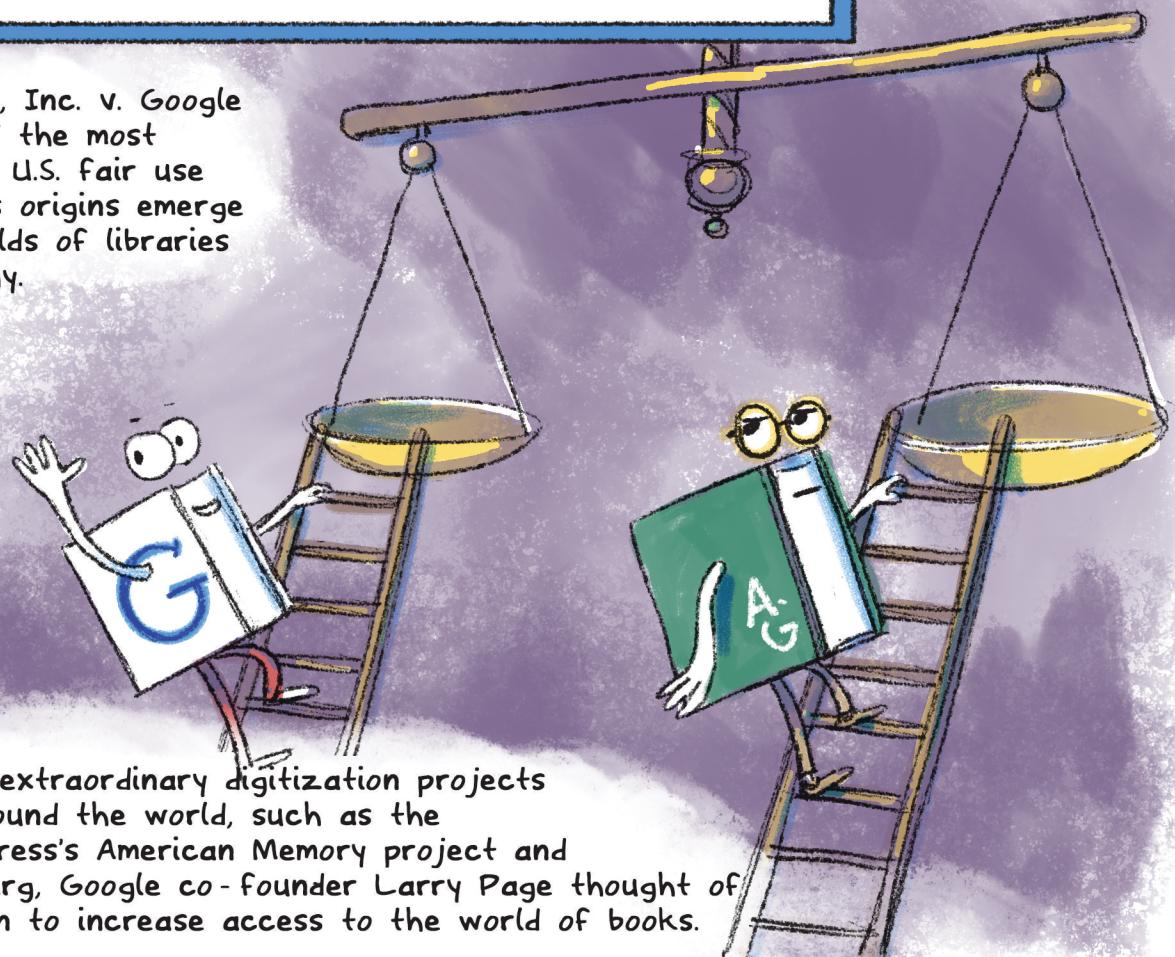


Authors Guild, Inc. v. Google Inc.
Written by Kyle C. Courtney art by Jackie Roche

Authors Guild, Inc. v. Google Inc. is one of the most famous of all U.S. fair use cases, and its origins emerge from the worlds of libraries and technology.



Inspired by the extraordinary digitization projects underway all around the world, such as the Library of Congress's American Memory project and Project Gutenberg, Google co-founder Larry Page thought of using digitization to increase access to the world of books.

Page and then-Googler Marissa Mayer began experimenting with book scanning in 2002.



(It took 40 minutes for them to digitize a 300-page book back then!)



In December 2004, Google announced the "Google Print" Library Project and partnerships with Harvard Library, University of Michigan Library, New York Public Library, and the libraries at Oxford and Stanford.

books Q

Page 1 public domain book>>

Google intended to scan **books**, index the contents, and provide both library users and the public with the ability to search through **books**.



books Q

Page 1 copyrighted book

For **books** that were clearly in the public domain, Google would provide full text access. For **books** that were under copyright, Google only offered 'snippets,' or small selected portions of the work where a phrase or search term appeared.

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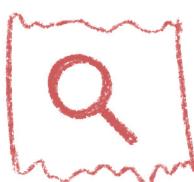


The case began in 2005 when the Authors Guild sued Google for digitizing those books.

The Authors Guild claimed that Google had not respected copyrights and has failed to properly compensate authors and publishers.



Google Books claimed their digitization met the standards of fair use, and that their project was beneficial many parties:



Text snippets were fair use and helped readers decide if a book was right for them.



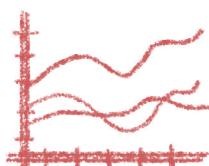
Rare or previously inaccessible books were made available.



Authors and publishers would benefit from Google helping readers find their books.



Digitized books could reach underserved areas experiencing book famine.



Full-text search allowed new and different types of research through massive text and data-mining scholarship.



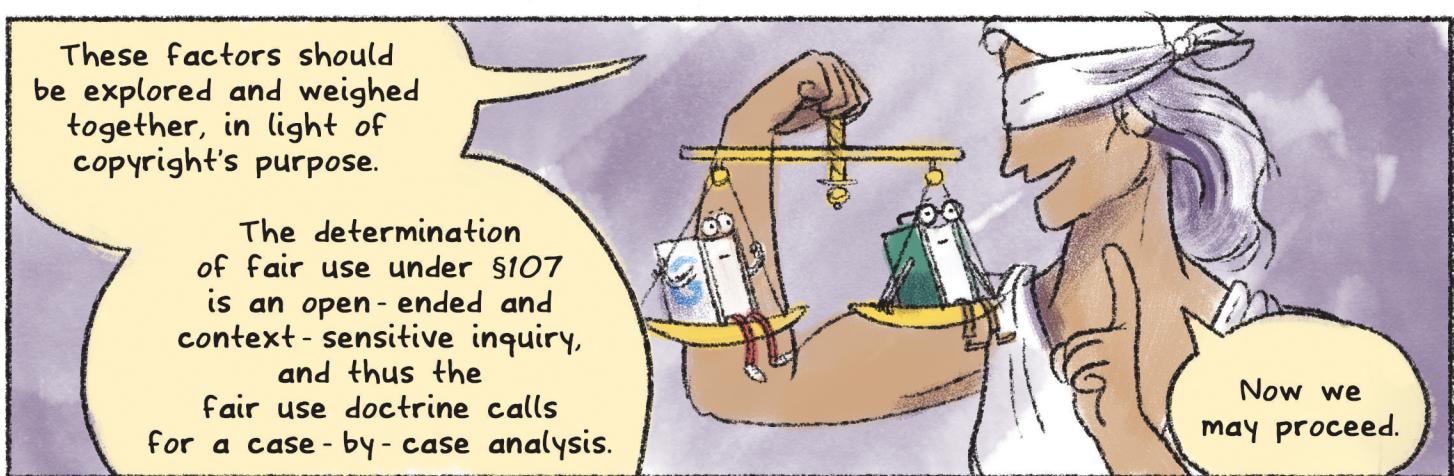
When the United States District Court for the Southern District of New York finally heard the case, the court had to address whether Google's use of copyrighted works was fair use under § 107 of the Copyright Act.

The court first stated that the fair use doctrine "permits the fair use of copyrighted works 'to fulfill copyright's very purpose, to promote the Progress of Science and useful Arts.'"

The court then weighed the four factors of fair use in light of the overall purposes of copyright laws.



The Four Factors of Fair Use



Factor #1: Purpose and character of use

After digitizing books scanned from the partner libraries' collections, Google made the digital versions available to the libraries.

Google made snippets of the copyrighted books available to the public but took measures to ensure that public users could not view a complete copy of a protected work.



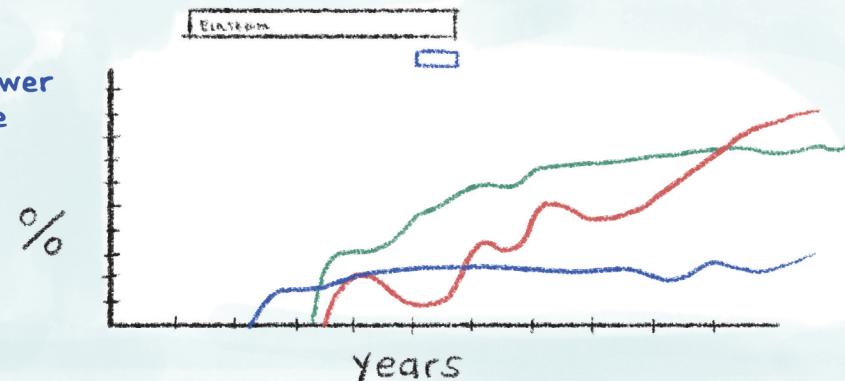
The court considered this use of the copyrighted books to be highly transformative because it digitized them and transformed expressive text into a comprehensive word index that helped readers, scholars, researchers, and others find books.

Factor #1: Purpose and Character of Use cont'd...

The court found that Google's use of books was "highly transformative," as showing snippets and allowing readers to discover books and conduct research "does not supersede or supplant books" but rather 'adds value to the original.'

It did not replace books because it was not a tool to be used to read books.

Tools like the
Google Ngram Viewer
graph word use
over time



Similarly, the use was transformative in the sense that the search engine transformed book text into data that could be mined for research purposes. For example, researchers and scholars use text and data to study the use of words and phrases that existed in the massive corpus of millions of volumes.



Further, while Google received some commercial benefit, the court found that this fact was outweighed by the fact that "Google Books serves several important educational purposes."

Verdict, First Factor: Strongly in Favor of Google Books



Factor #2: Nature of Copyrighted Work

The second factor, nature of the copyrighted work, pointed toward fair use, as the books are already published and publicly available, and as they are predominantly non-fiction works, they are entitled to lesser protection than traditional works of fiction.

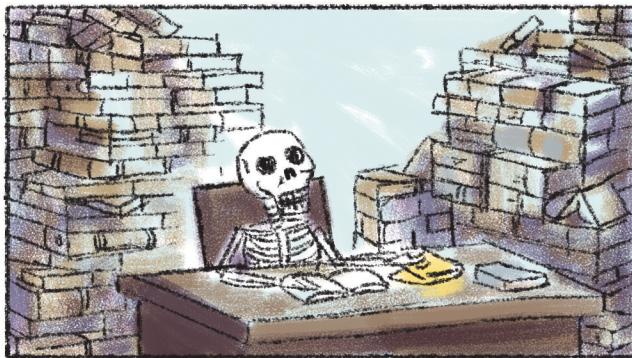


Verdict, Second Factor: in Favor of Google Books

Factor #3: Amount and Substantiality of the Portion Taken

When considering the third factor, the court noted that Google scanned and copied entire works, which generally weighed against fair use.

However, in order to allow the user to search millions of books for a word or phrase—it would take years to do that in a library—Google had to scan the entirety of the work.



The complete text was necessary to serve the new, transformative purpose.

The court also recognized that "full-work reproduction is critical to the functioning of Google Books," and that Google limits the amount of text visible to users through their search interface.

Third Factor Verdict: Slightly Against Fair Use



Factor #4: Effect of Use Upon the Potential Market

Lastly, the court looked at the fourth factor, effect of the use upon the potential market. Here the court rejected the plaintiffs' contention of negative market impact and market replacement, concluding that "Google does not sell its scans, and the scans do not replace books."

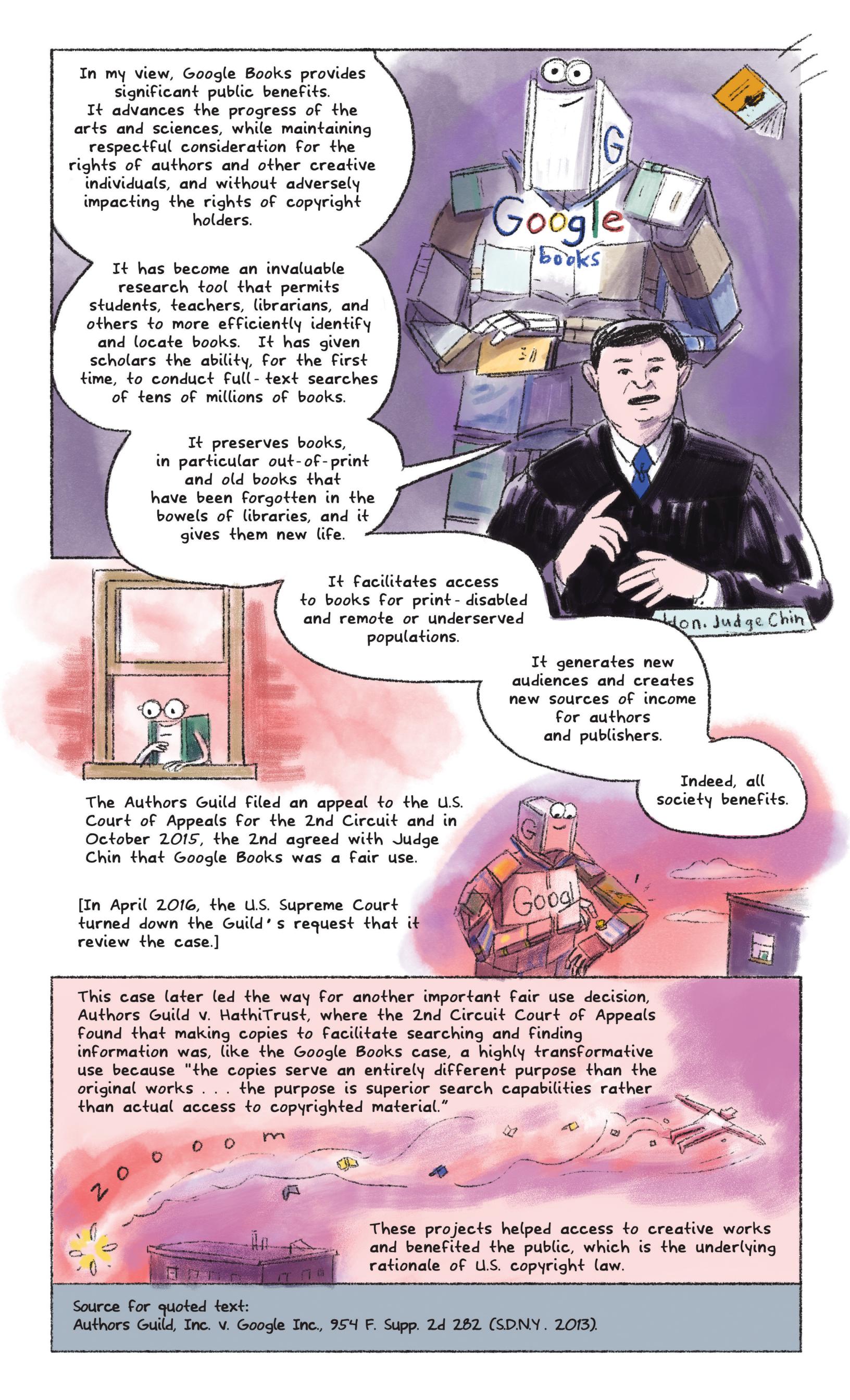
On the contrary, the court found that Google Books encourages books sales and benefits copyright holders.



Fourth Factor Verdict: Strongly in Favor of Fair Use



After weighing the four fair use factors, the court held that Google Books constituted a protected fair use consistent with the purposes of copyright laws, and provided substantial benefits to society at large.



In my view, Google Books provides significant public benefits.

It advances the progress of the arts and sciences, while maintaining respectful consideration for the rights of authors and other creative individuals, and without adversely impacting the rights of copyright holders.

It has become an invaluable research tool that permits students, teachers, librarians, and others to more efficiently identify and locate books. It has given scholars the ability, for the first time, to conduct full-text searches of tens of millions of books.

It preserves books, in particular out-of-print and old books that have been forgotten in the bowels of libraries, and it gives them new life.

It facilitates access to books for print-disabled and remote or underserved populations.

Judge Chin

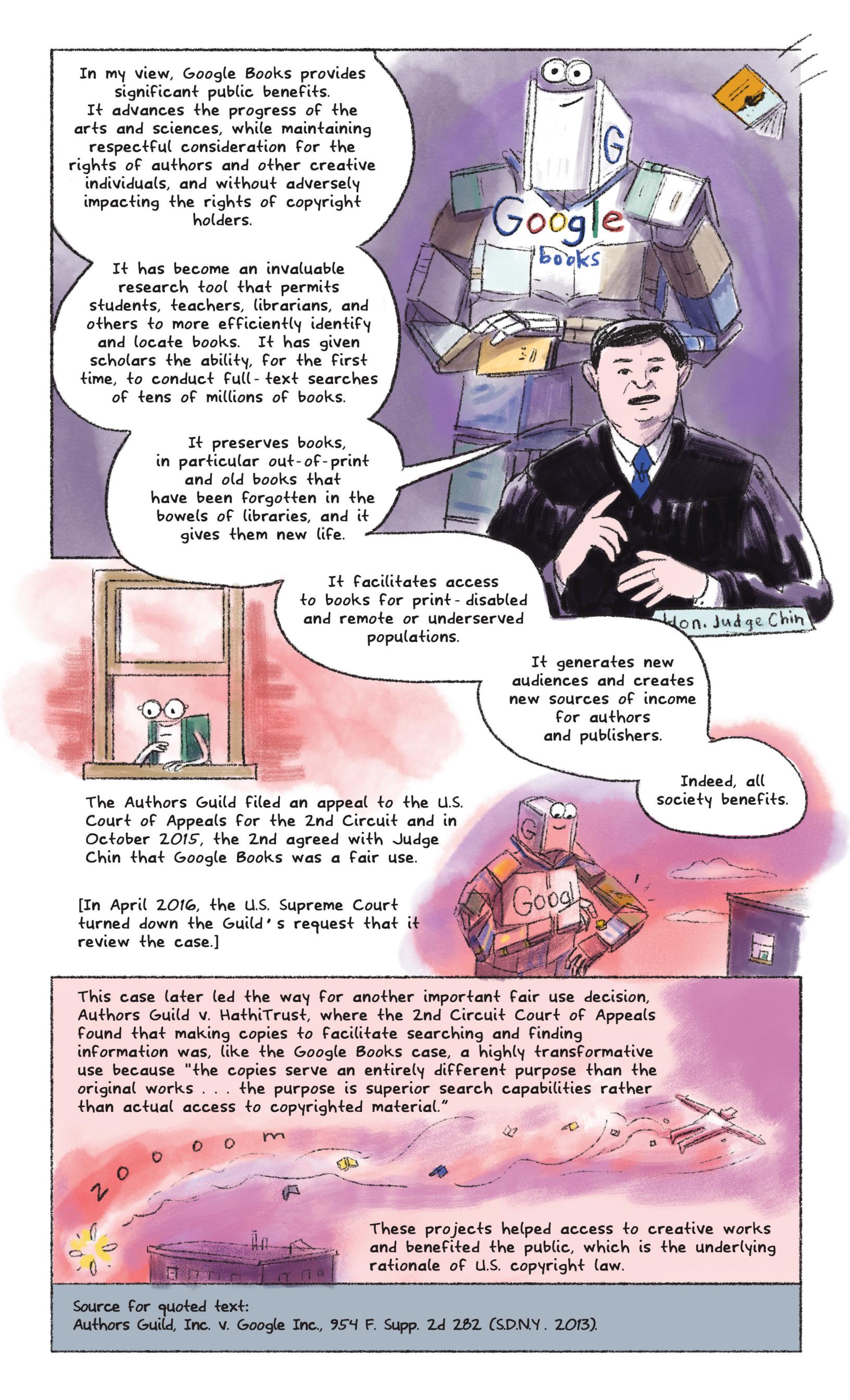
It generates new audiences and creates new sources of income for authors and publishers.

Indeed, all society benefits.

The Authors Guild filed an appeal to the U.S. Court of Appeals for the 2nd Circuit and in October 2015, the 2nd agreed with Judge Chin that Google Books was a fair use.

[In April 2016, the U.S. Supreme Court turned down the Guild's request that it review the case.]

This case later led the way for another important fair use decision, *Authors Guild v. HathiTrust*, where the 2nd Circuit Court of Appeals found that making copies to facilitate searching and finding information was, like the Google Books case, a highly transformative use because "the copies serve an entirely different purpose than the original works . . . the purpose is superior search capabilities rather than actual access to copyrighted material."



These projects helped access to creative works and benefited the public, which is the underlying rationale of U.S. copyright law.

Source for quoted text:

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