Books, Computers, and the Law

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21 July 2010
The *first* book scanning revolution

- Consider the printing press
- First use: printization
- Transforms our relationship to text
- Transforms our preservation strategies
Orphan works

• Some books are in copyright…
  • …but have unfindable owners
• These books aren’t doing anybody any good
• They are a failure of the copyright system
  • Reform legislation has so far gone nowhere
Some obvious benefits

- Fair use no longer turning on one die roll
- The universal library, this time for real
- Unusually solicitous of the disadvantaged
- New revenue source for authors & publishers
- For some books, the only way?
Civil procedure

• How good was the notice?
• Especially outside of the U.S.
• Who are these authors and publishers?
• Do they speak for, e.g. academic authors, who want open access rather than $$$?
• What kind of a class action is this …
• “© is opt-in” is dogma in most of the world
• (Perhaps not the best rule, but …)
• Technically, © owners are “agreeing”
• But U.S. class action law is *sui generis*
• Lots of controversy over publishing-industry details
Information policy

- Huge centralization of books in Google
- Libraries burnt by journal pricing
- Reader privacy
- Equitable access, pro and con
- Is Google a library?
Antitrust

• Is the settlement a price-fixing scheme?
• Algorithmic pricing to mimic the market?
• New products otherwise unavailable?
• What about the orphans?
• Good luck trying to compete!
The heart of the deal

- The settlement makes many orphaned books available again because it’s opt-out
- If you like books, that’s good
- But is this a legitimate use of a class action?
- Put another way, is this a job for Congress?
- What else is now on the table for courts?
Closing thought

- 0 and \( \infty \) make sense, but 1?
- If we think orphan works are valueless, then they should be public-domain
- If we think these rights are worth respecting, then they should be respected
- I’m still looking for the limiting principle
Discussion