

Google joins infringement crowd; publishers object

Publishers of music and video vigorously police their copyrights against infringement through Internet “file sharing.” Now publishers of text are beginning to notice electronic bootlegging, starting with “search engines” that index, “cache” and distribute copies of Web pages, books, articles, etc.

This past March, Agence France-Press (AFP) filed suit against Google for the unauthorized inclusion of AFP news headlines, story leads and photo thumbnails (stolen by Google from the Web sites of paying AFP subscribers) on “Google News” (<http://news.google.com>).

In May, the Association of American University Presses (AAUP) sent a strongly worded public letter questioning Google’s distribution of images of book pages, scanned from library collections through “Google Print for Libraries” (<http://print.google.com>), “a plan that appears to involve systematic infringement of copyright on a massive scale.”

Both AFP and the AAUP raise essentially the same two issues about the business model of Google, Inc.:

- Is Google’s commercial use of entire pages of copyrighted books, or of the headline and lead of every AFP story, “fair use?” This seems highly unlikely, given the factors that determine “fair use,” the quantity of material being distributed, and the fact that Google is a commercial service that generates advertising and other revenues from these programs.

- Google claims to offer publishers (but not authors) the ability to “opt out.” Both AFP and the AAUP, however, say that Google has ignored such requests, and that Web reproduction requires an explicit “opt-in” license from the copyright owner.

As the AAUP letter puts it, “Google’s response ... that [publishers] may “opt out” of the program seems both legally irrelevant and factually disingenuous. ... It is irrelevant because all a publisher can do

under this option is assert its control ... after the infringing copies have been made. It ignores the fundamental exclusive right of copyright owners to make copies in the first place. ... And disingenuous because ... at least two publishers have asked that the works to which they hold copyright not be included in Google Print for Libraries, and to date, Google has not complied.”

SearchEngineWatch.com quotes counsel for the [U.K.] Publishers Association, which has raised similar concerns with Google.

“It’s like robbing somebody’s shop and then saying, ‘Oh, I’m sorry, I’ll put the chocolate bar back if you say that’s yours. ...’ That’s not how property law works, especially intellectual property.”

Google also claims that its reproduction of AFP headlines and leads benefited AFP. But if that were true, AFP would be giving away their news headlines and summaries to any Web site that wanted them rather than selling them by subscription.

Legally, who benefits from the infringement is relevant only to the amount of damages, not to the definition of infringement. If copyright holders think that a particular use would be beneficial, they can license it for free or for a reduced price.

As a wire service, AFP sells a news feed whose value is largely destroyed by Google’s bootlegging of headlines and article leads. And AAUP members generate revenue for themselves, and for authors, through “offprints” and licensing of journal articles, book chapters and other excerpts for inclusion in course readers and the like.

Publishers rightly fear that they may share liability for Google’s infringement of authors’ copyrights. The AAUP letter says, “This large-scale infringement has the potential for serious financial damage to the members of AAUP.” *Business Week* quoted Stanford law professor and Internet legal guru Larry Lessig as saying, “There’s a huge exposure” to copyright liability.

Historically, as in *Tasini v. The New York Times*, publishers have

Historically, publishers have been the leading thieves of electronic rights to freelance writing. The AFP and AAUP challenges to Google are two cases, however, in which publishers and writers have a common interest in protecting their rights against electronic plagiarism.



by Edward Hasbrouck

been the leading thieves of electronic rights to freelance writing. The AFP and AAUP challenges to Google are two cases, however, in which publishers and writers have a common interest in protecting their rights against electronic plagiarism. Authors have a great deal at stake, and a great deal to gain if AFP and the AAUP are successful.

NWU San Francisco Bay Area chapter member Edward Hasbrouck is the author of The Practical Nomad: How to Travel Around the World (Avalon Travel Publishing, 3rd ed. 2004). There are links to the AFP complaint and the AAUP letter to Google in the “Writing and Publishing” section of his blog at www.hasbrouck.org/blog.