



*ACCESS TO KNOWLEDGE, FAIR
USE AND AUTHORS' RIGHTS: THE
GOOGLE BOOKS CASE*

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WHAT'S GOOGLE BOOKS

- Google Books was announced in December 2004
- Its purpose is the digitalization of millions of books
- Books are available if out of copyright or if the copyright owner has given permission
- Books in the public domain: in "full view" and free for download
- Books not in the public domain: Google limits the number of viewable pages through a variety of access limitations and security measures
- Orphan works: only "snippets" (two to three lines of text) are shown, though the full text of the book is searchable

PARTNERS

- Harvard University
- Stanford University
- Univ. of Michigan
- New York Public Library
- Bodleian Library – Univ. of Oxford

...then, many others (e.g. University of Chicago Press; Oxford Univ. Press; Cambridge Univ. Press, etc.)

FAIR USE

- 17 U.S.C. § 107 (2010): “reproduction...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright”.
- Four factors: transformative purpose of the use; the nature of the work; the quantitative and qualitative amount copied; the impact on the existing and potential market

EXISTING AND POTENTIAL MARKET

- Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539, 566 (1985)
- The existing and potential market factor is “undoubtedly the single most important element of fair use”
- What’s the market value of online snippets?

CLASS ACTION

- *Authors Guild v. Google Inc.*, 05 CV 8136 (S.D.N.Y. 2005)
- The Authors Guild and the Association of American Publishers sought to stop the unauthorized copying of their members' works
- Settlement: after three years of negotiation

GOOGLE BOOKS SETTLEMENT

- Preliminary approval: November 17, 2008
- Google agreed to compensate publishers and authors through a sort of copyright levy (a total of \$125 million to rights-holders)
- Google also agreed to create the Book Rights Registry
- Authors and rights holders of orphan works or works out-of-print (but still copyrighted) can receive \$60 per full book, or \$5 to \$15 for partial works
- March 22, 2011: U.S. Circuit Judge Denny Chin issued a ruling on the amended settlement agreement, rejecting it

CRITICISM TOWARDS GOOGLE SETTLEMENT

- Judge Denny Chin “The ASA 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”
- Language-imperialism: Google Books emphasizes on English works
- The settlement creates a collecting society (Book Rights Registry) which is managed by a private entity without any public control (playing a monopolist role in this sector)

FRANCE

- Tribunal de Grande Instance de Paris –
December 18, 2009: violation of copyright.
- Google condemned to pay €300,000
(approximately US\$430,000) in damages and
interest and ordered Google to pay €10,000 a day
until it removes the publisher's books from its
database
- Agreements with Hachette e La Martinière –
Two days ago has been announced another
agreement with Flammarion, Gallimard and
Albin Michel

MONOPOLY AS THE EVIL?

- It is right that authors be remunerated; and the least exceptionable [objectionable?] way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good.
- Thomas Babington Macaulay (speech delivered to the House of Commons on February 5, 1841)