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Is the Google Book Decision an Unqualified Good?

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Unless you've been living on a deserted island or stranded (or not?) like the pelagic castaway Jose Ivan (<http://bit.ly/1fq6JsJ>) for over a year, you could not possibly have missed the news that Google's mass digitization project, Google Books, won its case.

The short version of the story is that about eight years and millions of dollars ago, Google partnered with first a half-dozen or so major research libraries to scan all their books. This move was not an ill-conceived, off-the-cuff decision. CEOs Page and Brin wanted to do this — scan all the world's books — back when Google was called BackRub. Over time, those half-dozen libraries became a dozen, then two dozen and finally closer to three dozen major research institutions. Some libraries, however, had second thoughts and dropped out. Google decided to scan everything — in toto as academics are wont to say even when not referring to the Wizard of Oz — (<http://bit.ly/1brG0Kg>), from the title page to the back matter.

Some authors didn't much care for this opt-out approach and said so. The Authors Guild (<https://www.authorsguild.org>) reminded Google about this little thing we call copyright, but Google being Google (and having a googol (<http://mathworld.wolfram.com/Googol.html>) dollars at its disposal) ignored the reminder, and the matter went to court — for the next eight or so years.

Judge Denny Chin (<https://www.google.com/#q=Denny+chin>) on the U.S. Court of Appeals for the Second Circuit, held the matter and, after numerous fits and starts, decided in November 2013 to give Google the win. The matter is under appeal by the Authors Guild (<http://cnet.co/1gigiMg>).

What Google won was the right to display the snippets it shows of materials that are copyright protected (anything in public domain is shown in full). Google did this without permission and without any remuneration to those holding the copyright, whether authors or publishers. Chin agreed with Google that the snippets were “fair use,” something many did not see coming, but most hoped would be the outcome. (Left undecided was Google's decision to scan cover-to-cover all those books without permission.) While “fair use” has long been a staple of what libraries are able to do with materials, this is the first such case in which a commercial enterprise has been able successfully to claim fair use of an enormous amount of material without asking for any permission, written, verbal, or otherwise. Fair use appears in Section 107 of the U.S. Copyright Law of 1976 and can be viewed here (<http://www.copyright.gov/title17/>) in its confusing and inglorious entirety.

When the decision came down, the twitterverse, as it is apt to do, went all atwitter. It “exploded” as the phrase has it. For example, here (<http://wapo.st/11BfzLP>), here (<http://nyti.ms/1dqYAlk>), here (<http://bit.ly/1eyCwtC>) and here (<http://reut.rs/1eUUdQK>) are a few of the hundreds of gleeful comments. Even librarians (<http://bit.ly/1c4Dppn>) were in a lather of joy about it.

Almost. Not this librarian, although I know I'm in the minority when I say it. The Google Book Decision — what a publisher friend of mine likes to call “Google Book Theft” — gives me pause for a number of reasons.

First, it turns copyright and fair use on its head. Copyright is already upside-down, and this hasn't helped. Now the matter is nothing short of vertiginous. To say anything is NOT fair use now will be a real challenge. Many of you are doubtless thinking that would be a good thing. But no, Martha, it would not. Of all the things that can be said bad about our copyright laws — and there are thousands of things I can think of in sixty seconds — they still protect intellectual property. Determining what fair use is now is anyone's guess. Everything is, is the way I read it now (and I bet Google does, too). Furthermore, this will provoke Congress to reexamine copyright, something it has done about a half-dozen times in my lifetime. And, yes, they have made it worse each time. When Congress touches copyright, the old joke about the opposite of progress is congress, really hits home.

Second, there is no evidence, no empirical evidence, that shows any additional Internet exposure of any authors' works improves royalties. Of course, no academic expects (or should expect) to make any "real" money writing for academic presses. Those that can be named — Bloom, Edgar — can be named because they are so few in number. But to take away from academics any chance to improve those anemic bottom lines seems cruel, especially when Google with its gazillions could easily have shared (instead of giving it to lawyers). To test this idea, look at what the Internet has done to music. Sure, any group can get a million hits with even a so-so song. But those million hits and \$5 still won't buy you a cup of coffee at, well, at you know where. Likewise, authors will now get more exposure but that will not necessarily turn into more sales. I won't say that's QED, but it comes pretty close.

Third, this gives the information-wants-to-be-free crowd (i.e., most of cyberdom) a stranglehold on all intellectual property. This group believes what is yours is theirs, and what is theirs is theirs, a kind of socialism of information (and we all know how well socialism works). They shouldn't have to pay for any information because it should all be for the common good. All of it. This sounds really good until all of a sudden, that textbook you wrote that sold a few thousand copies is now everywhere, or that rubric you created is now in 5,000 schools, all courtesy of the Internet, or that cloning technique you worked years to perfect is now everywhere you look online, all without any reference to you or the hand you had in it. It's one thing when you do this yourself; it's quite another when someone else does it for you without asking. That sounds very self-centered, I know, but it isn't as if good ideas are superfluous. I'm not saying we do not need reforms in the whole information access calculus. But this one isn't so much a reform as an unhinged revolution. Those can be fun, too, until they start shooting at you.

Lastly, the decision simply adds to the UGC — user generated content — that Google has expropriated. Again when we do this voluntarily, no one should complain. But for Google to decide that copyright does not apply to what it wants to do is mind-boggling. It is doubly so, since Google kowtows to the demands made on it in Europe, and especially in places like China. Here, however, intellectual property is meaningless and merely another potential revenue stream. Google takes what it finds and makes it "free" to the world. The "free" refers to what Google pays for the idea, not what it makes back from all those ideas.

So, is the Google Book Decision an unqualified good? Certainly it is for Google. For intellectual property, not so much. For small- to medium-sized publishers, again, not at all. For discovery of materials, yes and no. Yes, because they can be found; no, because they are likely

to be lifted, for free, or you'll get a snooty email asking why you're a stinking, dirty, money-grubbing capitalist. (And for your information, all those billionaires in Silicon Valley are not capitalists; they just got rich quick, that's all!)

In a sense, we all work for Google now, free of charge. I suppose that fits since we all now attend the "University of Google," right?