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The Authors Guild et al v. Google Inc.

– Appellate Opinion Analysis

Submitted by
Arvind Ponnarassery Jayan
(aponnar1)

Johns Hopkins University
Information Security Institute (JHUISI)

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Abstract — Authors Guild v Google Inc created a .

Index Terms — Copyright, Fair-Use

I. INTRODUCTION

Authors Guild v. Google was a copyright case heard between 2005 and 2015. Initially in the United States District Court for the Southern District of New York, and on appeal to the United States Court of Appeals for the Second Circuit. The case concerned fair use in copyright law and the transformation of printed copyrighted books into an online searchable database through scanning and digitization. The case centered on whether the Google Book Search, which was launched in 2003, to be legal.

The decision made by the United States Court of Appeals for the Second Circuit helped in the expansion of the fair use doctrine and legalized Google Book Search. On April 18, 2016, the Supreme Court issued an order declining to review this decision. This paper attempts to analyze this appellate decision focusing more on the Cybersecurity aspects of the case.

II. LITERATURE REVIEW

A. *Copyright and Fair Use Doctrine*

Copyright is the right, for an extended period, to exclude others from using, copying, selling, or importing “works” of authorship.

17 U.S. Code § 102 explains that copyright protection applies to original works of authorship fixed in any medium of tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Works of authorship include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works.

17 U.S. Code § 102 also explains that copyright protection doesn’t not apply to an original work of authorship extend to any idea, procedure, process, system, method of operation,

concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S. Code § 106 presents us the exclusive rights the owner of the copyright has, this includes:

1. to reproduce the copyrighted work in copies or phonorecords
2. to prepare derivative works based upon the copyrighted work
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S. Code § 107 provides one of the limitations of these exclusive rights, which is a doctrine called Fair use. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
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
4. the effect of the use upon the potential market for or value of the copyrighted work.

With respect to the case, it is understandable that among the books that are digitized by Google there will be many that are protected by copyrights and it will be an infringement to the copyright owners if Google is constructing the comprehensive database without their permission. It can also be noted that Fair Use doesn't expand regarding the digitization and scanning of literature and transforming the printed material into an online searchable database. This is where the laws are required to be updated as new technologies comes to the horizon.

B. Google Inc and Google Books

Google, LLC is an American multinational technology company that specializes in Internet-related services and products, which include online advertising technologies, a search engine, cloud computing, software, and hardware. Google due to its dominant search engine, as well as related products like Adwords, YouTube, and Android, makes it one of the giants in the internet world.

Google Books started out as Project Ocean in 2002 that converts textbooks to digital copies through books scanning. At 2004, this project was told to the public which surprised the literary world. Google's goal was to create an unrivaled digital library, using these books to

draw users to its website, strengthen its dominance of the search-engine market, and increase its advertising.

III. RESEARCH METHODOLOGY

A. *Court Holdings*

The Proposed Settlement Agreement

It can be understood that this mass digitization of copyrighted literary works can raise a lot of warning bells for Google, especially if it is done without the permission from the authors. In September 2005, the authors guild and few other writers sued Google for infringing copyrighted works by digitizing them through scanning without obtaining permission as well as for not providing any fair compensation to authors. Google argued that under the fair use doctrine the Google Books program created offers great benefits to the public as well as the authors.

In 2008, the settlement agreement came into being where Google will be paying \$125 million, the money would go to owners of the books that were scanned without permission and rest are distributed to authors. This settlement was a good deal through which the authors can be compensated for their compensated works and at the same time Google can keep building the digitized database following the security standards.

The settlement agreement needed court approval, and this raised a lot of concern for and against Google. On one hand, some objected that the digitization by Google should be protected as it benefits the public a lot and on the other hand, if Google accomplishes the digital database then it will be a monopoly of the database by default. In March 2011, Judge Denny Chin rejected the settlement, agreeing that “the creation of a universal digital library would benefit many”.

The District Court Ruling

With downfall of the settlement agreement because of the court, the 2 parties were building up their own case. Google sticks to the Fair use doctrine while The Authors Guild raises quite a few points regarding the issue which includes giving rights to one private company to digitize text books could open the floodgates to other companies to do the same, this will inevitably lead to the free and unrestricted access to the copyright materials.

In 2013, Judge Chin ruled in favor of Google persisting that this would benefit the public a lot. He declared the program to be fair use because, he found, Google’s use was “transformative”—“words in books are being used in a way they have not been used before.” He added, “Even assuming Google’s principal motivation is profit, the fact is that Google Books serves several important educational purposes.”

The Second Circuit Ruling

In 2014, the Authors Guild made an appeal to the District Court ruling to the United States Court of Appeals for the Second Circuit, the argument was stated clearly as to not close down Google Books but rather to compensate the authors whose copyrights were infringed in the past. The Second circuit similar to the district court made the same ruling that Google is allowed to make the digital copy under the Fair use doctrine.

Petition for Supreme Court Review

In 2015, the Authors Guild filed a petition with the Supreme Court of the United States requesting that it review the Second Circuit's decision. On April 18, 2016, the Supreme Court issued an order declining to review a decision by the United States Court of Appeals for the Second Circuit in our landmark copyright infringement lawsuit Authors Guild v. Google. This is because Copyright is not established to appreciate the authors but to help promote the progress of Science and Useful Arts.

IV. RESULTS AND DISCUSSIONS

A. *Legal Opinions*

From the court holdings, that includes the District Court, Second Circuit and Supreme Court, it can be observed that they uphold the primary objective of copyright which is not to reward the labor of the authors but to promote the Progress of Science and useful Arts.

According to me this is a little bit unfair for the authors of the copyrighted works. Google created a digital database that has collections of copyrighted works under the basis of Fair use doctrine. The 17 U.S. Code § 106 states that only the owner has the right to reproduce the copyrighted material. Also 17 U.S. Code § 107 states that Fair use doctrine comes to play according to the nature and the amount of use of the copyrighted material. Even though Google Books seems to be free, it is to be noted that nothing is provided for free by anyone. It is obvious that Google's principle motivation is profit, which was also recognized by the court, and this according to me makes the authors eligible for their compensation as stated in the initial settlement agreement. The court appeal did not ask to bring down the platform but to compensate the authors whose copyrights were infringed in the past as they deserve it.

B. *Cybersecurity Opinions*

Google makes most of its revenue through their effective placements of advertisements throughout their platforms, which searches made in browser, YouTube, Android, and now Google Books. The efficiency of the advertisement arises due to the data collection that has been done per person. The personal searches and information that an individual provides on these multiple platforms gets aggregated to help place the appropriate advertisement right in front of them. This targeted advertisement in a small scale seems to be harmless. But the more the information that is collected regarding an individual the more this helps in profiling the individual and this will include searches made in Google Books as well. Compiling the

databases from different platforms can finally lead to a psychographic profile of the individual. This could lead to the estimation of the individual's actions and also at an extreme case lead to the control of an individual actions as well. This means that companies like Google and other companies who compile data can influence the masses through data analysis and strategic communications placed throughout their platforms. Internet privacy is not something an individual think of while using free applications. The invasion of privacy and exploitation of individuals are not something of the future, but it is currently happening. With growing platforms such as Google Books that seems free can finally lead up to individuals paying more than expected.

C. *Conclusions*

Free platforms that benefits the public such as Google Books seems really useful and helps ease the advancement of sciences and useful arts. But in the hindsight free platforms are never really free since they will mostly be tracking the users and their searches, compiling information to profile the user to target the user personally especially through advertisements. But invasion of privacy is dangerous as these profiles can lead to the influencing of the masses to take specific actions. So in my opinion the support Google receives from the court is too much biased and Google should not only be made to compensate the authors whose copyrights were infringed but also at the same time provide more explanation on how the privacy of an individual is preserved.

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