

# Digital Libraries: Threat to Copyright?

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# U.S. Copyright

- *Temporary* monopoly to
  - Encourage creativity
    - By rewarding the creator with protection for his work
  - Support the public good
    - Facts and ideas are not © protected
    - After limited time © work enters the public domain

“Promote the progress of science and useful arts by securing for limited Times to Authors and Inventors the exclusive Right to their Writings and Discoveries”

– *U.S. Constitution, 1790*

# Threat to copyright

- Anything that endangers © as initially conceived
  - Thwarts creator interests
  - Harms the public good



*All Glass Photo CC license graphic*



# Open access to research

- Is not a threat to copyright
  - Serves creator interests and the public good by broadening access to knowledge
- Signals need for © reform
  - Self-archiving authors often infringe ©  
*to their own work without sanction from © owner*
- Is a threat to some publishers
  - Purpose of © is not to protect publisher interests, but to protect creator interests and the public good



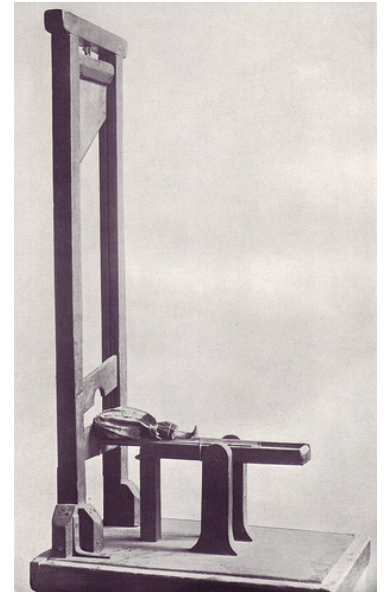
# Digitizing in-copyright material

- Is not a threat to copyright
  - If permission granted by © owner: complies with ©
  - If permission denied by © owner: infringes ©
    - Can be sanctioned
- Signals need for © reform
  - If can't identify or locate © owner: orphan works
    - Digitize = support public good but perhaps thwart creator or © owner interests; risk © infringement
    - Not digitize = harm the public good but perhaps thwart creator or © owner interests



# Google Books Settlement 2.0

- **Is a threat to copyright** – attempt to
  - Sidestep dysfunctions in © law with judicial approval of class-action settlement
  - Give for-profit publishers sole control of our heritage without permission of creator or © owner



A Journey Round My Skull CC license



# GBS 2 trumps © protection

- Makes © protection meaningless for those not involved in negotiating GBS 2
  - If opt out, work will still be scanned
  - If do **not** opt out, work will be scanned and 20% of out-of-print books displayed
  - *U.S. Department of Justice recommended opt in*
- Those who negotiated GBS 2 are not bound by it
  - Most major publishers made private deals with Google
  - *Department of Justice recommended they be bound*



# © requires permission or exemption

- Orphan works – cannot request © permission
  - U.S. Congress considering exemption: free use
  - GBS 2 gives Google exclusive license to orphan bks
    - Plan to sell orphan books to consumers for \$8.65
    - Commercial exploitation to continue until © expires
    - Vested interest in preserving escrow approach
  - *Department of Justice recommended*
    - *Not giving Google a monopoly*
    - *Designating a person to represent missing © owners*

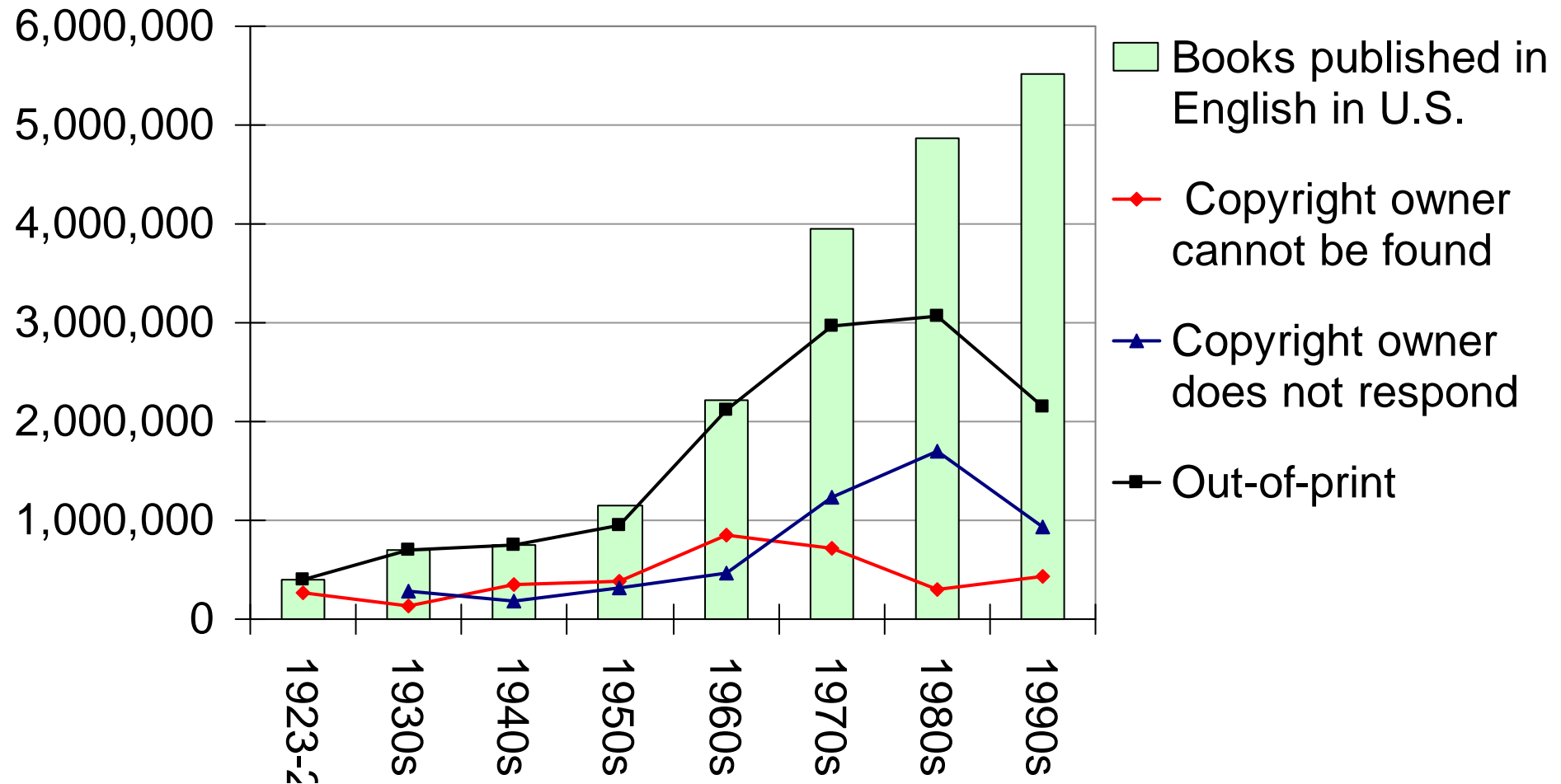




# GBS 2 Unclaimed Works Fiduciary

- Cannot make orphan books available open access
- Can authorize Google to alter the texts of orphans
  - Negotiated by publishers who in open access debate claim concern about integrity of scientific record
- Academics authored most books in Google corpus
  - Think orphans should be open access and unaltered
  - Not well represented in GBS negotiations
    - *Department of Justice recommended adequate representation of class members*

Estimate 3.5 M orphan books, 13 M out-of-print books,  
and 5 M books presumed © owner does not respond



Based on random sample feasibility study conducted by  
Carnegie Mellon University Libraries



# GBS 2 is “path to insanity”

- A **catastrophic mistake** that will create an environment that asphyxiates culture
  - Regulating and obsessively controlling access to books at the level of a page or a quote
  - Creating a digital bookstore of profitable books
    - No fair use at public computers
- **Cannot rely on favors granted by private companies to define access to our culture**

Lawrence Lessig  
Joi Ito CC license





# Threats to ©

- Are inherent in © law
  - Lengthy term, no registration or renewal
  - Focus on copies – out of touch with technology
  - Limits user power / trumped by contract
  - Assumes all creators create for \$\$
  - Assumes publishers serve creator interests
  - Incentivizes greed
- Need © reform that provides reasonable incentives, protection and access for diverse range of creativity

# Thank you!

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