

Title: Google Books; Law and Ethics Paper

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SAMPLE

Purpose: To analyze the Google Books project and the legal and ethical issues that surround it.

The world's most well known Internet search engine, Google, began their endeavour to develop the world's largest online library in 2002. The ultimate goal for Google is to develop an online digital library and bookstore containing literature from around the world. As of 2009, Google successfully digitalized more than 7 million books. So you may be wondering, "What's the problem?" Well, good question but unfortunately, there is no simple answer. This paper is designed to focus on both the legal and ethical issues that arise from the massive e-library project called, Google Books. It will provide background, insight and highlight the controversies surrounding the project.

Before we get into the nitty gritty details surrounding law and ethics, it is important to break down what exactly Google has stirring. In attempt to digitalize literature, Google has developed two separate programs. The first, Google Scholar, is a print publisher program in which scholarly work is made accessible to the public. It is a more educational based project which includes dissertations, Master's theses and college research papers. The literature is provided to Google by participating scholars through an opt-in model (we will cover in more detail later). This program allows users to view the full text of the work because copyright permission has been granted to Google by the authors, publishers, and/or owners of the work before it is uploaded to the online database. However, some of the literature only allows limited access to the text and if a reader wants more, they are linked to book sellers, such as Amazon to purchase the full text. This program only contains work that is in print. Google Scholar abides by all the common copyright laws and therefore has not created any controversy.

The second, Google Books, is an e-library database program in which only a limited amount of the content is viewable online. Users can view the front and back cover of the book as well as a few lines of the text based on the search words entered by the reader. Google Books

contains literature that is both in and out of print. This e-library database will contain books that will be scanned from Harvard, Stanford, Oxford, The University of Michigan and the New York Public Libraries. Google Books will index all of their literature allowing users to access full text for out of copyright books and only snippets of books still under copyright (AEI, 2006). Just as Google Scholar, Google Books provides readers with external links to book sellers and libraries if they are interested in purchasing or checking out the full text of any copyright material. This program uses an opt-out model which does not require Google to seek permission prior to uploading the literature to their database. A lot of controversy surrounds this library project due to a violation of U.S. copyright laws.

Google's efforts to scan and upload books from major libraries lead to two class-action lawsuits from the Author's Guild and the American Association of Publishers as early as 2005. These lawsuits, however, have not stopped Google from taking on this massive project. Although Google has good intentions in developing their e-library database to increase access of information and spread knowledge, they are being criticized for not complying with U.S. laws. Google Books is unethical because they are driven by their ambitious agenda. The remainder of this paper will touch on very critical areas that surround the Google Books controversy including U.S. copyright law, fair use, security and competition. It will focus on both the supporting and negating issues in order to equally present both sides of the case.

Google Books violates copyright law for many reasons. Article I, Section 8 of the United States Constitution contains a provision which explicitly respects copyright and the creativity of authors and inventors. The provision reads; "*The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries*" (Copyright Law of the United

States, 2009, p. *ii*). In other words, the copyright holder has an exclusive right to their work and another person or organization cannot reproduce the work without permission from the copyright holder. As it stands today, the United States Copyright law still functions the same, with additional provisions.

Google Books approach to using an opt-out model violates the copyright law. Although the opt-out model is more favorable for Google in this endeavor, the opt-in model is more favorable for authors, publishers and copyright holders. The opt-in model requires Google to contact the copyright holders and ask them permission to use their work prior to using it. Also, opt-in allows authors to contact Google themselves and ask to be included in the database, if they wish. Copyright holders are furious with Google's approach because they strongly feel that Google is not taking the necessary steps to abide by copyright laws.

According to Lichtman (2006), "Nearly everyone agrees that Google Book Search would have real value. If copyright law were to say that Google could proceed without asking permission, then Google would run the project faster, cheaper, and more comprehensively than if alternative means were utilized" (AEI, 2006). Unfortunately for Google, this is not the case. Critics argue that Google should implement an opt-in model and ask the copyright holders for permission prior to creating a digital copy of their work and making it accessible online. The argument Google makes in response is that not all of the copyright holders can be identified easily and this will take time away from their massive project. The opt-out model is, in essence, a way for Google to cop out of doing extra work. They have adopted this model and in their defense, believe that they can and will upload anything they want to their search engine. This model puts the responsibility on the authors, publishers and copyright holders to contact Google and request to be taken out of the database if they choose. This is clearly an unethical standpoint

that hinders Google's ambitions. They are so invested in completing this project quickly, that they tend to overlook the fact that people put hard work and effort into the books that they have copyright on. Google unethically oversteps their boundaries as the world's largest powerhouse for online web browsing, but this time, critics are not letting them get away with anything too easily.

The opt-out model does indeed receive backlash. Critics of the approach argue that Google will set an example to others that an opt-out model is ok. They feel that everyone will do what they want and violate copyright more frequently implementing an opt-out model which requires copyright holders to contact them if they want their work removed and not used. One fear that this generates for Google Book critics is that there will be a higher risk for malicious databases out there that will exploit original copyrighted work. The Internet is growing faster than ever and it will become nearly impossible for authors, publishers and copyright holders to track down all of the databases that use their work. The opt – out option on all the databases that will exist in the near future, with Google leading the pack will inevitably become a problem.

Unfortunately for Google, the problem began early on. Many authors, publishers and copyright holders have already begun sending Google law suits for what is arguably "Massive copyright infringement" (Stone, 2005). Of the many law suits that exist, a few notably stand out and have taken part in shaping how this project moves forward. Schroeder, the former Colorado congresswoman and head of the Association of American Publishers, told Newsweek (2005), that the "law does not say you can take my stuff because you're going to do something with it that is going to be really good for humanity." She makes this claim addressing the opt-out approach that Google has taken in attempt to reach their ambitious goals for the Google Books project (Stone, 2005). Additionally, the Author's Guild sued Google in 2005 which lead to an

agreement that Google has to pay out 63% of its revenues to the identified copyright holders. As of this November, 2009, the agreement has been taken back to the courts to be modified. The Department of Justice is asking the courts to dismiss the case.

An argument being made in favor of the Google Books project is that of Fair Use. The Fair use provision, under the 1976 copyright act is defined in the U.S. by the U.S. Copyright Act which provides a four-part test to determine if the usage actually falls under this provision. The four-part test is as follows:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Google argues that they are practicing fair use in this project because they are granting public access to an index of literature. They believe that this project provides information for education and knowledge spreading. They make the claim that their book scanning will ultimately preserve literature with electronic copies. Additionally, they believe that since they are only providing limited access to the text, in turn they are complementing book sales. Reason being, if a user wants to read more of the book, they have access to external links, such as Amazon.com, to purchase the complete.

Supporter of Google Books, Varian (2006), states that “Of the books owned by libraries, about 15 percent are out-of-copyright, 20 percent are in-copyright and in-print, and the remaining 65 percent are in-copyright and out-of-print. Books in the last category are difficult to locate outside of these libraries” (AEI, 2006). He argues that the Google Books project will not only help preserve these books but make access to them much easier. Some of the books in this

group include those that are orphans or fall under the Section 108, which have been under review and consideration by various groups since last year (Dames, 2006).

Another issue that Google Books faces is that of security. Critics are in fear that Google does not have the right infrastructures and security in place to protect and preserve the literature that will be scanned into their database. A common argument made is “what if people hack the system and access the full book content?” In comparison to the well known music sharing host, Napster, people fear that Google’s database will easily be hacked into, leading to an exploitation of books. If any book can be found online, why would someone go to the extent of paying for it? Unfortunately, there is no proof thus far that Google has the security in force that will prevent this exploitation from happening.

Additionally, many scholars and critics argue that there is no way to ensure that literature will be preserved if it can be so easily destroyed. Another issue facing Google, which they seem to have no control over themselves, is a fear that hard copies of books will be destroyed after being scanned electronically to make more room in libraries for new material. This argument, however, does not truly hinder Google for the simple fact that they are scanning books. If a library decides to destroy the hard copies of books that becomes an error on their part and is completely out of Google’s control. On the bright side, at least Google would have electronic copies, making their argument for preservation that much stronger.

Finally, only last issue that Google is facing in the scope of security is that currently, not all publishers have digital copies of books ready to upload for themselves. By doing Google book search, this may help new technologies because they will create all of the digital scans for future libraries and projects. *The catch...* all of these copies will belong to Google and they control the e-copies as well as what can be done with them in the future. They can be sold,

transferred and destroyed very easily! So critics are asking, “how much of the world’s library books should Google control?”

According to Koehler, Wallace and Searcher (2008), “on the one hand, Google may well provide researchers, users and readers with an ever widening and invaluable resource... On the other hand, it also may mean that a single economic for-profit entity could gain effective centralized control over much of the world’s information” (Koehler, Wallace, Searcher, 2008). They go on to argue that Google’s quasi-altruistic goals today could soon “morph into an Orwellian vision.”

Many critics argue that Google Books challenges book sales because consumers will not buy the books if Google is providing access for free. Supporters of Google books argue that this project will complement book sales and direct more people to purchase the books if they want to read more than the small sample Google provides.

Overall, the Google Books project is having a hard time juggling between the legal and ethical issues. As we discussed in our Communication Ethics course at the University of the Pacific, “ethical behavior requires more than merely complying with the law.” This in many cases is treated by people badly. Ignoring the law is one thing, but finding ways to get around the law deem unethical. Although statutes have been passed and a tradition of common law have been developed to address protecting people from having their work exploited, Google stands firm on their ambitious goals that they are doing an altruistic thing to help spread and preserve the world’s knowledge. This paper only touches on a small list of issues that Google has faced since as early as 2004. It is clear that Google’s ambitious goal blinds them from doing the right thing.



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