Books, Computers, and the Law

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The *first* book scanning revolution

- Consider the printing press

- First use: printization

- Transforms our relationship to text

- Transforms our preservation strategies

Orphan works

- Some books are in copyright…

  - …but have unfindable owners

- These books aren't doing anybody any good

- They are a failure of the copyright system

  - Reform legislation has so far gone nowhere

Some obvious benefits

- Fair use no longer turning on one die roll

- The universal library, this time for real
  - Unusually solicitous of the disadvantaged

- New revenue source for authors & publishers
  - For some books, the only way?

Civil procedure

- How good was the notice?

  - Especially outside of the U.S.

- Who are these authors and publishers?

  - Do they speak for, e.g. academic authors, who want open access rather than $$$?

- What kind of a class action is this …

©

- "© is opt-in" is dogma in most of the world

    - (Perhaps not the best rule, but …)

    - Technically, © owners are "agreeing"

    - But U.S. class action law is *sui generis*

- Lots of controversy over publishing-industry details

Information policy

- Huge centralization of books in Google

- Libraries burnt by journal pricing

- Reader privacy

- Equitable access, pro and con

- Is Google a library?

Antitrust

- Is the settlement a price-fixing scheme?
  - Algorithmic pricing to mimic the market?
  - New products otherwise unavailable?
- What about the orphans?
  - Good luck trying to compete!

The heart of the deal

- The settlement makes many orphaned books available again *because* it's opt-out

  - If you like books, that's good

  - But is this a legitimate use of a class action?

- Put another way, is this a job for Congress?

  - What else is now on the table for courts?

Closing thought

- 0 and ∞ make sense, but 1?

  - If we think orphan works are valueless, then they should be public-domain

  - If we think these rights are worth respecting, then they should be respected

- I'm still looking for the limiting principle

Discussion