

Legal Sidebar

Still Fair Use for Google Books: Second Circuit Ruling in Authors Guild v. Google

11/30/2015

In its October 16, 2015 decision in *Authors Guild v. Google*, the U.S. Court of Appeals for the Second Circuit affirmed the [lower court's ruling](#) and held that Google's copying and distribution of books as part of its Google Books Project qualifies as fair use under the Copyright Act, and thus Google is not liable for infringement of the authors' copyright in these books. This decision marks another ruling in the now decade long dispute between Google and copyright holders of the books included in the Google Books Project.

[Google Books](#) is a searchable digital database of scanned books and magazines. Beginning in 2004, Google has worked with several research libraries to scan their collections, creating an electronic database of 20 million books from libraries across the globe. While Google has agreements with the libraries to digitize their holdings, the company did not obtain permission from the copyright holders themselves for this particular use of their texts.

In 2005, several copyright holders represented by the Authors Guild, a professional advocacy organization for writers, brought a class action against Google claiming copyright infringement by the Google Book project. [Section 106](#) of the Copyright Act provides copyright holders with the exclusive right to control reproduction, distribution, and display of their works. Specifically, the plaintiffs claimed that Google violated these rights by digitally reproducing the books, making copies available for download, and displaying snippets from the books to the public, all without authorization by the copyright holders. Google's principal defense against these claims was fair use under [Section 107](#) of the Copyright Act.

Fair use is a defense that permits courts to excuse an infringing activity in order to promote the broader purposes of copyright law: to encourage production and dissemination of works of authorship. Section 107 of the Copyright Act lists four factors that courts must consider in determining whether a defendant's use of the copyrighted material was a fair one: (1) purpose and character of the use, (2) nature of the copyrighted work, (3) amount of the copyrighted work used, and (4) effect of the use upon the potential value of the copyrighted work. In deciding whether the fair use defense is present, courts consider each factor weighed together "[in light of the purposes of copyright.](#)"

On November 14, 2013, the district court concluded that Google's use of copyrighted books as part of the Google Books Project constituted fair use under Section 107. The Second Circuit affirmed this ruling, with Google Book's database search function and "snippet view," where readers view only a portion of the digital book, serving as the focus of the court's analysis. First, the Second Circuit concluded that Google's digital copying of the books was "[transformative](#)," meaning that Google's new digital copy of the work does not supersede or supplant the original book. For the court, the search and snippet function of the Google books digital copy expands the utility of the book by allowing potential buyers of the book to evaluate portions of the book before purchasing it, and thus furthers the Copyright Act's overall objective of contributing to public knowledge. The Second Circuit briefly considered the second factor, "nature of the copyrighted work," and concluded that this factor, while it favors fair use in this context, is not significant in light of the strength of the transformative nature of the use.

The Second Circuit also held that the amount of the copyrighted work used (third factor) contributes to its holding that Google's use is fair use. The court acknowledged that while Google generally has copied the entire book, it does not

make the entire digital copy available to the public, but, rather, provides a “snippet view.” According to the court, this view is not a meaningful substitute for the entire work. Moreover, the court stated that Google must copy the entire book in order for the search and snippet features to function properly for the reader. Finally, the court concluded that the fourth factor (“effect of the use upon the potential value of the copyrighted work”) also weighed in favor of fair use. While the court acknowledged that the snippet function can cause some loss to copyright holders in terms of fewer sales of their written works, this, according to the court, is attributed to the reader obtaining factual information from the “snippets,” and thus not needing the entire work. In the court’s view, such factual information is not protected by copyright.

Thus, considering the four fair use factors in light of the overall goals of copyright, the court held that Google’s digital copying of plaintiff’s works for the purpose of the Google Books project, particularly the search and snippet view functions, is fair use, and thus Google is not liable for infringing the authors’ copyrights in their books.

A [commentator](#) has remarked that the Second Circuit decision will assist organizations such as libraries and other non-profit organizations with determining the boundaries of fair use as they adopt this type of technology. The Authors Guild plans to [file](#) a petition for writ of certiorari to the U.S. Supreme Court.

Posted at 11/30/2015 10:31 AM