

Google vs. Authors Guild

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Introduction

In a society so reliant upon technology and the digital world, information once sought after is available to nearly anyone. Hard copies of books seem like rarities, with their contents sealed inside libraries that are rarely visited. Google seemed to remedy this disconnection with print in 2004 when it partnered with a number of “extraordinary” libraries including Oxford, Harvard, and Stanford, whose contents are “estimated to exceed 15 million volumes” to create a database of ebooks accessible to all Google users in the Google Print Library Project (“Google Books History”). These digital publications became Google Books in 2007.

This new online library raised questions about copyright and fair use, as Google did not receive permission from the books’ copyright holders in creating Google Books. This issue is very relevant in this digital age, as the rules of fair use and what Google claims as “transformative use” become blurred and in need of definition. The Authors Guild is furiously defending the copyright owners’ rights. The question of interest in this paper is: what is transformative enough to not be considered copyright infringement? After careful examination, we find ourselves in favor of the Guild, as we believe that Google Books are not transformed versions of the original copyrighted works, thus acting as competing products to the print works and harming their market value. As such, the copyright owners should be compensated for the continued use of their writings in Google Books. Copyright owners should receive equal protection for all formats of their work, including digital versions.

Issue

In 2005, shortly after Google initiated its Google Print Library Project, the Authors Guild filed a class action lawsuit against Google for its digitization of thousands of copyrighted works for its Google Print Library Project (“Authors Guild v. Google, Inc.”). After years of debate, the two parties brought a settlement proposal to the U.S. District Court of New York, where the settlement was rejected, then appealed.

Google

Google started its Google Print partnership program to make print publications easier to search through for readers, as they could search keywords and find them amongst the scanned books in the database. For this, Google obtained permission from rights holders for the books, many of which were no longer in print, and compensated those holders with percentages of ad revenue gained from the ads that ran with the digital books.

However, with Google Books that sprouted from the partnership, Google scanned over 20 million public works in their entirety without copyright holder permission. “Snippets,” or small sections, of the books were made available to the public, while libraries were given the option to download the books in their entirety. Some libraries declined to accept scans of works that were not in the public domain, but Google still distributes multiple digital versions of all books, copyrighted or not. In addition, Google does not compensate rights holders, as ads no longer run with the Google Books (*Google Summary Judgement*).

Through the project, Google successfully created an index of books that made researching more efficient for readers and librarians, identifying thousands of books and giving “new life” to millions of books through its “optical character recognition” technology (*Google Summary Judgement*). But at what cost?

The Authors Guild

The Authors Guild “is the nation's largest organization of published authors and it advocates for and supports the copyright and contractual interests of published writers,” so the organization felt strongly against Google’s digitization of what had reached over 20 million publications (*Google Summary Judgement*). The Guild believed that the cooperating libraries which had provided the copyrighted works did so in order to digitize its libraries in a way that they would not be responsible for copyright infringement. As private institutions, library leaders were fully aware that they would be violating copyrights if they attempted to digitize themselves, which would be a lofty task anyhow. Enter Google, also a private company. According to the Guild, authors and publishers should be compensated for the use of their works not in the public domain, especially when being used by a billion-dollar business like Google (“Authors Guild v. Google”) .

The digitization of the books through optical character recognition was not substantial enough to be considered “transformative” in the eyes of the Guild, and the Guild also did not believe that Google went to great enough lengths to ensure that viewers could not access the works in their entirety for download. Thus, the organization took action.

The Verdict?

The two parties reached an agreement for a settlement in 2008 outlining the requirements for Google to continue their Google Books program, which included an upfront \$45 million payment plus royalties to an organization called the Books Rights Registry, which would collect the money and distribute it to authors and publishers of the works (*Google Summary Judgement*). However, because the case had been filed prior to the settlement, the agreement had to be presented to the district court. In 2011, the settlement, known as the Amended Settlement

Agreement (ASA) was rejected by the New York district court, as it did not address the fact that such privilege would “give Google a significant advantage over competitors, rewarding it for engaging in wholesale copying of copyrighted works without permission, while releasing claims well beyond those presented in the case” (*AUTHORS GUILD versus GOOGLE, INC.*). The decision was appealed in 2013, and dismissed in favor of Google. The Authors Guild, however, continues to fight back and is planning for another appeal.

Discussion

Google’s Claims

As mentioned previously, by using Google’s book search program online, Google Books, individuals can search keywords and phrases to find books that contain them. Google claims their copying of entire texts should be protected under fair use, because the program serves a useful public purpose (*Authors Guild v. Google*). This purpose is to provide information on the original books that would otherwise be unavailable to the public. Additionally, Google claims providing a search engine function to access portions of the digitized book is a transformative use of the original works (*AUTHORS GUILD v. GOOGLE, INC.*). Therefore, Google is arguing the digitization of these books does not constitute copyright infringement.

Authors Guild Claims

The plaintiff in this case, the Authors Guild, argues that under the fair use doctrine, private companies like Google should not have the right to make digital copies of entire copyrighted books without compensating whomever owns the copyright. According to its website, the Guild believes that Google should pay for its use of the full works it copies, because the Google Books program will harm the market for books (*Authors Guild v. Google*). If Google’s copying of entire books constitutes fair use, the Guild argues that it will set a precedent

allowing any individual to also make digital copies of books for similar purposes. As a result, there would be an unrestricted availability of copyrighted books online (Authors Guild v. Google). Furthermore, the Guild claims that Google's digital copying of entire books and allowing individuals to read portions on its program is not transformative use. Rather, this infringes on the copyright holders' derivative rights in search functions. The Guild argues the copyright holders are being deprived of potential revenues gained from "licensed search markets" (*AUTHORS GUILD v. GOOGLE, INC.*).

Factors of Fair Use and the Case

According to the text *Digital Media Law*, courts assess four factors to determine what actions fall under the fair use doctrine:

1. the purpose and character of the use;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for...the copyrighted work (Packard 185).

As mentioned before, Google claims that its actions fall under fair use, because Google Books serves a useful public purpose, and its use is transformative enough by providing a search function to view only portions of the copyrighted works. According to a case paper by the Second Circuit of the U.S. Court of Appeals, demonstrating transformative use is not "absolutely necessary" to determine whether or not a case falls under fair use. However, the paper further explains that the "goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works." According to the court, transformative use is one that demonstrates something "new and different" from the original work or expands its service to the

public (*AUTHORS GUILD v. GOOGLE, INC.*). In this case, Google merely copied full texts into a digital form and added a search function, which is not really “transformative.”

In order for Google Books to serve its purpose, Google must copy an entire book for the search function to accurately reveal to users in which books and how many times their searched keywords and phrases appear. Although Google makes a digital copy of the entire work, it only reveals portions of the book to the public, based on the criteria individuals search for (*AUTHORS GUILD v. GOOGLE, INC.*). Despite the fact that substantial portions are not revealed to the public, it can still be argued that the availability of material from copyrighted works on Google Books serves as a competing substitute with the originals. By providing individuals the opportunity to view portions of a copyrighted work, Google is denying revenue to copyright holders that would otherwise be earned if individuals bought the work instead of viewing it for free online. Even if individuals accessed a copy at the library, the library still must purchase those copies from the copyright holder.

Furthermore, Google’s digitization of the books in their entirety is infringing upon the potential market for the copyrighted work. If they have not done so already, copyright holders of the books that Google copied have the right to make derivatives of their works, including digital versions with added search functions to view portions of the books. Copyright holders could have chosen to charge small fees to individuals wanting to access material in the book. Additionally, individuals might have chosen to purchase the work after viewing portions. Because Google Books allows users to see “snippets” for free, this potential revenue is denied to the copyright holders of the original works.

A Legal Solution

Because the digitized books on Google Books currently acts as a competing substitute with the originals, we believe Google should pay the copyright holders for continued use of the digital versions. The amount compensated should be an estimate of total revenue denied the copyright owners as a result of Google Books, and Google should additionally pay a flat rate to the owners in order to continue providing public access to the digital versions. This will give the copyright holders the money they would have gotten had the public purchased their books. Furthermore, compensation will prevent writers from being discouraged from writing more, out of fear of Google copying their work and not receiving their due profit. Because the goal of copyright, stated in the Second Circuit's case paper, is to promote science and the arts, writers should feel confident that their works are fully protected under copyright, as well as that they will receive payment for any copies accessed by other parties.

Conclusion

Although Google argued that its copying of full works was legal under the fair use doctrine, its digitization and added search function is not enough to be considered transformative. The availability of copyrighted material online serves as a competing substitute to the original works and harms the market for books. Additionally, Google's copying of the books in their entirety is infringing upon the potential market for the copyrighted work, as copyright owners have the right to make derivatives of their books, including formats with digital search functions. As a result, Google should pay the estimated total revenue that copyright owners lost as a result of Google Books, as well as a flat rate for continued use of the books. This way, they will receive the money due to them for public access to their work.

The Authors Guild makes a statement on their website that sufficiently summarizes the bottom line of this case: “...the digital revolution cannot come at the cost of authors’ right to preserve writing as a livelihood...Copyright protection...ensures the next generation of writers and other creators have the same opportunities as those who came before them.” Inevitably, we are migrating to a more digital world. Already we see digital versions of almost any book an individual could want that can be downloaded onto a personal electronic device. Even though the format in which individuals read some books has changed, copyrights must continue to offer the same protection to all versions of books. With equal protection, copyright offers writers the incentive to produce new works for both learning and pleasure.

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