Publishers Lunch
September 15, 2025

Authors Have Questions -- And No One Is Getting $3,000 A Book; But Macmillan Will "Make...Whole"Those With Overlooked Copyright Registrations

Writ large, the Anthropic settlement is a huge win for creators, comprising both the largest copyright infringement settlement ever as well as a rare victory over the marauding tech companies that have trampled copyright for their own purposes for over two decades.

But for many individual authors, the settlement so far has brought confusion and sometimes disappointment. At least some have rudely discovered that their publishers never properly registered their copyrights in the first place, a basic error that denies both parties the right to participate in this settlement and to benefit from other past infringements by the LLMonsters.

On that front, at least, there is some good news for Macmillan authors. The company shares with PL that it has been communicating to authors and agents who have inquired about unregistered copyrights, acknowledging, "From what we currently understand, this was largely our mistake and we take full responsibility. If your work was excluded from the settlement for this reason, we will make you whole by paying you what you otherwise would have been paid under the settlement."

Additionally, they write: "We are also taking corrective action. Our team is conducting a thorough review to identify affected works and close any registration gaps.... We regret this error and are committed to making it right."

No other large publisher contacted by PL has taken such a clear step yet to amend situations where they were supposed to have registered copyright and failed to do so, but at least some indicated on background that they were evaluating any oversight. Agents and authors hope that Macmillan's position will inspire others.

While the parties work to resolve all the complex details to the satisfaction of presiding Judge William Alsup, there is abundant confusion as to who might be eligible for a piece of that big $1.5 billion settlement fund, and how to expect the proceeds to be split between publishers and authors.

There are no definitive answers to most of these questions right now, as the settlement itself is in limbo as attorneys work to answer many questions to the satisfaction of Judge

Alsup, but here instead is a review of at least some of those issues. (Today is the "drop-dead date"for the parties to give the judge "a final never-to-be-changed-again list on the works and on the class."Thereafter, they will build a checkable database.)

For starters, it should be clear, *no one* is actually getting $3,000 a title. It will start lower than that -- though it could ultimately go higher, too, as we'll explain later. *More likely, any in-print or unreverted author with a traditional publisher is looking at about $1,125 a title as a starting point.*

At a minimum, the lawyers will get paid a portion of the fees, even for authors who self-published or have had their rights reverted. The plaintiffs' attorneys said they would ask for up to 25 percent of the settlement funds -- which is not abnormal as a percentage of a big award (even though this massive judgement also comprises a massive fee, for a case that never went to trial).

At the hearing last Monday, Judge Alsup expressed disdain for "hangers on with all this money on the table," and vowed that "add-on" attorneys would not be paid out of settlement funds. ("There will be not one penny paid to any lawyer except class counsel.") More radically, he suggested that he would pay the attorneys based on their success rate in getting members of the class paid: "Your fee would turn on how many actual claimants are paid. It might be a small fraction of 1.5 [billion]. It might be all of 1.5."

So this may be the rare judge who gives the attorneys a smaller piece than what they are seeking. But for now, rightsholders should plan on maximum gross proceeds of $2,250 a book until there is a court order indicating otherwise.

From there, for authors whose works are still under contract, how much of that $2,250 is paid out probably depends on your individual agreement--unless the judge decrees otherwise.

While contracts always can vary, and the books infringed by Anthropic were likely published over many years, a typical provision at a big house would split proceeds from any infringement equally between the publisher and author, after deducting any legal costs incurred by the publisher. In the Anthropic matter, the case was brought by the class action attorneys, so it's unlikely that any publisher has any direct cost attributable to any particular author.

So now the trade author's starting share is down to something like $1,125. (Standard contracts ought to generally put infringement awards outside of any earnout and standard agency agreements leave such monies outside of any commission.) It has been suggested to us that academic contracts may leave authors with little or no share, however.

On the plus side, there will be accrued interest to split as well, since Anthropic has two years to fully capitalize the settlement fund. In the motion for preliminary approval, the plaintiffs' expert "estimate[d] that interest earned by the time of Anthropic's final payment may be as high as $126.40 million."So your $1,125 could grow into...$1,220.

But we may have buried the lead: Up to the half of this huge settlement fund, after attorneys take their piece, could be going to publishers rather than authors, comprising an injection of hundreds of millions of dollars. As one agent wrote to us, "I'm out of my mind with rage that publishers are going to make staggering profits off this while authors will be left holding the bag."

In an ideal world, it's possible that publishers would recognize the injury being felt by authors who are the victims of this massive infringement, and they could decide to share more of the proceeds. We queried all of the largest publishers on this question, but no one is ready to speak to the issue on the record. Indications are for now that publishers believe the 50/50 split common to many contracts over the year will apply.

But here is some better news for you. One of Judge Alsup's concerns a week ago -- lost in some of the coverage of his dyspeptic take on the settlement as presented -- is to make sure as many injured parties as possible get paid.

What the judge is looking for first and foremost is a plan for a thorough and exhaustive notification process that lets everyone potentially eligible to participate know about the settlement and how to file a claim.

As it turns out, the average participation rate in class action restitution is very low. In 2019, an FTC staff report that studied 149 *consumer* class actions found a median claims rate of 9 percent (and a weighted mean claims rate based on class members who received notification of 4 percent). Bear in mind, these are *consumer* lawsuits, where often the class is very large -- in the millions, if not tens of millions -- and the per person award is usually quite modest.

The Anthropic settlement is expected to cover approximately 500,000 works with properly registered US copyrights. Here, the potential payoff of millions of dollars for large publishers will serve as strong incentive to use their corporate staff and resources to claim all possible recovery of proceeds.

But there will still be a non-trivial number of infringed works for which claims are never made. Importantly, the settlement payment of at least $1.5 billion is deemed *non-*

reversionary. In many class action payouts, money that is not claimed goes back to the defendant. But that is not the case here. So any money not claimed will be distributed pro-rata to the actual claimants. That means, for example, that if claims are made for only 250,000 of the eligible works, the eventual payment to those claimants will be twice as much.

Much of the judge's other other main focus in last week's hearing was the problem of receiving claims for the same work from both the author and the publisher. There could be honest confusion -- or disagreement -- about who controls the rights and should benefit from the settlement.

Authors feel particularly aggrieved here, and many have been surprised to learn that under the terms of the settlement agreement, for in print or nonreverted books, the publisher is the likely rightful recipient of the funds.

As the Authors Guild made clear, “For books where the author has granted the publisher an exclusive right to publish the book, the publisher is the legal owner, and the author is the 'beneficial' owner under copyright law."

Some authors writing on social media mistakenly believe that, since functionally AI rights are deemed by many to have been not granted and thus retained by authors, they won't have to share the money with their publishers at all.

But the AI training portion of the Anthropic case is over, and sadly the authors and publishers lost. The court ruled that LLM training on this corpus of books was a transformative, fair use.

The charge Anthropic is settling instead of taking to trial is a simple -- if gigantic -- allegation of plain old copyright infringement. They downloaded millions of illegally pirated works, and according to evidence through deposition and discovery as interpreted by the plaintiffs and, it appears, Judge Alsup, they kept that big old illegal library, for a variety of potential uses beyond LLM training.

Judge Alsup's vision in the hearing differed from what the plaintiffs were proposing. He said, "I think it would be best to have a claim form signed by every interested author and the publisher."He suggested: "The claim form would be signed by both the publisher and the author. It would be joint. It would be work-by-work. So the ABC Publishing Company of New York City would not file a claim for 100 works. It would file work-by-work. And the author would have to be on each one -- the author or authors.

"So why? So that we would eliminate the problem of the author or their publisher coming back later and suing them and saying, well, wait a minute, we didn't agree to waive anything. They would warrant -- publisher and author would warrant that they own the copyright and interest. And that they would supply the legal papers that ...that would show that they own the copyright and interest."

He seemed to believe that filing a joint claim would "force the authors and the publishers to come to terms"on sharing the settlement, or else forfeit getting any payment at all -- perhaps without understanding that contracts already cover matters like this, and perhaps without appreciating the complicated mechanics of getting hundreds of thousands of claims jointly signed.

But he was clearly opposed to the proposed advisory working group and special master to resolve disagreements. His position is that the attorneys represent the class (and the case was brought by authors) and it's their job to work out the disagreements. "The plaintiffs lawyers love 'special master,' because with that phrase is a cure-all for every evil. It's not going to work here. If there's going to be a dispute over ownership, it goes to state court or some other lawsuit. It's not going to be in this court and it's not going to be with a special master...because we're talking about contracts here. We're not talking about copyrights."