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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
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
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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