

## Against the Grain

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# Op Ed -- Little Red Herrings -- Is the Google Book Decision an Unqualified Good?

Mark Herring

Winthrop University, [herringm@winthrop.edu](mailto:herringm@winthrop.edu)

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## Op Ed — Little Red Herrings

## Is the Google Book Decision an Unqualified Good?

by Mark Y. Herring (Dean of Library Services, Dacus Library, Winthrop University) &lt;herringm@winthrop.edu&gt;

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.authors-guild.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/1d-qYalk>), 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 cyberspace) 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

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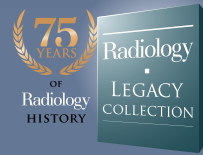
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for **Google**. For intellectual property, not so much. For small- to medium-sized publishers, again, not at all. For discovery of materials, yes and no. Yes, because they can be found; no, because they are likely to be lifted, for free, or you'll 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? 🐼

### You Gotta Go to School for That? from page 41

I want to spend the time and money to travel somewhere just to "screen" films when I can do it from the comfort of my office computer screen? This experience at the **National Media Market** answered that question for me.

I suppose I'm making a case for the film "experience." I'm trying to say that viewing a few seconds of a film from one's desktop is not really "screening" a film. The fact is that randomly reviewing films from my desktop cannot hold a candle to sitting in a screening room with an audience and getting the full film experience. There really is a big difference between watching a film, even a trailer, and ex-

periencing a film in its natural environment on the big screen with a big audience.

Of course we often have to make buying decisions based solely on reviews or the few minutes we can give to online trailers. So, yes, one can get an idea of the worth or appropriateness of a film title by a quick desktop trailer. We have to do that most of the time. But, I posit that we media librarians (dare I say "film" librarians?) cannot fully grasp the medium we cherish, promote, and nourish without being regularly washed in the real/reel thing upon occasion. Just as one cannot live on fast food alone, one should spend at least one week a year savoring a full film meal at the **National Media Market**. Next year it is in Charleston again just ahead of the **Charleston Conference**. Certainly, this is yet another reason to come to Charleston early. 🐼

### Rumors from page 22

Speaking of the **Charleston Conference**, the **Call for Preconferences** at the **2014 Charleston Conference** is out. And the **Call for Papers** opens tomorrow! Get on the stick! Time's a wastin'! <http://www.katina.info/conference/call-2014-preconferences-now-open/> and <http://www.katina.info/participate/call-for-papers/>

The **2014 Charleston Conference** program is shaping up! We can let everybody in on a few things.

First, the fantastic **Anthea C. Stratigos** will be our main keynote speaker. We mentioned **Outsell's End-User Study of Faculty and Students** above in this issue. **Ms. Stratigos** is co-founder and CEO of **Outsell, Inc.** (founded in 1994), a leading research and advisory firm that focuses exclusively on the information and publishing industries,

providing analysis and recommendations for high-level executives regarding markets, trends, benchmarks and best practices. **Anthea** is **Outsell's** primary spokesperson, and chairs **Outsell's Leadership Council**, a member-service for CEOs and senior executives of publishing and information-provider firms. **Ms. Stratigos** holds a B.S. degree in Communication from **Stanford University** (1983) and graduated from the Executive

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