

Copyright Reforms for the Digital Age: A Closer Look at Google

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Introduction

— [What We Cover:

- History of copyright
- Google as an example
- Proposed modifications

Foundations of US Copyright Law

- [Protection for Intellectual Works

- Granted by federal government

- [Copyright Laws

- Secure a monopoly to the holder

Foundations of US Copyright Law (cont)

— [Article I, Section 8, Clause 8

— “The Congress shall have Power [...] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Foundations of US Copyright Law (cont)

— [Statute of Anne

— [Copyright Act of 1790

Foundations of US Copyright Law (cont)

— [Changes in Copyright Law

— Relaxation of formalities

— Berne Convention

Why Copyright?

- [Copy-centric

- Printing and publishing

- Guarantees compensation

- [Serves interest of public and copyright holders

Attitude Towards Copyright

— [Wheaton v. Peters

— “no reporter has or can have any copyright in the written opinions delivered by this court; and that the judges thereof cannot confer on any reporter any such right”

— [Baker v. Selden, Feist v. Rural Telephone

— “sweat of the brow”

Fundamentals of Copyright

— [Title 17, Section 102

- Works must be “fixed in a 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”
- Copyright protection can never 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 [of original authorship].”

Fundamentals of Copyright (cont)

— [Owner of a Copyrighted Work

- Section 202 specifically states this distinction, and adds that “transfer of ownership of any material object . . . does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does the transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.”

Fundamentals of Copyright (cont)

— [Exclusive Rights

- to reproduce the copyrighted work
- to prepare derivative works
- to distribute copies of the work to the public by sale or other transfer of ownership
- to perform and display the work publicly

Traditional Limitations on Copyright

— [Title 17, Section 107

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit purposes
- the nature of the copyrighted work
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- the effect of the use on the potential market for or value of the copyrighted work

Traditional Limitations on Copyright (cont)

— [Digital Media Differs From Analog Media

- Perfect copies
- Little to no marginal cost of production
- Tends to require duplication in everyday use

Digital Millennium Copyright Act

- [Protects Copy-Protection Mechanisms

- Replaces economic costs of copying with legal ones

- [Attempts to Remedy Issues Caused by Everyday Copying

Digital Millennium Copyright Act (cont)

— [Title I

- Follows World Intellectual Property Organization Treaty
- Prohibits “circumvention of technical measures used by copyright owners to protect their works”

Digital Millennium Copyright Act (cont)

— [Title I, continued...

- Prohibition on tools that expressly circumvent copy-protection mechanisms
- Limitations on Fair Use
 - Fair Use is not a valid reason to break protection
 - Protects works even out of copyright

Digital Millennium Copyright Act (cont)

— [DeCSS, an Example

- Breaks DVD encryption
- Allows transcoding of DVDs to other platforms and formats
- Illegal under DMCA even though it is otherwise Fair Use

Digital Millennium Copyright Act (cont)

Exemptions to Title I

- Non-profit libraries, archives, education, to decide whether to obtain authorized use
- Reverse-engineering for compatibility
- Encryption research
- Protection of minors and privacy
- Security testing

Digital Millennium Copyright Act (cont)

— [Title II

- Provides exemptions to copyright for “service providers”
 - Acting as a conduit
 - System caching
 - Mirroring
 - Among others...

Digital Millennium Copyright Act (cont)

— [Problems with Title II

- Does not rectify concerns with personal copying in RAM or on disk
- Leaves this interpretation to the courts

Google's Economic Model

- [Three Constituencies

- Users

- Advertisers

- Google Network Members

Google's Economic Model (cont)

- [**Users**

- 1% of revenue from search engines

- **Portal**

- Images, News, Gmail, etc.

- Search

Google's Economic Model (cont)

- [Advertisers

- Form 99% of revenue

- AdWords

- Pay-per-click

Google's Economic Model (cont)

- [Google Network

- AdSense

- Search

- Content

- Revenues returned to members

- Member control

Google's Economic Model (cont)

— [The “Hidden Constituency”

— (i.e. copyright owners)

Legal Issues Presented by Google

— [Text Excerpts and Keywords

- Search results return highlighted phrases within a summary
- Shows contextual ads along with search results
- May show adds for competitor companies along with search results

Legal Issues Presented by Google (cont)

— [Geico v. Google Inc.

- Ruled that sale of trademarked names as AdWords was legal
- Ads must not contain the trademarked name
- Check 'n Go has sued over the same issue
- There still remain questions over the legal of Google's actions

Legal Issues Presented by Google (cont)

— [Google Images

— Displays representative thumbnails along with contextual ads

— Kelly v. Arriba Soft

— Transformative works

— Perfect 10 v. Google

— Google found infringing due to profiting

Legal Issues Presented by Google (cont)

— [Caching

- Provides plain text versions of sites
- Allows viewing of pages that are no longer online
- Acts similarly to the Internet Archive Wayback Machine

Legal Issues Presented by Google (cont)

- [Internet Archive Wayback Machine

- Provides historical views of the internet

- Healthcare Advocate, Inc. and Harding Earley Follmer & Frailey

- Healthcare Advocates

- Sued Harding et al. and Internet Archive for copyright and DMCA violations

Legal Issues Presented by Google (cont)

— [Field v. Google

— Decided that Google caching was Fair Use

— “improv[es] access to information on the internet”

— Does not resolve the issue of DMCA violations and robots.txt

Legal Issues Presented by Google (cont)

- [Caching in Canada

- Bill C-60

- Amendment to Copyright Act

- Implements parts of WIPO Treaty

- Could make caching of content illegal

Legal Issues Presented by Google (cont)

News

- News entries are gathered from media outlets
- Contains a short summary with a link to original provider
- Google does not advertise on News site, nor cache articles
- AFP complaint
 - Resulted in the removal of all references to AFP articles and content from the site

Legal Issues Presented by Google (cont)

— [Books and Library Project

- Aims to digitize entire libraries of books
- Provides small excerpts and purchasing information for copyrighted works (and does not profit)
- Provides full versions of public domain works

Legal Issues Presented by Google (cont)

Books and opt-out

- Google delayed the project to allow copyright-holders to opt-out
- Isn't sufficient to meet copyright restrictions
- Sued by three authors for copyright infringement because Google didn't ask explicit permission

Legal Issues Presented by Google (cont)

— [A Summary of Issues

- Opt-out and implicit licenses are not a legal standard
- Derivation of profit may not be legal
- The DMCA

To allow Google and others to be confident in the services they provide, all of these problems must be addressed...

Legal and Technical Solutions

- [Kelly v. Arriba Soft

- The court promotes the dissemination of freely available information on the internet

Legal and Technical Solutions (cont)

— [Proposals

- Modify copyright to promote sciences, useful arts, and the dissemination of public information
- Freely publishing on the web carries an implicit license permitting others to copy and disseminate

Legal and Technical Solutions (cont)

- [Proposals, continued...

- An opt-out scheme for protecting the rights of diligent copyright owners

- Technical solution along the lines of robots.txt

Legal and Technical Solutions (cont)

- [Proposals, continued...

- Amendment to the DMCA that allows circumvention for the preservation of Fair Use and using content out of copyright

- Legalizes programs such as DeCSS

Legal and Technical Solutions (cont)

— [Proposals, continued...

— Have suggestions implemented by the Berne Convention

— Applies new rules to a wider internet audience

Why It Works Without Making Trouble

```
<DomainEntry>
  <Requestor>Google.com</Requestor>
  <Right>NonProfitDisplay</Right>
  <Right duration="5 days">PublicCache</Right>
</DomainEntry>

<DomainEntry>
  <Requestor>Alexa.com</Requestor>
  <Right>NonProfitDisplay</Right>
  <Right duration="indefinite">PublicCache</Right>
</DomainEntry>

<DomainEntry>
  <Requestor>Others</Requestor>
  <Right cache="5 days">PrivateCache</Right>
</DomainEntry>
```

Modified License

Protects interests of
both parties

Enforceable by law

Congruent with
philosophy

Why It Works Without Making Trouble (cont)

- [Modifications to the DMCA

- Doesn't condone piracy

- Assimilates standards for analog and digital works

- Copy-protection circumvention already exists

Why It Works Without Making Trouble (cont)

- [Berne Convention

- Difficult to get all members to agree but...
- Simplifies international copyright dealings
 - Jurisdiction problems

Questions?