



DATE DOWNLOADED: Sat Sep 5 14:43:53 2020

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Citations:

Bluebook 21st ed.

Tiffany Viveros, Authors Guild, Inc. v. Google Inc. 954 F. Supp. 2d 282 (S.D.N.Y. 2013), 18 INTELL. PROP. L. BULL. 251 (2014).

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Authors Guild, Inc. v. Google Inc.

954 F. Supp. 2d 282 (S.D.N.Y. 2013)

TIFFANY VIVEROS*

BACKGROUND

Plaintiffs are individual authors of copyrighted books and The Authors Guild, Inc., an organization of published authors (collectively, “Authors Guild”). Defendant is Google, a corporation that provides Internet-related services and products.

Google operates Google Books, a program that requires Google to scan and copy millions of books into an online database. Google Books houses both in-print and out-of-print books. Approximately 93% of the books in the database are non-fiction, while only 7% are fiction. Two digital book programs make up Google Books: the Partner Program and the Library Project. The Partner Program contains material provided to Google by book publishers or other rights holders. The Library Project hosts scanned copies of books that Google borrows from collections of the New York Public Library, the Library of Congress, and a number of university libraries. Google never sought the permission of the copyright holders to copy or display the books used in the Library Project.

After scanning a book into the Library Project, Google retains a copy for its own records and gives a digital copy to the participating library from which it borrowed the book. Google maintains an overall index of all the scanned books. Google users can conduct searches using their own queries, and Google will return a list of the most relevant books in which their search terms appear. The user can click on a particular result, and Google will direct the user to an “About the Book” page, which includes links to sellers of the book or libraries that list the book as part of their collections.

During searches, users can look at “snippet views” of selected books. Each snippet view comprises one-eighth of a page of the book. Google takes security measures to prevent users from viewing a complete copy of a snippet-view book by “black listing” certain pages in each book. An “attacker” that tries to obtain an entire digital copy of a book by stringing together words appearing in successive passages would be able to obtain, at best, a patchwork of snippets—at least one snippet would be missing from every page and 10% of the pages would be missing.

PROCEDURAL HISTORY

Authors Guild initiated this suit in 2005, alleging that Google

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committed copyright infringement by scanning copyrighted books into Google Books and making the scanned copies searchable to the public. Google raised a fair use defense under Section 107 of the Copyright Act (the “Act”).¹ The parties initially reached a settlement agreement, but Judge Chin, Circuit Judge for the Second Circuit, rejected the agreement on the grounds that it was not fair, adequate, or reasonable. The parties engaged in further discussion, but they were unable to reach a second agreement.

Authors Guild moved for class certification, and Google moved to dismiss the Authors Guild’s claims. Judge Chin granted the class certification motion and denied Google’s motion to dismiss. Both parties then filed cross motions for summary judgment, but the Second Circuit stayed proceedings pending an interlocutory appeal of Judge Chin’s grant of class certification. The Second Circuit vacated the class certification decision, stating that the “resolution of Google’s fair use defense in the first instance will necessarily inform and perhaps moot [the court’s] analysis of many class certification issues.”²

ISSUE

Judge Chin assumed that Author’s Guild had established a *prima facie* case of copyright infringement under Section 106 of the Act³ against Google for digitally reproducing millions of copyrighted books, maintaining copies for itself on Google servers and backup tapes, making digital copies available for its Library Project partners to download, and displaying snippets from the books to the public. Therefore, the sole issue before the court was whether Google’s use of the copyrighted books in its Google Books program was “fair use.”

DECISION

The court denied Authors Guild’s motion for partial summary judgment and granted Google’s motion for summary judgment, holding that Google’s digital reproduction of millions of copyrighted books through the Google Books program was fair use under copyright law. As such, the court entered judgment in favor of Google and dismissed the case.

REASONING

The court began its analysis by pointing out five notable benefits of Google Books. First, Google Books provides a new way for people to locate books and serves as a beneficial research tool for librarians. Second, Google Books promotes “data mining,” which permits humanities scholars to quickly analyze massive amounts of data. Third, Google Books increases access to books by providing literature in a format compatible with various

1. 17 U.S.C. § 107 (2012).

2. *Authors Guild, Inc. v. Google Inc.*, 954 F. Supp. 2d 282, 289 (S.D.N.Y. 2013).

3. 17 U.S.C. § 106.

software and devices used by print-disable individuals to read and locate books. Fourth, Google Books preserves old books, many of which are out-of-print or falling apart in the library collections. Finally, Google Books benefits authors and publishers by exposing users to new books to which they might not otherwise be exposed. The program directs readers to stores that sell the books, thereby generating new audiences and profits.

The court then evaluated Google's defense by balancing the four fair use factors: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use on the potential market for the copyrighted work.

The court found the first factor, the purpose and character of the use, to weigh heavily in favor of fair use. The court determined that Google's use of the copyrighted books is highly transformative. Google Books transforms expressive text into a comprehensive word index, which helps readers, scholars, and researchers find books and opens new fields of research. Further, the court found that Google Books does not replace actual books because it is not a tool for reading books. Instead, it allows for the creation of "new information, new aesthetics, new insights and understandings."⁴ The court acknowledged that Google benefits commercially from Google Books because the program draws users to Google websites, but found the important educational purpose of the program to outweigh its commercial nature.

The court also found that factor two, the nature of the work, weighed in favor of fair use as the vast majority of the books in Google Books are non-fiction. Non-fiction books are typically afforded less copyright protection than other works due to their educational value.

Turning to the third factor, the amount and substantiality of the portion taken, the court found it slightly weighed against fair use since Google scans entire books and copies expression verbatim.

The court found that the fourth factor, the effect of the use upon the potential market, weighed strongly in favor of fair use. Google does not sell the scanned books, and the scans do not replace the books. Libraries can only download copies of books they already own. Further, users cannot obtain enough snippet views of the books to comprise an entire book because Google blacklists certain pages and snippets, meaning readers must still purchase the copyrighted works to obtain full access. The court found that Google Books does not serve as a market replacement, but rather enhances book sales to the benefit of the copyright holders by acting like a traditional in-store book display.

Lastly, in its overall assessment, the court noted that Google Books provides significant public benefits and advances the progress of the arts and sciences while maintaining a respectful consideration of the authors' rights.

4. *Authors Guild*, 954 F. Supp. 2d at 291.

For the foregoing reasons, the court found Google was entitled to summary judgment for its fair use defense and thus was not liable for copyright infringement.