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international law of contemporary media

session 12: google book search. overview of key topics. Q&As

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today's session

- **google book search project:** copyright issues; the recent deal and beyond: some thoughts on the impact of the project on media access and use
- **overview of the course's goals**
- **exam parameters**
- **questions and answers; feedback exchange and discussion.**

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google book search

- a Google service that searches the full text of books that Google scans, converts to text using optical character recognition, and stores in its digital database
- formerly known as Google Print when introduced at the Frankfurt Book Fair in 2004
- october 2009: 10 million books scanned
- **basically 3 types of books: (i) in the public domain 16%; (ii) under copyright and out of print 75%; (iii) under copyright and in print 9%.**

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google book settlement

- Google pays a **total of \$125 million to rights holders of books** it had scanned, to cover the plaintiffs' court costs, and to create a **Book Rights Registry**
- Google created also a Google Book Settlement website; it allows authors and other rights holders of out of print (but copyright) books to submit a claim by June 5, 2010. **In return, they will receive \$60 per full book (\$5 to \$15 for partial works)**
- Google will be able to show ads and make available for sale digital versions of each book. **Copyright holders will receive 63% of all advertising and e-commerce revenues associated with their works.**

google book settlement

- as revised, the settlement includes only books that were either registered with the US Copyright Office or published in the **US, UK, Canada or Australia**
- Google could however work directly with int'l rights holders or organisations that represent them
- **access models:**
- free library access at designated terminals
- **print-on-demand**
- **file download**
- **consumer subscription**
- authors can make books available for free or allow re-use under creative commons or other licenses.

google book search case

- the Authors Guild and the Association of American Publishers sued claiming '**massive copyright infringement**'
- **2 core arguments:** (i) massive copying of copyrighted works without asking for permission and (ii) google is profiting from authors' work
- from a legal viewpoint, unanswered question: **is google's book search project fair use?**
- two cases to consider when contemplating: *mp3.com (UMG Recordings, Inc. v. MP3.com, Inc., 2000)* and *Kelly v Arriba Soft Corp., 2002*.
- <http://images.google.ch/images?hl=de&source=hp&q=andy+warhol&qbv=2&aq=f&oq=>

fair use (1)

- US legal doctrine; known as 'fair dealing' in common law and as 'limitations and exceptions to copyright' under civil law jurisdictions
- allows limited use of copyrighted material **without requiring permission from the rights holders**
- **the fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (incl. multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.**

fair use (2)

- case-by-case test; fact intensive
- in determining whether the use made of a work is a fair use **4 factors** are considered:
 - **the purpose and character of the use**, incl. whether such use is of a commercial nature or is for nonprofit educational purposes;
 - **the nature of the copyrighted work**;
 - **the amount and substantiality of the portion used** in relation to the copyrighted work as a whole; and
 - **the effect of the use upon the potential market for or value of the copyrighted work.**

google book search: pros

- unprecedented access to what may become **the largest online corpus of human knowledge**
- no matter how content is made available, google offers an **index of all books**
- millions of in-copyright out-of-print books will otherwise be not available (possibly also generating new profit for authors)
- access is free
- could change the ways we read, research.

google book search: cons

- copyright violations
- *de facto* monopoly for google on access to the global digital library
- google as a private company: 'The real risk of privatization is simple: companies fail (...) Should we entrust our heritage and collective knowledge to a company that has been around for less than a decade? What if stockholders decide that Google Library is a money loser or too much of a copyright liability?' (Siva Vaidhyanathan, 2007)
- significant privacy issues
- language issues

goals of the course

- understanding the framework of rules of relevance to media at the int'l level
- fragmented rules (horizontally and vertically); also profoundly different types of rules: from HR to satellite law
- putting different developments into the 'bigger' picture and having a more differentiated, informed view (e.g. new TLDs; News Corp. deal with Microsoft; media market dynamics, etc.)
- learning to deal with complexity and uncertainty.

a panoply of organisations

- European Union (EU)
- Council of Europe (CoE)
- Internet Governance Forum (IGF)
- Internet Corporation for Assigned Names and Numbers (ICANN)
- International Telecommunication Union (ITU)
- World Intellectual Property Organization (WIPO)
- World Trade Organization (WTO)
- United Nations Educational Scientific and Cultural Organization (UNESCO)

exam info (1)

- oral; limited to 20 minutes; 5 minutes to prepare notes; 2 questions:
- Q1: corresponding to everyone's role during the interactive session (i.e. *pro and con* cyber-regulation or *pro and con* cultural diversity regulation)
- Q2: a concrete 'small-scale' question to be picked blindly from a list of 20 questions
- examples: Q: What is NT under the law of the WTO? Difference in NT obligations under GATT and GATS, or Q: What is ICANN and what are its main functions?

exam info (2)

- Q1: not just arguing; choose well your arguments (better fewer than many but unstructured); elaborate; use examples if you can; link between law and facts; between different arguments; don't take paths not travelled yet
- Q2: 1-2 minutes; answer the question precisely and give the essential information

the end

- thank you and good luck (!)
- for the exam and for all your other endeavours
