

Abstract: The Google Library Project and its international dimensions

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The Google Library Project, one of the most colossal as well as debated projects of digital mega-owner Google, is in position to change the pivot of the copyright ecosystem by redefining the fair use doctrine in the digital epoch. The “Google Library Project” started as a project promoting the creation of a digital library without the need of copyright licensing by any copyright holder, vigorously based on the fair use argument and the need to promote access to books in an environment which by nature was until now thought to undermine it. The digital library will be created by scanning books belonging to some of the world’s largest American and International libraries into Google’s database which in exchange will give the libraries one digital copy of every work. In response to every search query the user will be able to access the “snippet” related to the query and a few sentences before or after. This does not apply to books which are already in the public domain which shall be fully visible. Simultaneously, links will enable the user to locate and buy the book directly from the seller or publisher thus facilitating access to the entire content. The Authors Guild and some individual authors followed by five publishers sued Google alleging that the Library Project infringed their copyrights. In view of the precariousness of the outcome of the litigation the parties reached a settlement which was later amended. Final approval on the settlement can be granted by the judge upon realization that the settlement is “fair, reasonable and adequate” for the class members, because the suit is a class action. However, judge Denny Chin announced that the ruling on the final fairness hearing (February the 18th 2010) would be delayed for further consideration.

The basic issues which need to be taken into account regarding the Google Library Project are: 1) the use of orphan and out-of-print works, 2) the proper formation of the Book Rights Registry and 3) the opt-out copyright strategy and competition. With regards to copyright liability there are 3 target points: I) the creation of intermediate copies/digitization of full text into the Google search Database, ii) partial availability of scanned and stored works by user request-the so called “snippets”, iii) the distribution provision regarding the partner libraries-the digital library copy. Google based her defense against the rights holders’ allegations of copyright infringement by claiming that the Library Project, if found to be infringing, constituted a fair use. The criteria for the determination of fair use include (thus are not limited to): I) the purpose/character of the use, ii) the nature of the copyrighted work, iii) the amount and substantiality of the portion used, IV) the effect of the use on the market.

Global harmonization has to be achieved though the conception of a golden rule between respect of international intellectual property regimes and the US system, as to allow everyone to draw the innumerable benefits arising from Google’s initiative to create an online library. Between the theories that could potentially be adopted is: 1) the replacement of the right of reproduction, in other words the right of making copies, with a boldly canvassed (and restrained in its scope) right to control public distribution of a copyrighted work¹ or 2) the adoption of a different set of criteria with regards to the application of the fair use doctrine online

¹ ERNEST MILLER AND JOAN FEIGENBAUM, TAKING THE COPY OUT OF COPYRIGHT, available at <http://cs-www.cs.yale.edu/homes/jf/MF.pdf>