law, and we will continue to do so, just as we do in our negotiations with other commercial content providers.

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