The Google Books Project is Lawful

Kluwer Copyright Blog
May 16, 2016


The Google Books Project originated in 2004 when Google initiated cooperation with the largest research libraries of the world: “Library Project” (http://books.google.com). It is a digital library project where the digital copies of the books are made available for free search and reading. In its decision of October 2015, the Court of Appeals held that Google can continue scanning books without prior copyright holders’ permission, just as long as the scope of the court’s money-finding function in the fair use doctrine is not used and the users of Google Books shall not be required to pay the fees for the works scanned.

These two goals of copyright law – the promotion of creativity and facilitating the dissemination of information – could be considered as having equally philosophical justifications. A closer look at the transformative use criteria set out in the “fair use doctrine” of the US Copyright Act reveals that the transformative use of the original works because it enables a search function would not be possible. Moreover, it was emphasized that in any case the users of Google Books can only see up to three short snippets of each work. It was stressed that the search function is not intended to create new market or cause actual harm to the parties involved.

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The above comparative analysis shows that although a fair use doctrine was not originally known in civil law countries, similar ways of reasoning do exist in court practice as well as statutory provisions that are designed to limit the exercise of copyright. It goes without saying that fair use doctrine could be deemed as a more general and structured framework for the parties in terms of factors which have to be proven in copyright infringement cases. While such issues as copyrightability, ownership and the act of copying have to be proven by the plaintiff, the defendant seeking to escape liability may choose to rely on the fair use doctrine as a defense. These factors will be discussed in the following sections.

In Japan, for instance, courts may refer to the establishment of more comprehensive types of databases. For example, the Japan Intellectual Property Exchange (IP EXCH) was established in 2008 with a mission to facilitate the dissemination of information. It provides an online database for the retrieval of information on patents, trademarks and industrial designs.

The decision of the Court of Appeals might put an end to discussions about the legality of the Google Books project. However, as a result, Google may continue its digitization project without seeking prior permission from the authors. This Court of Appeals decision will not impact on the existence of fair use doctrine in the future and perhaps serve as an impetus for the proliferation of similar digitization projects and the establishment of more comprehensive types of databases.

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In the future, the Internet will continue to play an important role in the development of copyright law. The current legal frameworks are not yet ready to deal with the challenges posed by the Internet. However, as the Internet becomes more integrated into our daily lives, it is likely that we will see changes in the law. These changes may be driven by new technologies or by changes in the way people use the Internet.

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