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FAQs & Discussion

IMPORTANT NOTICE

The official class action website at www.copyrightclassaction.com is now fully operational. Class members may immediately begin filing claims on the official website. Please submit all questions and comments regarding the settlement to the Claims Administrator via the means described on the official website. The Claims Administrator and/or attorneys for the plaintiffs will respond to those questions. This website will no longer do so.

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What are the terms of the Settlement?

The Defense Group has agreed to pay a minimum of \$10 million and a maximum of \$18 million to settle the lawsuit, to be applied to valid claims and all fees and expenses, all of which must be Court-approved. If the sum of all valid claims, fees and expenses is less than \$10 million, then the remainder of the \$10 million minimum would be distributed on a pro rata basis to those claimants whose Eligible Works were first published after 1977 and appeared on a defendant database. If the claims for Eligible Works that were first published after 1977 and appeared on a defendant database, together with all fees and costs, exceed \$18 million, then certain claims as necessary would be reduced pro rata.

How much would I receive under the Settlement?

If you submit a valid claim, you would receive a cash payment for each Eligible Work. The amount would depend on whether and when you registered the copyright for the Eligible Work, when it was originally published, and whether you choose to grant the defendants a non-exclusive license to exploit the electronic rights now. Each class member who submits a timely, valid Proof of Claim would receive a cash distribution Settlement Payment, the amount of which would be calculated as explained below.

Do I need to have registered my copyright with the Library of Congress to take part in the settlement?

No. All writers whose work appears in the electronic databases would be eligible to receive an award. Those who registered would receive a higher per-story settlement.

When can I submit my claim?

In its preliminary approval of the settlement, the court ruled that people may begin to submit claims on May 31, 2005. The period for making claims will end 120 days from May 31, or on September 28, 2005.

I never registered my stories with the U.S. Copyright Office. How much would I receive?

Even if you did not register the copyright, you would still be eligible for cash compensation in the Settlement if you submit a timely, valid Proof of Claim. This is called Category C. Compensation for unregistered Eligible Works would be calculated as follows:

- \$60 for each Eligible Work originally sold for \$3,000 or more;
- \$50 for each Eligible Work originally sold for \$2,000 to \$2,999;
- \$40 for each Eligible Work originally sold for \$1,000 to \$1,999;
- \$25 for each Eligible Work originally sold for \$250 to \$999;
- The greater of \$5 or 10% of the original price of the Eligible Work for all other works (sold for less than \$249).

These amounts would represent compensation for the past infringements and for the future electronic use of your Eligible Works. 65% of the payment would be compensation for past infringement, and 35% would be compensation for future electronic use by the Database Defendants and original publisher of your Eligible Works. You would not have to grant the rights to future use, but if you did not grant the rights, you would receive 65% of the total available payment and your Eligible Works would be removed from the databases.

You would not be able to prevent the continued electronic use of Category C Works) if you signed a written agreement granting the electronic rights to your present and past Eligible Works with a defendant publisher. If you signed such an agreement, then you would only be eligible to receive the amount allocated for past infringement with respect to that Eligible Work, i.e., 65% of the Settlement Payment.

Reduced Payments For Older Eligible Works. If the unregistered Eligible Work was created before January 1, 1995, payments in Category C would be reduced as follows:

- **Eligible Works created in 1985-1994:** a 5% reduction for each year beginning in 1994 and continuing through 1985, so that payments for Eligible Works created in 1994 would be reduced by 5%; payments for Eligible Works created in 1993 would be reduced by 10%, and so on until works created in 1985 (payments reduced by 50%).
- **Eligible Works created before 1985:** Payments reduced by 50%.

There is a chance that a reduced payment or no payment would be made for Category C Works if there are so many Category A and Category B claims that they use up all of the money available for paying claims.

I registered the copyright within three months after publication or the first infringement. How much would I receive?

If you registered the copyright with the United States Copyright Office:
(a) after the Eligible Work was first published and before it was infringed
or (b) within three months after first publication of the Eligible Work,
you would receive:

- \$1,500 for each of the first fifteen Eligible Works written for any one publisher;
- \$1,200 for each of the second fifteen Eligible Works written for that publisher; and
- \$875 for each Eligible Work written for that publisher after the first thirty.

These amounts represent compensation for the past infringements and for the future electronic use of your Eligible Works. 65% of the payment would be compensation for past infringement, and 35% would be compensation for future electronic use by the Database Defendants and original publisher of your Eligible Works. You would not have to grant the rights to future use, but if you did not grant the rights, you would receive 65% of the total available payment and your stories would be removed from the databases.

There is a chance these amounts would be reduced pro rata if the number of valid claims exceeds the total available funds for paying claims.

I registered the copyright before December 31, 2002 but more than three months after first publication or the first infringement. How much would I receive?

This is called Category B. If your Eligible Work was published after December 31, 1994 and you registered the copyright before December 31, 2002 but more than three months after it was first published, you would receive, per Eligible Work, the greater of \$150 or 12.5% of the original sale price of the Eligible Work.

These amounts represent compensation for the past infringements and for the future electronic use of your Eligible Works. 65% of the payment would be compensation for past infringement, and 35% would be compensation for future electronic use by the Database Defendants and original publisher of your Eligible Works. You would not have to grant the rights to future use, but if you did not grant the rights, you would receive 65% of the total available payment and your Eligible Works would be removed from the databases.

Reduced Payments For Older Eligible Works. If the Eligible Work was created before January 1, 1995, payments in Category B would be reduced as follows:

- **Eligible Works created in 1985-1994:** a 5% reduction for each year beginning in 1994 and continuing through 1985, so that payments for Eligible Works created in 1994 would be reduced by 5%; payments for Eligible Works created in 1993 would be reduced by 10%, and so on

until works created in 1985 (payments reduced by 50%).

- **Eligible Works created before 1985:** Payments reduced by 50%.

There is a chance that a reduced payment or no payment would be made for Category B Works if there are so many Category A claims that they use up all of the money available for paying claims.

What is this lawsuit about?

In August 2000, three writers organizations and 21 freelance writers brought a class action lawsuit against 12 commercial electronic databases, alleging that they had infringed the copyrights of thousands of freelance contributors to newspapers, magazines and other print publications. The lawsuit asserts that after the freelancers' works were legally published in the print publications (with the authors' permission,) those publications then licensed the works to the commercial databases for electronic exploitation, without the authors' permission, and therefore infringed the authors' copyrights in their articles.

A proposed settlement of this lawsuit has been reached on behalf of the Class. The Class is defined as all persons who hold the copyright to an English language written work that, at any time after August 14, 1997, was made available in electronic format (e.g., online, on CD-ROM, or in any other electronic format) without the person's permission] by at least one of the defendant databases or participating publishers.

Why was there a lawsuit?

For years, it was industry practice for freelance authors to sell their works for publication to periodical publishers, either without a written contract, or with a written contract that gave the publisher only the first right to publish the work in a specified edition of the newspaper or magazine. In either case, for all other purposes, the author retained the copyright in the work.

Beginning in the 1980s, periodical publishers began to license part or all of the content of their publications for inclusion on electronic databases such as LEXIS/NEXIS. The content licensed to the databases included freelancers' works as well as staff written works. (Articles written by staff writers are works made for hire and the publisher owns the copyright to those works. Accordingly, staff written works are not included in this litigation.) The publishers typically did not obtain the freelance authors' permission for this subsequent publication of their works on the electronic databases. The named plaintiffs, which include freelance authors who represent the Class and three professional writers' organizations, allege that the databases and print publications violated the freelance authors' copyrights in the electronically exploited works. They brought this lawsuit to obtain redress for all affected freelancers.

After nearly three years of negotiations, the parties reached this Settlement.

The defendants deny any wrongdoing or liability, and claim that any member of the class would not win damages if the case proceeded to trial. The court has not ruled on any of the contentions of the plaintiffs or defendants.

What works are included in the Settlement?

All English language literary works that, at any time after August 14, 1997, appeared in electronic format in at least one of the Databases or Publishers' websites or databases without the copyright owner's permission. Only stories and articles written in English and published in an English language publication are included. Letters to the editor, scientific studies, or works that are not literary works are not included in the Settlement.

Do I have to be a member of the Authors Guild, National Writers Union, or the American Society of Journalists and Authors to participate?

No. You need not be a member of any organization to make a claim. You need only have written a work included in the Settlement.

Questions about the settlement.

IMPORTANT: Please address all questions and comments about the settlement to the Claims Administrator via the means described on the official settlement website at www.copyrightclassaction.com.

I signed an "all rights" agreement with The New York Times in 1998, agreeing that the Times would own the copyright to my work. However, my agreement also states that the Times would pay me fifty percent of its gross receipts from the sale of my articles to a third party for republication. There is no explicit mention of electronic rights in the agreement. Do my works qualify?

REPLY: Please submit all questions to the official class action website at www.copyrightclassaction.com. The Claims Administrator and/or attorneys for the plaintiffs will respond to questions submitted to that website. This website will no longer do so.

I signed a copyright agreement in 1996 with a newspaper that appears on the list of publications. During subsequent years I wrote hundreds of articles for the publication, which now appear on a defendant database. I cannot find the original copyright agreement that I signed and I am not sure whether or not I granted the publication electronic rights. Am I entitled to participate in the settlement?

REPLY: Please submit all questions to the official class action website at www.copyrightclassaction.com. The Claims Administrator and/or attorneys for the plaintiffs will respond to questions submitted to that website. This website will no longer do so.

I wrote hundreds of articles for a UK newspaper as a stringer

between 1995 and 2002. The newspaper appears in the list of publications and my articles appear on one of the defendant databases. I was paid a monthly retainer plus lineage per story calculated on a per-word basis. I have payslips documenting the payment for each story filed during the period. At no time during the period was I an employee of the newspaper, and I never received any staff benefits. Are these works eligible for inclusion in the settlement?

REPLY: Please submit all questions to the official class action website at www.copyrightclassaction.com. The Claims Administrator and/or attorneys for the plaintiffs will respond to questions submitted to that website. This website will no longer do so.

I have written several articles for IDG and Cahnners and Reed Elsievier? Would I register for copyright for each one? Do I pay the copyright fee for every publication, or per piece?

REPLY: Please submit all questions to the official class action website at www.copyrightclassaction.com. The Claims Administrator and/or attorneys for the plaintiffs will respond to questions submitted to that website. This website will no longer do so.

This page has been accumulating new questions but there appear to have been no new answers posted for weeks. Please advise us on when we can expect answers to these questions.

REPLY: We have responded to most of the new questions. Please submit all additional questions to the official class action website at www.copyrightclassaction.com. The Claims Administrator and/or attorneys for the plaintiffs will respond to questions submitted to that website. This website will no longer do so.

From 1996 through 2001, I wrote hundreds of articles for Copley Press, which is a signatory to settlement. In 2001, Copley sold the newspapers I wrote for to Hollinger, which is NOT. What is my situation?

REPLY: If your freelance articles were included on the defendant databases without your permission, they are included in the Settlement and you are eligible to make claims for them, even if the original publisher is not a participating publisher.

I just went on the Chicago Tribune electronic database. Today (May 6, 2005), there are 667 articles I wrote in its database. Why are companies still infringing copyrights when they were told not to do so in 2001? Will publishers have to pay additional money for apparently violating the law (I never signed a contract with Trib)? Also every article has the following in parenthesis after a description of my article (pre-1997 Fulltext). What does this mean? Is this an attempt to avoid responsibility for copyright

infringement?

REPLY: Publishers should not be posting and selling electronic copies of freelance articles unless they have the author's consent to do so, and the Settlement does not give any publisher or defendant database the right to do so unless and until it is finally approved by the Court. If you would like to discuss this further, please contact one of the Associational Plaintiffs or the plaintiffs' lawyers.

I left my email address on the site for an update. Is there any other way to see if any of the many articles I've had published fall under the settlement?

REPLY: The Claims Administration website is now fully operative and contains a List of Publications from which freelance articles were included on a defendant database. If your articles were published in one of the publications on this List of Publications, you should submit a claim for them. You may access the List of Publications at www.copyrightclassaction.com.

How does one copyright an article with the US Copyright Office?

REPLY: To register your copyright in an article, visit the Copyright Office website at <http://www.copyright.gov/register/literary.html> and follow the instructions there.

Someone asked about articles posted on highbeam.com. This database buys much material from ProQuest, one of the defendants in this class action. ProQuest licenses it from the original publishers. They don't necessarily look to be sure that they have a contract allowing secondary sales. If you click on the title of your article on the highbeam database, and scroll down, you will most likely see a notice concerning where the material came from. I would save the page and documentation of this infringement so you can collect later.

REPLY: Highbeam.com is not a party to the Settlement and nothing in this litigation or the Settlement permits highbeam.com to infringe freelance works. If your works appeared in any publication on the List of Publications on the www.copyrightclassaction.com website, then you can and should submit claims for those works because their inclusion on the List of Publications means they appeared in a defendant database and are eligible for compensation. However, the defendant databases, including ProQuest, do not have the right under the Settlement to re-license works that are eligible under the Settlement to any third parties such as highbeam.com. It is important to document the fact that your works appear on highbeam.com and to register your copyright to those works.

In reply to an earlier query it was stated: "For purposes of this Settlement, if you did not register your copyright before

December 31, 2002, your claim, if it qualifies, will be paid as a Category C unregistered claim ..." What is the significance of the December 31, 2002 cutoff date?

REPLY: The parties agreed to the Plan of Allocation among the claims categories on or around that date. The cut off date for registering copyrights so as to qualify for Category B status was required to prevent an unfair advantage to the members of the Associational Plaintiffs (that is, the Authors Guild, the ASJA and the National Writers Union), which were aware of and had agreed to the Plan of Allocation. Any class member who registered the copyright in their works at any time and believes they can recover more through private litigation than the Settlement provides has the right to opt out of the Settlement and to pursue their own action.

I had several freelance newspaper and magazine articles that appeared on databases a few years ago, but they since have been removed from the sites as litigation moved through the system. Without having printouts for these stories is it still possible to make a claim?

REPLY: Yes. The Claims Administration website, which is located at www.copyrightclassaction.com, has the data necessary to determine whether an article appeared in a defendant database in the past, even if it no longer appears there. You can learn whether your articles are included in the Settlement from the List of Publications on the Claims Administration website.

I have written several freelance articles on verbal contracts for Alaska-based newspapers owned by Morris Communications (Augusta, Ga.), which makes extensive use of the Web. I didn't see Morris Communications listed in the publishers section. Will that company be added to the list at a later date?

REPLY: So long as your articles were included on one or more of the defendant databases, then you can and should file claims for them. If Morris Communications contributes to the settlement fund, it will be released from liability for infringement of your articles. If it does not contribute, it will not be released. Either way, however, if your articles are otherwise eligible, you will be compensated under the Settlement if you file a claim.

I found a two-paragraph teaser for one of my essays posted on highbeam.com and can access the entire piece only by providing credit card information. Does my situation qualify for a claim?

REPLY: Highbeam.com is not a party to the Settlement and nothing in this litigation or the Settlement permits highbeam.com to infringe freelance works. If your essays appeared in any publication on the List of Publications on the www.copyrightclassaction.com website, then you can and should submit claims for those works because their inclusion on the List

of Publications means they appeared in a defendant database and are eligible for compensation.

Can writers in Canada whose works appear in the databases as a result of the works first appearing in a Canadian publication make a claim or can they make a claim only if their work was first published by a defendant publisher, or are non-US citizens even eligible?

REPLY: Yes. Canadian freelance writers whose works appeared in one of the publications on the List of Publications on the www.copyrightclassaction.com website are members of the class and can submit claims. However, Canadian freelancers should closely review the Canadian Authors Notice available on the home page of this Web site and should contact Michael McGowan at McGowan & Company, Suite 1400, 10 Bay St., Toronto, Ontario, Canada, M5J 2R8, to determine whether it is in your interests to participate in this Settlement or to opt out.

Are stories automatically registered as copyrighted when they say "copyright Jane Austen," on them, or does one have actually physically write Washington to do that?

REPLY: A class member must have affirmatively registered the copyright to an eligible work with the U.S. Copyright Office in order for that work to be counted as a Category A or Category B work. If an eligible work was not affirmatively registered for copyright, it will be considered a Category C work.

Why was this lawsuit limited to literary works? Are there any similar actions pending regarding freelance visual works (e.g., photographs or illustrations that accompanied articles)?

REPLY: The lawsuit was brought by individual writers and writers organizations as representatives of writers in order to redress the infringement of their works. As far as we are aware, there is no separate lawsuit pending regarding visual works.

I was a full time freelancer and ASJA member from 1982 until 1996. I have thousands of articles that would fall under the Class C section of this settlement and have located many of them on Lexis. But what will be required to document my payments from the original publishers? I have check stubs from 1993-1996 but all I have remaining from the 1980s-92 are my ledger book entries. Will these suffice?

REPLY: Documentation of payments received for eligible works will not be required unless it is conveniently available. Freelancers making claims will have to affirm that the information set forth in their claim forms is accurate to the best of their knowledge, but it is up to the relevant publishers to disprove any statements made by claimants.

A number of my short articles (book reviews) were added to databases without my knowledge. It looks like I'll get 10% for each one. Will I have to search those databases and identify each article, or can I just submit a claim with the byline name?

REPLY: Submitting a byline alone will not be sufficient. For each eligible work, you will need to state the following: (i) a specific identifiable publication, (ii) a particular date or dates (although precision is not required), and (iii) the title or subject matter sufficient to permit identification of the particular eligible work. It should not take more than a few minutes to fill out the Proof of Claim form once you've gathered the information you need for it.

By way of example:

- "Four articles by Jack Smith in Newsweek in 1985 on soccer, Uruguay, Clifford Irving, and the Amazon" suffices to comprise four claims that can be processed.*
- "Articles in Sports Illustrated from 1982-1989" or "Articles in various publications during the 1980s" fail to provide sufficient information to be processed, and will be disallowed.*

The claims administrator is charged with assisting claimants in filling out their claims, and we will work to make sure the claims process is as painless as possible.

I am confused about the period covered by the lawsuit and settlement. One press account indicates that it covers works published electronically before Dec. 31, 2002. Your Web site indicates it covers any work created after 1997. Most of my affected columns were written posted in 2003 and 2004, and new columns continue to be posted. Will these be eligible?

REPLY: The settlement covers freelance works that appeared in a defendant database at any time after August 14, 1997, no matter when the work was originally published.

As you recommended in this space, I tried to find out if the San Francisco Chronicle, published by Hearst Newspapers (one of the publisher defendants), is covered by the suit by going to the Columbia Journalism Review site. However, I could find nothing there about the suit. Is it possible for you provide a list of which newspapers are covered?

REPLY: We will provide this information at a later time. The Columbia Journalism Review website lists the publications owned by particular publishers, but it does not contain information about the settlement.

If I signed the NYT's agreement on electronic publishing rights even before any of my works were published, am I still eligible to participate in the settlement?

REPLY: You are not eligible to participate in the settlement if you sold your work pursuant to a written contract granting the original print publisher the electronic rights to your work. However, if you signed a contract that retroactively contained a grant of electronic rights to works that were previously published, you can participate in the settlement, but your payments generally will be reduced by 35% from the base amount.

It would help if you describe at some point how the payments are determined for writers who are freelancers, on contract, paid per month, not per article. the NYTimes, for example, pays many freelancers on a monthly stipend -- OK, they're really employees being hidden from the IRS, but that's another story. How is their compensation to be determined, per article? The pay is not as simple as "originally sold for \$3,000 or more..."

REPLY: We'll reply shortly.

I always included a copyright notice with my columns, but did not register them with the Copyright Office. Newsbank continues to post columns as recent as March 27. If I register them now, will I be eligible for the higher compensation rate, or is there an end date for violations?

REPLY: For purposes of this Settlement, if you did not register your copyright before December 31, 2002, your claim, if it qualifies, will be paid as a Category C unregistered claim even if you register the copyright now. If you register your copyright now, however, you might have more protection against future infringements than if you do not.

If I've signed the New York Times freelance contract since 1995, or have worked for the Times as a contract writer since then, are my works covered by this settlement and I'm due compensation? Or am I out of luck?

REPLY: You are included in the Settlement even if you signed a license agreement granting to a publisher retroactive electronic rights to eligible works that had been previously electronically published without your permission (but your payments will generally be reduced by 35%. We'll provide more details shortly.)

You are also eligible even if you authorized the New York Times Company to electronically publish your Eligible Works pursuant to The Times Restoration Request Website or print advertisements shortly after June 25, 2001, when the U.S. Supreme Court ruled on New York Times v. Tasini.

I published hundreds of articles in national newspapers and magazines during the 1990s. How should I best go about determining how many of my articles are subject to this settlement, if any?

REPLY: We're trying to make filing claims as painless as possible, and, if the settlement is approved, there will be a website -- separate from this one -- run by the claims administrator to handle claims. We'll be sending information on how to do so to everyone signed up for our newsletter.

The Court settlement ought to provide some electronic mechanism to assist journalists and other writers in determining the amount of their claims. Are there any plans along these lines?

REPLY: If and when the court approves the settlement, there will be an official website -- separate from this one -- run by the claims administrator to assist writers in submitting claims. The claims administrator will have access to lists (including electronic, searchable lists) of publications that have appeared in electronic databases or online and the applicable dates.

While doing a Google search, I found one of my articles without my byline on the website www.indoindians.com. I don't know anything about them and never gave permission for them to print anything. I sent a letter to the web master and to the "Contact us" link stating that they must remove my article or add a byline. They did neither and I never got a response. Would this qualify under the settlement?

We'll reply shortly.

I have about a hundred articles with one publisher which were infringed by the original publisher, who is not listed as a defendant. If I make a claim does this let them off the hook? Or just the databases companies who carried out the infringing activity?

REPLY: If your original publisher is not participating in the settlement, any infringement claims against it will not be released because of the settlement, even if you do make claims that are compensated. However, the list of participating publishers does not specify all the publications produced by those publishers, so your original publisher might be included. To see a list of who owns whom, visit the Columbia Journalism Review website at www.cjr.org.

If you did not sell an original print article to one of the defendants listed in the database, how do you know if something under your copyright was posted electronically? In other words, how can I determine, if I am otherwise unaware, if I am due?

We'll reply shortly

Mediastream had 200 of my newspaper columns posted for years without my permission. Once the lawsuit was filed, they removed them within a few months. Am I still entitled to compensation?

REPLY: If the uses were infringing and covered in this lawsuit, then later removal wouldn't prevent you from recovering.

I have more than 3,500 stories that appeared from 1984 until 1998 in various publications, including trade publications owned by Ziff Davis and New America. How do I file a claim? It would take weeks to sift through every story included. Please advise.

REPLY: We're trying to make filing claims as painless as possible, and, if the settlement is approved, there will be a website -- separate from this one -- run by the claims administrator to handle claims. We'll be sending information on how to do so to everyone signed up for our newsletter.

Two of my novels were published by iUniverse under the Authors Guild Back-in-Print program. iUniverse published the entire text of one of the novels on their website. The Authors Guild legal staff subsequently used my situation as a test case and got iUniverse to stop this unlawful printing of my novel on the Internet. Would this in any way qualify under this current lawsuit?

REPLY: This, because it was not published by the database defendants, would not qualify.

Will being involved in this suit in any way jeopardize my relationships with the publications I wrote these pieces for? Will they even know I'm "suing" them?

REPLY: The publishers will know who is making claims for works that appeared in their publications, but the settlement agreement contains a provision prohibiting the participating publishers from retaliating against writers who make claims.

Is there a database I can search to determine which of my articles have been infringed by the defendants?

REPLY: We'll do our best to provide lists or links or research methods that will help. If you sign up for our newsletter, we'll keep you posted as we add these resources.

A lot of the magazine contracts I signed over the past ten years included some provisions about electronic rights. Do I need to find and scrutinize those contracts to know which ones might have been violated?

We'll reply shortly

At some point, will you list magazines published by the defendants during those years? I don't know who published various magazines 20 years ago, and didn't receive copies of all of my articles. Thanks!

REPLY: We'll do our best to provide lists or links or research methods that will help. If you sign up for our newsletter, we'll keep you posted as we add these resources.

I don't see the Times Mirror company listed as one of the defendants, nor several other companies which violated copyright. Does this mean I will NOT be able to collect from these companies?

REPLY: Tribune Publishing, a participating publisher, bought Times Mirror in 2000. To see a list of who owns whom, visit the Columbia Journalism Review website, www.cjr.org.