

# Google prevails in long-running book digitization case (Update)

14 November 2013, by John Biers



A man and a woman stand at the Google stand during the 62nd Frankfurt Book Fair in Frankfurt am Main, on October 6, 2010

A US judge Thursday threw out a long-running challenge to Google's massive book-scanning project in a decision that could transform copyright law in the digital age.

Federal Judge Denny Chin dismissed the case which dates back to 2005, saying Google's project is "fair use" under copyright law because it provides vital educational and other public benefits.

In a 28-page decision, Chin said the Google program, dubbed the "Library Project," preserves books, gives "new life" to forgotten editions, sustains "print-disabled" users and benefit authors and publishers by finding them new readers.

"In my view, Google Books provides significant public benefits," Chin wrote. "Indeed, all society benefits."

The Authors Guild, one of the original plaintiffs in the case, vowed an appeal, saying the decision

runs counter to copyright standards.

"This case presents a fundamental challenge to copyright that merits review by a higher court," said Authors Guild executive director Paul Aiken.

"Google made unauthorized digital editions of nearly all of the world's valuable copyright-protected literature and profits from displaying those works. In our view, such mass digitization and exploitation far exceeds the bounds of fair use defense."

Google hailed Thursday's ruling.

"This has been a long road and we are absolutely delighted with today's judgement," a Google spokesperson said.

"As we have long said Google Books is in compliance with copyright law and acts like a card catalog for the digital age giving users the ability to find books to buy or borrow."

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

Google has scanned more than 20 million books so far in the project. Books in the public domain—without current copyrights—are made available online to the public for free. For copyrighted books, Google offers a searchable database that displays snippets of text.

Google argued that the Library Project creates new information and new insights. The program "has been used to analyze the evolution of the American novel and how word usage reflects changes in American society and values," Google said in a legal brief.

But the Authors Guild, who were joined in the litigation by three authors, had argued Google

violated the rights of authors by scanning works without obtaining approval from the authors.

The Authors Guild had argued that Google's objectives were purely commercial in that the main goal in the endeavor is to boost use of its search engine, which generates advertising revenue.

But Chin concluded that Google's use of the copyrighted works is "highly transformative" in that it enables readers, scholars and others to find out about new books and permits book text to be transformed "for purposes of substantive research, including data mining and text mining... thereby opening up new fields of research."

While Chin acknowledged that Google is a for-profit entity, he noted that Google does not sell the scans of the books or the snippets or "engage in the direct commercialization of copyrighted works."

"The fact is that Google Books serves several important educational purposes," the judge wrote.

The decision was also praised by the Computer and Communications Industry Association, whose members include Facebook, Microsoft, Samsung and other technology companies.

"This ruling is a vindication for transformative technologies online," said Matt Schruers, CCIA's vice president for law and policy.

Schruers said the ruling, if upheld on appeal, 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.

"Investors are going to be far likelier to invest in digital media services," Schruers said.

Librarians also hailed the ruling.

The decision "enables the discovery of a wealth of resources by researchers and scholars," said Trevor Dawes, president of the Association of College and Research Libraries.

Google and US publishing firms announced a settlement last year in the case, leaving the Authors Guild to pursue the lawsuit.

A tentative settlement in the case was reached in 2008 under which Google would pay \$125 million to resolve copyright claims and to establish an independent "Book Rights Registry." But the court rejected the deal.

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