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Copy That?

by **Mark Y. Herring** (Dean of Library Services, Dacus Library, Winthrop University)

Google Books won another (and possibly the last?) round against the copyright drudges, or so we are to believe. Is anyone surprised? I know I'm not. In the latest chapter, the 2nd U.S. Court of Appeals ruled in early October that **Google's** book-scanning project is a-ok, copacetic, fine with them, it doesn't matter — you get the point. The "creators" in this case, authors under the auspices of the **Authors Guild** to those of us who work around books, will appeal again, but it appears at this point that they are spitting in the wind. Since 2005 the **Authors Guild** has tried to put the brakes on this runaway train to no avail. As an author, I appreciate their persistence, but I wonder now if this isn't just throwing good money after a bad idea. A federal appeals court ruled that **Google's** "snippets" were "fair use" because what **Google** was doing was transformative. I suppose in the sense that **Google** distilled whole books into small, bite-sized tapas-tastings, that's true.

In any event, it's all fair use and so fair game. If you're one of the authors, it doesn't matter what you think, or, rather, if you disagree, it's up to you to do something about it. **Google** is doing you a favor because, according to **Google** spokesperson **Aaron Stein**, **Google** has turned those snippets into a giant "card catalog" for the digital age. Hallelujah! Hallelujah! Besides, it exposes your materials to more eyes and that means more money, copy that?

Had **Google** lost, some insiders say that this would have been the end of the service and possibly the beginning of the end of **Google**. The company would have had to pay tens of millions in fines, perhaps even billions, and it's clear that **Google** was tired of the legal proceedings. This now gives them carte blanche to continue on their merry way doing what the Internet is so good at: helping technicians make money off of others' creations for free. Whew! Glad we dodged that bullet.

It appears that most are happy with this outcome, including many librarians. A random sample of headlines runs along the lines of "Researchers Rejoice!" to "Huge Win for Google" to "Copyright Go to Hell." I'm just kidding about the last one. I made it up. But it may as well have been one.

Now, I'm not going to defend copyright. Everyone hates it in this country and I really don't need another reason for people to send me hate tweets, even though they are so much better and easier to dismiss than the old hate snail mail I used to receive. But I would like to make one point. At this rate, we'll eventually wake up **Congress** to take another look at copyright. I hope I don't need to remind anyone that the last three times **Congress** did this, it only made things worse. Do the numbers 70 years after the death of the author, 95, or 120 ring a bell? The old joke about the opposite of Progress being **Congress** is hilarious, of course, but especially when used in conjunction with copyright.

While most of what I read about copyright borders on the pejorative, no one really calls for copyright here to mimic what it is in China. And yet this strikes me as the only place left for us to go. If the information-wants-to-be-free crowd wins the day — and they are, of course — then who are we, those of us who create content, to try to stymie them at any juncture for whatever they want? What is yours is theirs and what is theirs is theirs. If our current copyright laws are draconian and debilitating to those who want and need information, then why not make it the Wild West of Copyright here a la China, the Wild East of copyright?

It sounds silly, I know, but why not let the decision to make something free to everyone be made by those who create the information that ostensibly so many people want? Is it too much to ask that we allow them to decide if they will make their information available on Creative Commons or some other open access venue rather than letting those who had little or nothing to do with creation of said information make it for them? Sure, if we do it this way we won't get everything, but then, the search for information has never been a zero sum game. It's always been piecemeal at best, and that piecemeal approach worked pretty well because it forced those who want more to reflect a bit and perhaps create something on their own. In other words, it helped to make us all both users and creators. The last thing we need is for yet another divided world between competing creeds, or more disincentives for those who create content.

When you think about it, copyright has worked pretty well in this country, and it has allowed the rich and the poor, the intelligent and the clever, the enterprising and the flippant to be successful. Are we ready to jettison something that has worked pretty well for something we not only don't know is going to work, but have some preliminary evidence that it may in fact imprison that very thing it hopes to liberate?