

Google Settles Copyright Lawsuit With Book Publishers.

Technology and copyright law have been at odds since the beginning of the digital era. Music publishers sued the fans who illegally downloaded songs. Movie studios and book publishers had their lawyers and lobbyists block digital access as best they could. But content owners are finally realizing they're better off helping their customers use digital media than trying to stop the march of technology.

Just in the past few weeks, YouTube announced that MGM will let the online video site offer selected movies and that CBS will let it link to shows such as the original "Star Trek" series. The big four music labels agreed to let the LaLa Web site offer sample songs. Even the Beatles, longtime digital holdouts, agreed their music can be part of a videogame.



The most fascinating truce in the copyright wars is this month's settlement of litigation between book publishers and authors on one side and Google on the other -- at \$125 million, the biggest book deal ever. Google has digitized some seven million books. Of these, one million were already covered by an agreement with publishers to allow "preview" selections of books. Another one million books are old enough that they're no longer covered by copyright.

The settlement focused on the remaining five million books, which are still under copyright but no longer in print. This sounds like a perfect application of the Web -- letting people find digital versions of books not otherwise available. But it was unclear what "fair use" meant to determine how much of a book Google could display before having to pay publishers and authors. The settlement agrees that 20% of a book can be previewed without payment. So while fair use is still undefined for other situations, this is an important precedent that benefits both consumers and content owners. It also, of course, benefits the Google colossus by letting it display for free significant excerpts of books it's already digitized.

Copyright is critical to provide property rights in books, music and other forms of intellectual property, contrary to those who claim that somehow everything must be free just because it's on the Web. But content owners also belatedly realize that simply suing consumers who find new, convenient ways to access content online is not as good as finding new business models to profit from customer interest that technology makes possible.

Under pressure from all sides, Congress and the U.S. Copyright Office had dithered about so-called orphan works, books whose owners or authors are hard to find. Congress toyed with a test of requiring payment after a "reasonably diligent search" for the owners.

This vague standard "would have been a classic Washington solution to the problem," Lawrence Lessig said in an interview, "meaning it would have been a nightmare." Mr. Lessig, a Stanford law professor and author of several books on copyright, says the registry is a huge breakthrough because it ends uncertainty. "Establishing who owns what is real progress," he says. "An efficient solution can be found once there is settling of property rights."

Google still claims it has the right to index content on the Web for its search engine. Exactly what snippet or excerpt goes too far for fair use in other cases remains unclear. Under the registry it will set up, the owners of the intellectual property can set prices for book downloads, have a Google algorithm set prices, or refuse access altogether.

The market solution means Google will now offer millions of books for sale, sharing the proceeds with publishers and authors. Books long out of print will be searchable and available for a fee.

This is a sharp break from Google's approach of gaining access to content such as newspaper and magazine articles simply by providing advertising-supported links, though the company warns not to read too much into this precedent of agreeing to make direct payments for content or encouraging its users to pay for content online.

This shift by Google led Peter Osnos, founder of PublicAffairs books, to wonder if the book settlement could have lessons for other owners of content. "Google has now conceded, with a very large payment, that information is not free," Mr. Osnos wrote for the Century Foundation. "This leads to an obvious, critical question: Why aren't newspapers and news magazines demanding payment for use of their stories on Google and other search engines? Why are they not getting a significant slice of the advertising revenues generated by use of their stories via Google?"

Alas for the troubled news media industry, so much of its news is commoditized that people won't pay for it online. But as digital media mature, we'll see more redefinitions of legal concepts such as fair use. There will also be revisions of business practices regarding who gets paid what by whom. The Google settlement is a reminder that owners of intellectual property can choose to lock it away, give it away, or, most sensibly, share it in exchange for reasonable compensation.

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