

US appeals court backs Google's book-scanning project

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The New York Second Circuit Court of Appeals backed a lower court's ruling that Google was exercising "fair use" of the books it was scanning and making available for online users to search and read excerpts of the text

Google's colossal project to digitize the world's books does not violate copyright law, a US appeals court ruled Friday, affirming a 2013 decision seen as a landmark for the digital era.

Google welcomed the decision allowing its vast digitization program to move forward, but plaintiffs led by the Authors Guild vowed to take the case to the US Supreme Court.

The New York Second Circuit Court of Appeals backed a lower court's ruling that Google was exercising "fair use" in scanning books and making them available for online users to search and read excerpts.

The appeals panel rejected the arguments of the Authors Guild, several prominent writers and leading publishers that the Google Books program and its Library Project would eat into their earnings potential by allowing readers free access to the books.

Google allows people to search for words or names in books, but only shows snippets of copyrighted works, not entire texts.

Judge Pierre Leval wrote in his opinion that the longstanding interpretation of copyright law has for 300 years been that authors do not have "absolute control" over their works, and that there are important exemptions for "fair use," including news reporting, historical analysis, parody and other "transformative" purposes.

The court said that the snippets made available by Google were not a viable substitute for the works and that it was immaterial if Google made a profit from its search business using the books.

"The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals," the court said.

"Google's commercial nature and profit motivation do not justify denial of fair use."



Google scanned books submitted to it by libraries, in return for the libraries being able to make the digital copies available to users in limited ways

'Catalog for digital age'

Google, which has scanned of millions of books for its project, welcomed the decision.

"Today's decision underlines what people who use the service tell us: Google Books gives them a useful and easy way to find books they want to read and buy, while at the same time benefiting copyright holders," the company said in a statement.

"We're pleased the court has confirmed that the project is fair use, acting like a card catalog for the [digital age](#)."

"The circuit court's decision is a victory for the public," said Raza Panjwani, policy counsel at Washington-based Public Knowledge, an Internet freedom advocacy group.

"The tragedy is that 10 years and countless dollars have been spent on lawsuits, instead of on expanding or establishing new programs like Google Books."

Authors argued that the project violated their copyrights, even if Google provided the search and viewing access without charge, because it supported Google's dominance of the advertising-driven Internet search business.

They also said Google's scans would make it easier to make pirated copies of the books freely or cheaply available on the Internet.

But the court dismissed those arguments, because Google would only make available "information about" the books, and "snippets" from them, without allowing access to substantial parts of the books.

In addition, the court said, the scanning project does not expose the authors "to an unreasonable risk of loss of copyright value through incursions of hackers."

'Big loss for authors'

Reacting to the decision, the Authors Guild called it "a big loss for authors everywhere" and indicated it would take the case to the US Supreme Court.

"America owes its thriving literary culture to copyright protection. It is because of that success that today we take copyright incentives for granted, and that courts as respected as the Second Circuit are unable to

see the damaging effect that uses such as Google's will have on authors' potential income," said Mary Rasenberger, executive director of the Authors Guild in New York.

"We are very disheartened that the court was unable to understand the grave impact that this decision, if left standing, could have on copyright incentives and, ultimately, our literary heritage. We trust that the Supreme Court will see fit to correct the Second Circuit's reduction of fair use to a one-factor test whether the use is, in the [court's](#) eye, 'transformative.'"

The case, which dates back to 2005, centers on a Google program started in 2004 to create an electronic database of books that could be searchable by keywords.

In the original ruling, backing Google's side of the case, federal Judge Denny Chin in New York said what was originally called the "Library Project" preserves [books](#), gives "new life" to forgotten editions, sustains "print-disabled" users and benefits authors and publishers by finding them new readers.

The victory could encourage social media companies and others to compete with Google on a similar project using published content, and would generally encourage more investment from parties interested in "transformative" use of content who might be fearful of stringent copyright enforcement.

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