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# **Copyright Law and Massive Book Digitization Projects: A Current Interpretation**

CAPSTONE REPORT

**Darren Baker  
Vice President  
Dijahnelos Homes, Inc.**

University of Oregon  
Applied Information  
Management  
Program

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722 SW Second Avenue  
Suite 230  
Portland, OR 97204  
(800) 824-2714



**Approved By**

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**Dr. Linda F. Ettinger**  
**Academic Director, AIM Program**



**Abstract**  
**for**  
**Copyright Law and Massive Book Digitization Projects: A Current Interpretation**

Six pre-selected legal concepts related to copyright law (*copyright infringement, fair use, intermediate copy, library exception, property, and transformative use*) are examined in relation to massive book digitization projects, such as the Google Book Search (Jeweler, 2005). Content analysis is applied to literature, published between December 2004 to present, in order to develop interpretive narratives for each concept. These concepts present a “snapshot-in-time” that covers current discussion for people tracking topics of interest.



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## CHAPTER I – PURPOSE OF STUDY

### *Brief Purpose*

The purpose of this study is to explicate a set of six pre-selected legal concepts pertaining to copyright law as these concepts frame current discussions in the literature on the topic of massive book digitization projects (“Google,” 2004; Bengtson, 2006). The goal is to identify the current state of discussion in relation to each of these six legal concepts. The pre-selected set of six copyright concepts includes *copyright infringement* (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007).

Book digitization refers to the scanning of printed books in order to create both images and Optical Character Recognition (OCR) files (“Google,” 2004; “Cooperative Agreement,” 2006). In turn, these files are stored in a searchable database for use by the public in general (Kelly, 2006a). Massive digitization is the digital conversion of library materials on an industrial scale—whole library collections are digitized without making a selection of individual materials (Coyle, 2006). Until recently, book digitization on a massive scale seemed unlikely (Tennant, 2006) because of a number of key problems, including the lack of public search engines (Kelly, 2006a), compression technology (Kelly, 2006a) and funding (U.S. National Commission on Libraries and Information Science, 2006). According to the U.S. National Commission on Libraries and Information Science (NCLIS) (2006), the opportunity to digitize books on a massive scale has become more likely with the creation of such programs as the Google Book Search Project (“Google,” 2004) and the Open Content Alliance (Bengtson, 2006). However, along with the creation of these projects to scan printed books on a massive scale comes a larger

public discussion of legal questions regarding copyright law (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005).

The U.S. Copyright Office (2006) defines copyright as:

A form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and In the case of sound recordings, to perform the work publicly by means of a digital audio transmission (§ 1, ¶ 1).

Jeweler (2005) writes, “Copyright law confers on the rights holder the exclusive right to control reproduction, display, and distribution of a protected work” (p. 3). A potential user of a copyright protected work must gain the rights holder’s permission as well as negotiate terms, conditions and payments (Jeweler, 2005). Some of the books that Google is digitizing are

protected by copyright (Hanratty, 2005). Google is conducting this digitization of copyright protected works without seeking permission from the rights holders (Givler, 2005). Given the volume of works Google intends to digitize, the company's actions constitute copyright infringement (Hanratty, 2005). The Author's Guild (2005) alleges:

By reproducing for itself a copy of those works that are not in the public domain . . . , Google is engaging in massive copyright infringement. It has infringed, and continues to infringe, the electronic rights of the copyright holders of those works (p. 2).

This study is designed as a literature review (Leedy & Ormrod, 2005) on the topic of copyright as it intersects with massive book digitization. Google's ("Google," 2004) announcement of a program to digitally scan the library books of Harvard, Stanford, the University of Michigan, the University of Oxford, and The New York Public Library and make them searchable online is used as a time delimiter for this study; only items published after December 14, 2004, are collected. Additionally, only articles that specifically address at least one of six pre-selected legal concepts concerning copyright and massive book digitization are selected for further examination. Using conceptual content analysis (Palmquist, et al., 2005), the six pre-selected legal concepts associated with copyright in regards to massive book digitization are coded for their existence and use within the selected literature. The expected result of the data analysis process is a tabulation of identified factors that explicate each of the six pre-selected legal concepts.

Based on the results of the data analysis process, the outcome is a discussion of the six legal concepts presented in narrative format that highlights the factors that help explain how these terms are being used currently in the selected literature. The outcome of this study is designed to serve as a "snapshot-in-time" of the current discussions regarding copyright and

massive book digitization for comparative examination as the discussions continue into the future.

The audience for this study is individuals within the general public who are interested in becoming better informed about the issues of massive book digitization, with a focus on copyright as framed currently. This audience may include varied stakeholders such as library patrons, teachers and public policy makers.

### *Full Purpose*

In the last two and a half years, massive digitization projects at libraries have widened public access to library collections via the World Wide Web (Bengston, 2006). According to Coyle (2006), massive digitization is “the efficient photographing of books, page-by-page, and subjecting those images to optical character recognition (OCR) software to produce searchable text” (p. 641). The Google Book Search (GBS) project is part of these massive digitization projects (Bengston, 2006).

Google’s (“Google,” 2004) digitization project to scan the library books of research libraries at Harvard, Stanford, the University of Michigan, the University of Oxford, and the New York Public Library has grown over the past two and a half years to include the University of California, the University of Complutense of Madrid, the University of Wisconsin-Madison, the University of Virginia, the National Library of Catalonia, the University of Texas at Austin, Princeton, and the Bavarian State Library (Grogg & Ashmore, 2007). Grogg and Ashmore (2007) write, “With Google the favorite discovery tool among the current generation, it is easy to see how Google has become an important partner for libraries to further their digitization goals” (§ 11). Google’s digitization project generates one digital copy of a book for a participating library and at least one digital copy of the same for Google (“Cooperative Agreement,” 2006; Kupferschmid, 2005). In the literature published on the topic of Google’s digitization project from the date of its announcement on December 14, 2004, to present, an area of concern is identified on the topic of copyright (Jeweler, 2005; “McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005).

Google's project is presented in the literature using legal concepts related to U.S. copyright law. Six of these concepts are selected for further explication in this study. They include:

1. **Copyright Infringement** ("McGraw-Hill Companies," 2005; "The Author's Guild," 2005), which considers issues such as the commercial nature of an endeavor and the copying of works still protected by copyright ("McGraw-Hill Companies," 2005).
2. **Fair use** (Jeweler, 2005), which considers special dispensation of certain users of copyrighted materials and issues such as copyright infringement and the amount of the portion of the copyright protected work used (Jeweler, 2005).
3. **Intermediate copy** (Kupferschmid, 2005), which considers issues such as fair use and the retention of a copy of the original work (Kupferschmid, 2005).
4. **Library exception** (Gbegnon, 2006), which considers issues such as copyright infringement and the use of the work by libraries and archives (Gbegnon, 2006).
5. **Property** (Bracha, 2006), which considers issues such as copyright infringement, orphan works, and the opt-out model in relation to intellectual property (Bracha, 2006).
6. **Transformative** (Toobin, 2007), which considers the creation of a new and independent work in relation to issues such as fair use.

The purpose of this study is to explicate six pre-selected legal concepts as they relate to the current state of discussion concerning copyright, and the larger topic of massive book digitization. For example, Dames (2006a) addresses one of these six legal concepts, *fair use*, when he writes, "The [Google Book Search] litigation—with its high-profile, 'Do No Evil' defendant fighting the comparatively less well-respected publishing industry and theories of *fair*



*use* dancing around lawyers' heads—is the sexiest legal issue out there right now” (§ 3). Google intends to display through its Google Services small excerpts from the digitized books protected by copyright that it determines constitutes *fair use* under copyright law (“Cooperative Agreement,” 2006). *Fair use* is an exception to copyright law and places limitations on the exclusive rights of copyright holders (Jeweler, 2005). In order to determine *fair use*, a court must weigh four non-exclusive statutory factors (Hanratty, 2005): (a) purpose and character of the use, (b) nature of the copyrighted work, (c) amount used in relation to the whole, and (d) effect on the potential market for or value of the work (17 U.S.C. § 107).

This study is designed for individuals within the general public (in contrast to members of the legal profession or publishing profession) who are interested in becoming better informed about the copyright issues relevant to massive book digitization. Digital libraries can allow a greater number of users—including library patrons, teachers and public policy makers—to make more effective use of library collections (Crane, 2006). However, questions are being raised about copyright and massive book digitization including (a) Hanratty (2005) on the topic of *copyright infringement*; (b) Jeweler (2005) on the topic of *fair use*; (c) Kupferschmid (2006) on the topic of *intermediate copies*; (d) Gbegnon (2006) on the topic of the *library exception*; (e) Bracha (2006) on the topic of *property*; and (f) Toobin (2007) on the topic of *transformative*. For example, in a legal brief on the Google massive book digitization project, Hanratty (2005) concludes that Google's actions *infringe* the rights of copyright holders. In Jeweler's (2005) report, the author posits that Google's claim of *fair use* is similar to technology-related category of fair use known as time shifting. Kupferschmid (2005) writes that the copies of digitized books that Google stores as part of the company's massive book digitization project are not *intermediate copies* as that concept has been interpreted in other copyright cases related to

digital works. Gbegnon (2006) explores a re-conceptualization of the library under which Google would qualify for the *library exception* of copyright afforded to libraries and archives. Bracha (2006) considers the exclusive rights associated with *property* as they relate to copyright and how these rights can be interpreted in light of Google's massive book digitization project. Lastly, Toobin (2007) reports Google's assertion that the company's digitization of a book from an analog form to a digital form is *transformative*. These legal concepts are relevant to the discussion of a digital library (Toobin, 2007; Kupferschmid, 2006). Additionally, the dramatization of these legal concepts might motivate some to pursue new digital rights agreements (Crane, 2006).

It is possible that these legal questions surrounding massive book digitization and copyright will not be resolved in court because Google will settle both lawsuits against it (Dames, 2006a; Toobin, 2007). Nonetheless, this researcher believes that the audience for this study is interested in understanding the current state of discussion relevant to the goal to promote a balance between the progress of science and useful arts and the securing of exclusive rights for content creators (The United States Constitution, 1787, Article I, § 8, Clause 8) in an online environment in regards to the massive digitization of books. That is to say that copyright is meant to balance both incentives for content creators in the form of exclusive rights for the reproduction and dissemination of their works for a fixed period of time and a benefit to society as a whole by allowing information seekers to use the works not in the public domain under exceptions to those exclusive rights (Gbegnon, 2006).

This study is designed as a literature review of selected references (Leedy & Ormrod, 2005) on the topic of massive book digitization. According to Leedy & Ormrod (2005), "The [literature] review describes theoretical perspectives and previous research findings regarding the

problem at hand” (p. 64). Literature is collected for this study that is published since December 14, 2004, as a way to insure the currency of the discourse on the topic of massive book digitization since the announcement of Google’s (“Google,” 2004) massive book digitization project. The goal is to examine selected literature according to a pre-selected set of legal concepts, in order to establish an interpretive narrative of the nature of discussions surrounding each selected concept. Using the conceptual content analysis (Palmquist, et al., 2005), factors associated with each of the six pre-selected legal concepts pertaining to copyright are identified in the selected literature through a coding process. The number of pieces of literature in the data set for coding is 28 (see Appendix B: Data Sources). The pre-selected list of terms is used to extract factors that help define these legal concepts in the current literature associated with copyright and massive book digitization projects.

The expected result of the conceptual content analysis is a list of words and phrases that help define the six legal terms used in current literature. Raw data are presented in six tables that display the literature sources used for the study; the words and key phrases coded for; the locations of the words and key phrases within the literature; and paraphrases or direct quotes of the ideas expressed in relation to the words and key phrases. Each table is structured in relation to a selected word or key phrase (see Figure 1 for coding template).

An analysis of the results of the study is used to create the outcome for this study, developed for a broad audience impacted by this new world of information access including publishers, librarians, authors, readers, and researchers (Bubnoff, 2005). Quint (2005) writes, “...all information professionals have known that the Universal Virtual Library is growing out of the Web and its search engines and that, some day, this emerging phenomenon will threaten and finally engulf the world of traditional, brick-and-mortar libraries” (¶ 1). Additionally, academics

could receive a benefit from this universal virtual library by saving travel time and money and by broadening the scope of their research through the use of keywords (Lee, 2004). Finally, the universal virtual library could impact K-12 students and how they view research (St. Lifer, 2005).

The final outcome of this study is an interpretive narrative of the ideas related to copyright and massive book digitization projects, designed to serve as a “snapshot-in-time” of the current discussions regarding copyright and massive book digitization. This “snapshot-in-time” serves to make observations on massive book digitization as a system prior to the introduction of some new dynamic into that system. A new dynamic in the case of this study could be a legal ruling (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005 or settlement (Toobin, 2007) that impacts copyright and massive book digitization. Subsequent observations could be formulated after these dynamics are known and then compared to this study. Such a comparison is outside the scope of this study. The interpretive narrative, structured by the six pre-selected legal concepts, is written to be comprehensible to a general audience as opposed to an audience of strictly legal or publishing professionals. The narrative is formulated by discussing how each of the pre-selected legal concepts is used and interpreted in current literature in relation to copyright and massive book digitization.

### *Limitations to the Research*

According to the U.S. National Commission on Libraries & Information Science (2006), “The project announced in December 2004 for a partnership between Google, Inc. and five major research libraries . . . to digitize over 10 million unique titles launched a new era of large-scale digitization heretofore not imagined feasible or affordable” (p. 3). Specifically, Google

(“Google,” 2004) made this announcement on December 14, 2004. In order to define this new era, the literature selected for this study is limited to those items published from December 14, 2004, to the present.

The focus of the literature selected for this study is limited to those items that address one of the six pre-selected legal concepts pertaining to copyright, related to massive book digitization. A preliminary review of the literature reveals, for example, that the six terms of *copyright infringement* (“McGraw Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007) can be further defined by additional terms such as market, opt-out, orphan works, and public domain. Market is addressed as a sub-topic to *fair use*; and opt-out, orphan works, and public domain are sub-topics to *property*.

The literature is collected for this study by a combination of library resources, electronic databases, and the World Wide Web. Literature is deemed useful for this study based on the following criteria:

1. Publication date: With the exception of reference literature on the topic of research methods, only literature published on or after December 14, 2004, is used.
2. Copyright and massive book digitization: Only literature that addresses the legal implications of book digitization is used as data for this study. Literature that addresses economic or social implications of book digitization are used as part of the overall bibliography for the study, but they are not part of the conceptual content analysis.

3. Digitization on a massive scale: Only literature that addresses massive or large-scale digitization projects is used. These projects include the Google Book Search and the Open Content Alliance (Toobin, 2007).
4. U.S. relevance: The primary complaints of copyright infringement from massive book digitization are filed in U.S. Federal Court (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005). Thus the literature on copyright is further limited by those items that address U.S. copyright only. However, since some of the massive book digitization projects include international libraries, international articles are used as part of the overall bibliography for this study.
5. Electronic sources: Additionally, all of the literature is limited to electronic sources. In other words, only literature that could be obtained in full text from one of the sources listed in the section titled Literature Collection in the Methods Chapter is used. However, non-electronic sources of literature are used as part of the overall bibliography to define the research method and document formatting for this study.

This study uses conceptual content analysis (Palmquist, et al., 2005) to analyze the selected literature. The focus of conceptual analysis is looking at the occurrence of selected terms within the literature (Palmquist, et al., 2005). The occurrence of a term can either be explicit—the actual appearance of the selected term; or implicit—an implied meaning of a term or phrase that is similar in meaning to the selected term (Palmquist, et al., 2005). The terms used for this study are derived from the focus on copyright and massive book digitization. These terms are *copyright infringement* (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007). This study is limited to

these six terms. Other terms—social, economic, legal, or otherwise—are not coded for in the literature.

Conceptual content analysis is chosen for this study because of the use of a literature review as the primary research method. Moreover, content analysis is used due to its versatility: it can be applied to any form of recorded communication (Palmquist, et al., 2005). Conceptual content analysis can be applied to a broad field of academic disciplines (Palmquist, et al., 2005). Also, one of the possible uses of conceptual content analysis is the identification of intentions, focus or communication trends amongst a larger group, which suits the purpose of this study in identifying the terms associated with copyright and massive book digitization.

### *Problem Area*

Massive book digitization projects are part of the larger issues related to digital rights and intellectual property (Lavoie, Connaway, & Dempsey, 2005; Peukert, 2005). Digital rights refers to a set of actions normally permitted in accordance with the rights of an individual as they exist in any other aspect of life but which have been impacted by a change to digital technology (“Digital Rights,” 2007). Intellectual property (IP) refers to various legal entitlements that attach to certain names, written and recorded media, and inventions; the entitlement’s holder is generally empowered to exercise exclusive rights in relation to the subject matter of the IP (“Intellectual property,” 2007). These two concepts have led to what Peukert (2005) calls the “digital dilemma.” The digital dilemma is the dilemma that exists because digital technology and the Internet facilitate global dissemination of information while simultaneously diminishing the control copyright owners have over their copyrighted works (Peukert, 2005). Vaidhyathan (2005) writes, “[The Google project] injects more uncertainty and panic into a [copyright]

system that is already out of equilibrium” (§ 35). Indeed, this digital dilemma is at the heart of the legal issues surrounding Google’s massive book digitization project to digitize the collections of several libraries around the world (Dye, 2006; “Google,” 2004; Grogg & Ashmore, 2007).

In the case of Google’s massive book digitization project, copyright holders assert that the project ignores their fundamental right to make copies and to distribute those copies (Givler, 2005). Moreover, the project is seen as a form of feudalism in which Google makes a profit off of the content someone else created (Dye, 2006). The Author’s Guild (“The Author’s Guild” 2005) alleges that Google will generate advertising revenue by attracting more visitors to its website because of hosting a digital archive of all of the books the company is digitizing. Publishers would like to share in the potential revenue stream created by the Google project (U.S. National Commission on Libraries and Information Science, 2006).

Google’s massive book digitization project is viewed as a significant step toward a universal virtual library (Quint, 2005). Also, the digitization of the books is considered by some to be a valid and socially useful function (Jeweler, 2005). By creating a searchable index of millions of books, Google is establishing a tool of historic significance (Band, 2006a). Indeed, according to Coleman (2006), the Google massive book digitization project is about the public good and the promoting and sharing of knowledge (p. 10). Dye writes, “Critics and detractors of the [Google digitization project] might disagree on the exact shape [the] future of digital content will take, but all agree that the Internet, with its nearly universal availability, unlimited storage capacity, and powerful search capabilities, needs a comprehensive library” (p. 37). Thus, the project transcends debates about digital rights and intellectual property (Coleman, 2006).

The Google massive book digitization project is facing litigation due to the dilemma of digitizing books under copyright protection to create a searchable index (“McGraw-Hill



Companies,” 2005; “The Author’s Guild,” 2005). It is possible that this dilemma will be settled before it goes to court (Toobin, 2007), in which case the core legal issues of digital rights and intellectual property in regards to massive book digitization will not be resolved (Dames, 2006a). As written in Google’s Company Overview (2007), “Google’s mission is to organize the world’s information and make it universally accessible and useful” (§ 1). Google took another step toward achieving its mission (Toobin, 2007) when the company announced in December 2004 that it intends to digitize the collections of five different research libraries: Harvard, Stanford, Oxford, the University of Michigan, and the New York Public Library (“Google,” 2004). Sandler (2005) writes, “[Google Book Search] is clearly a breathtaking expansion of the democratization of human learning; probably the most significant since the advent of print technology attributed to Gutenberg in the 15<sup>th</sup> century” (p. 7). According to Lavoie, Connaway, & Dempsey (2005), Google’s announcement “...has, predictably, stirred conflicting opinion, with some viewing the project as a welcome opportunity to enhance the visibility of library collections in new environments, and others wary of Google’s prospective role as gateway to these collections” (p. 1). In any case, the massive book digitization projects of Google and others has led some to talk about the birth of a universal library (Bengston, 2006). According to Hilton (2006), “We are on the cusp of a world in which everyone will have access not only to online information but also to information that traditionally was accessible only by going into a library or archive stack or by asking somebody to bring the information to you” (p. 64).

The Google project has led some to question the role of librarians in this new digital world (Byrd, Charbonneau, et al., 2006). Bell (2005) writes, “Speculation persists that [academic librarians] may soon be the higher-education equivalent of the Maytag repairman, as the Internet becomes the first place students and professors look for information” (§ 1). However, some are

keen on delineating the differences between Google and librarians such as Byrd, Charbonneau, et al. (2006) and Litwin (2004). Byrd, Charbonneau, et al. (2006) assert that Google is in the indexing business and not the metadata business, which means any book search tool offered by Google will still require librarians to create subject search capabilities. Also, Litwin (2004) writes that Google's digital library will not encompass the values usually associated with the word "library" such as public access, collective ownership, privacy, organization, bibliography, and librarianship as a profession.

While the university libraries participating in the Google Book Search project had digitization efforts that pre-dated the project, none of these efforts match the scale of the Google Book Search project (Grogg & Ashmore, 2007). The scope of the project has resulted in legal challenges on the grounds of copyright infringement ("McGraw-Hill Companies," 2005; "The Author's Guild," 2005). In their work, librarians attempt to comply with copyright law while simultaneously providing as much access to their collections as possible (Grogg & Ashmore, 2007). As noted by Lavoie, Connaway and Dempsey (2005):

It will be some time before [Google Book Search's] implications for libraries and library print book collections can be fully appreciated and evaluated. But the strong interest and lively debate generated by this initiative suggest that some preliminary analysis—premature though it may be—would be useful (§ 3).

The only implication of the Google massive book digitization project that is known for certain is that it will bring change (Sandler, 2005). Sandler (2005) writes, "Perhaps it is causing change, but more likely it is catalyzing changes already underway" (p. 21). This study seeks to explicate the current understanding of these changes as they relate to copyright and massive book digitization.

## CHAPTER II – REVIEW OF REFERENCES

The Review of References is an annotated bibliography of the key references used in the design and development of this study. The Review of References does not list all of the references used in this study. Each annotated reference is listed alphabetically and includes: (a) specific aspects of the reference used in relation to this study; (b) description of the parts of the study supported by the reference including whether the reference is used as data; and (c) the criteria used to select and qualify the reference for inclusion in this study.

**Band, J. (2006a).** The Google Library project: The copyright debate (*Office for Information Technology Policy OITP Technology Policy Brief*) [Electronic Version]. Retrieved April 24, 2007 from <http://www.ala.org/ala/washoff/contactwo/oitp/googlepaprfnl.pdf>.

- A. Band's article is useful to this study because the author provides a brief overview of a multitude of the copyright issues related to Google's massive book digitization project. Band (2006a) writes, "This paper will attempt to set forth the facts and review the arguments in a systematic manner" (p. 1). Band summarizes the following items: (a) The Google Book Search Project; (b) Google's opt-out policy; (c) the library copies; (d) actions by other search engines; (e) opt-in vs. opt-out; (f) the litigation; (g) Google's fair use argument; (h) the owners' response to Google's fair use argument; (i) intermediate copying; (j) the equities; (k) the social benefit of the library project; (l) the owners' desire for control; (m) the owners' desire for compensation; (n) the economics of the library project; (o) harm to the owners; (p) the definition of snippets; (q) security; (r) floodgates; (s) the impact on libraries; (t) the impact on search engines; (u) what do authors want?;

(v) the legality of library copies; (w) the orphan works initiative; and (x) international dimensions.

- B. Band's article is used in this study as data. Also, Band's article is used to frame the Problem Area for this study. Furthermore, Band's article contributed to this researcher's understanding of the various issues—legal, social, and economic—associated with Google's massive book digitization project.
- C. The criteria used to select this article as a key reference includes the currency of the article; it was published in January, 2006. Also, the article was published by the American Library Association's Office for Information Technology Policy, which validates the quality of the authorship. According to the American Library Association's website, "The American Library Association [ALA] is the oldest and largest library association in the world, with more than 64,000 members. Its mission is to promote the highest quality library and information services and public access to information" (American Library Association, 2007, ¶ 1). Finally, the author of the article received his law degree from Yale Law School in 1985 (Band, 2006b). According to Band's personal website (Band, 2006b), "Mr. Band has written extensively on intellectual property and the Internet, including the book *Interfaces on Trial* and over 60 articles. He is an adjunct professor at the Georgetown University Law Center" (¶ 5). Band's background provides the quality of authorship for this article.

**Bracha, O. (2006).** Standing copyright law on its head? The Googlization of everything and the many faces of property [Electronic Version]. Retrieved March 22, 2007 from <http://www4.cc.utexas.edu/law/conferences/ip/BrachaPaper.pdf>.

- A. Bracha's article is useful to this study in that it examines a legal understanding of property rights as it relates to Google's massive book digitization project. Specifically, Bracha considers digital property rights, Google's use of an opt-out model, and transaction costs associated with obtaining copyright holders' permissions for copying or reproducing their works. Bracha (2006) writes, "Although at first blush this may seem a rather narrow and technical subject, the questions involved go to the core of the role played by copyright in the digital age" (p. 4).
- B. This article is used in this study as data. In addition, Bracha's article is used to define the term *property* for this study. Bracha's article is also used to formulate the various sections of this study including both the Brief and Full Purposes. It is Bracha's argument for the role of property in the digital age that warrants the term's inclusion in the list of six legal concepts used in the concept content analysis coding.
- C. This article was initially selected for this study because of its relevance to the topic of copyright and massive book digitization. The article was also selected because of its currency; a draft was published in September 2006. The quality of authorship for this article is determined by Bracha's professional background. Bracha is an assistant professor at the School of Law at the University of Texas at Austin (University of Texas at Austin, 2007). Bracha received a law degree from Harvard in 2005 (University of Texas at Austin, 2007). According to the University of Texas at Austin (2007) website, "Oren Bracha is a legal historian and an intellectual property law scholar" (§ 1).

**Coleman, M. S. (2006).** Google, the Khmer Rouge and the public good [Electronic Version].

*Address to the Professional/Scholarly Publishing Division of the Association of American*

*Publishers*. Retrieved April 24, 2007 from

<http://www.law.pitt.edu/madison/downloads/coleman.pdf>.

- A. This reference is a transcript of a speech given by Coleman as an address to the Professional/Scholarly Publishing Division of the Association of American Publishers. This transcript is important to this study in that it assisted this researcher in learning about the history of the University of Michigan's digitization projects in general and involvement in the Google massive book digitization project specifically. Also, the transcript provided the motives behind the University of Michigan's decision to cooperate with Google and become one of the initial five partners in Google's massive book digitization project. The transcript (Coleman, 2006) reads, "It is this criticism of the project that prompted me to accept your invitation to speak—and explain why we believe this is a legal, ethical, and noble endeavor that will transform our society" (p. 2).
- B. This reference is used as data for this study. Additionally, this reference is used to formulate the Problem Statement for this study. Specifically, Coleman addresses the greater public good being served by the Google massive book digitization project. Coleman also expresses the opinion that the societal benefits of the Google massive book digitization project transcend copyright issues, which is a unique perspective.
- C. This reference was selected for inclusion in this study because of its relation to the topic of copyright and massive book digitization. Also, the reference is current in that it was presented in February 2006. Lastly, the quality of the authorship is determined by Coleman's role as President of the University of Michigan (University of Michigan, 2007).

**Gbegnon, K. (2006).** Digitized scholarship and the "library" concept: allowing the history of the library exemption to inform how we view Google's digitized library [Electronic Version]. *Hastings Communications and Entertainment Law Journal*, 29. Retrieved April 7, 2007.

- A. Gbegnon's article is useful to this study in that it provides an argument for the re-conceptualization of the library exception as it applies to copyright infringement. The article specifically addresses Google's massive book digitization project and the legal challenges the project faces. Gbegnon posits that the notion of library be broadened to include the Google massive book digitization project because it is in a sense a digital library. According to Gbegnon (2006), such a broadening will allow the Google project to claim the library exception to copyright infringement (§ 3).
- B. This article is used as data for this study. Additionally, Gbegnon's article partially provides the definition for the library exception to copyright. The article also is the foundation for the inclusion of library exception in the list of six pre-selected legal concepts used in the conceptual content analysis coding. Both the Brief Purpose and the Full Purpose refer to Gbegnon's article to formulate this list of legal concepts.
- C. The criteria used to select this article as a valid reference for this study includes its relationship to the topic of copyright and massive book digitization projects as well as its currency; the article was published in the fall of 2006. The article was published by the University of California's Hastings College of the Law. Gbegnon is a law degree candidate at Hastings College of the Law in 2007 (Gbegnon, 2006). The publication source and the author's academic background provide the authorial quality for this article.

**Grogg, J. E., & Ashmore, B. (2007).** Google Book Search libraries and their digital copies

[Electronic Version]. *Searcher*, 15. Retrieved April 7, 2007 from

[http://www.infoday.com/searcher/apr07/Grogg\\_Ashmore.shtml](http://www.infoday.com/searcher/apr07/Grogg_Ashmore.shtml).

- A. This article is useful to this study because it provides a current overview of the Google massive book digitization project. The article includes background information on digitization efforts that pre-date the Google project. The authors of the article also provide a synopsis of the copyright issues related to massive book digitization. Instead of focusing solely on what Google intends to do with the digitized versions of books from the partnering libraries, the authors' primary concern is on the use of the digitized versions by the partnering libraries. This perspective provides a unique consideration of the copyright issues at hand. Grogg & Ashmore (2007) write, "How will the librarians at participating Google Book Search libraries use their copies of the digitized books, commonly referred to as the library digital copy, the copy that Google gave to them in return for their participation in the Book Search project?" (p. 1).
- B. This article is used as data for this study. This article is further used in both the Full Purpose and Problem area sections of this study to provide the history for the Google massive book digitization project.
- C. This article is the most current of all of the key references; it was published in April 2007. Furthermore, the article directly relates to the issues associated with copyright and massive book digitization projects. The quality of authorship is established with Grogg's role as the Electronic Resources Librarian for The University of Alabama Libraries and Ashmore's position as the Cataloging Librarian for Samford University (Grogg & Ashmore, 2007).



**Hanratty, E. (2005).** Google library: beyond fair use? [Electronic Version]. Retrieved March 22, 2007 from <http://www.law.duke.edu/journals/dltr/articles/2005dltr0010.html>.

- A. This article is useful to this study because it provides a compelling argument for why the Google massive book digitization project is not exempted from copyright infringement under a claim of fair use. The author provides a step-by-step analysis of the characteristics of the Google massive book digitization project in relation to the criteria used to determine fair use. Hanratty (2005) writes, “The focus of this iBrief is the copyright implications of reproducing and displaying a portion of a digital copy of library books that are still under copyright protection” (§ 3).
- B. This article is used as data for this study. This article is also used in the Brief and Full Purpose sections of this study to frame the copyright infringement claims against Google’s massive book digitization project. Also, the article is used to provide the basis of one of the pre-selected legal concepts related to copyright and massive book digitization. This study also uses Hanratty’s brief definition of fair use.
- C. The criteria used to select this reference include its relation to the topic of copyright and massive book digitization. Additionally, the article was published in 2005, which establishes its currency. Hanratty was a 2006 law degree candidate at Duke University School of Law (Hanratty, 2006). The article itself was published in Duke Law & Technology Review. Hanratty’s article is cited by both Bracha (2006) and Jeweler (2005).

**Jeweler, R. (2005).** The Google Book Search project: Is online indexing a fair use under copyright law? [Electronic Version]. Washington, D.C.: The Library of Congress, Congressional Research Service.

- A. This reference is useful to this study in that it provides a summary of the complaints against Google because of its massive book digitization project. Jeweler also gives a synopsis of the complainants' positions, copyright law, fair use, and case law. Jeweler (2005) writes, "This report provides background on the pending litigation. It will be updated as judicial developments warrant" (§ 1). This report was published by the Congressional Research Service (CRS). According to the CRS (2007) website, "Congress created CRS in order to have its own source of nonpartisan, objective analysis and research on all legislative issues" (§ 1).
- B. This article is used as data for this study. Jeweler's article is also used to define *fair use*, which is one of the pre-selected legal concepts used in the conceptual content analysis coding. In addition, this article is used in this study in Appendix A: Definitions to define the Google Book Search project as well as in the Brief Purpose and Full Purpose sections.
- C. This article was published in December 2005, which is current to the time of this study. The intended audience for this study is the U.S. Congress (Jeweler, 2005). Jeweler is a Legislative Attorney in the American Law Division of the Congressional Research Service (CRS) (Jeweler, 2005). This article is credible for inclusion in this study because of the author's profession, CRS as the article's publisher, and the article's intended audience—the U.S. Congress.

**Kelly, K. (2006a).** Scan this book! [Electronic Version]. *The New York Times Magazine*.

Retrieved March 31, 2007 from

<http://www.nytimes.com/2006/05/14/magazine/14publishing.html?ei=5070&en=b5633346a62f1171&ex=1175486400&adxnnl=1&adxnnlx=1175385904-SA+cv1C8Bh3yG2kiNpNexA>.

- A. This article is useful to this study because it presents the concept of a universal library. The author discusses the Google and Open Content Alliance massive book digitization projects. The article also covers why massive book digitization projects are now possible as well as some of the potential social and economic impacts of such projects. Kelly (2006a) draws comparisons between the great library of Alexandria, established in 300 B.C., that was designed to hold all the scrolls of the known world and Google's massive book digitization project (§ 2). The author asks, "Might the long-heralded great library of all knowledge really be within our grasp?" (§ 3).
- B. This article is used as data for this study. In addition, this article is used in the Brief Purpose section to explain Optical Character Recognition as well as why digitization of books is now technically possible.
- C. Kelly's article is relevant to this study because it was published in May 2006, which makes it current to this study. Also, it explores the history of the Google Book Search project and the copyright issues surrounding the project. Kelly helped launch *Wired* magazine in 1993 (Kelly, 2006b). Also, he is the author of the book *Out of Control: The New Biology of Machines, Social Systems and the Economic World* (Kelly, 2006a).

**Kupferschmid, K. (2005).** Are authors and publishers getting scroogled? [Electronic Version].

*Information Today*, 22, 1-51. Retrieved April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19091457&loginpage=Login.asp&site=ehost-live>.

- A. This article is useful to this study because it provides a detailed analysis of the relation of the Google massive book digitization project to copyright law. The author gives a background on the Google project, an argument for why the Google project violates copyright, and an explicated definition of fair use. Kupferschmid (2005) writes, “There appears to be no legal basis justifying Google’s massive copying of books to populate its [project]” (p. 51).
- B. This article is used as data for this study. Furthermore, this article is used to define the concept of *intermediate copy* as one of the six pre-selected legal concepts used in the conceptual content analysis coding. The article is also used to define the concept of market as it relates to copyright. Finally, the article is used in the Full Purpose section to describe Google’s use of the digitized versions of the books.
- C. This article was selected for this study because of its direct relation to the topic of copyright and massive book digitization project. The article was published in December 2005, which establishes its currency. Kupferschmid is Vice President for Intellectual Property Policy and enforcement for the Software & Information Industry Association (SIIA) (Kupferschmid, 2005). Prior to joining SIIA, Kupferschmid was an intellectual property attorney at the U.S. Patent and Trademark Office (PTO), where he was responsible for international and legislative patent and copyright issues (Software & Information Industry Association, 2007).

**Lavoie, B., Connaway, L. S., & Dempsey, L. (2005).** Anatomy of aggregate collections: The example of Google Print for libraries [Electronic Version]. *D-Lib Magazine*, 11.

Retrieved April 23, 2007 from

<http://www.dlib.org/dlib/september05/lavoie/09lavoie.html>.

- A. This article is useful to this study because it quantifies the number of books represented by the initial five libraries participating in the Google massive book digitization project. The authors of this article also quantify the number of books still under copyright protection that could be digitized by the Google project. Lavoie, Connaway, & Dempsey (2005) write, “The purpose here is to explore a few basic questions raised by [the Google project], and in doing so, provide an empirical context for the debate that is sure to continue for some time to come” (¶ 5).
- B. This article is used as data for this study. In addition, this article is primarily used to formulate the Problem Area of this study. The authors of this article state that the Google project has intellectual property rights implications, which is part of the larger context related to copyright and massive book digitization projects.
- C. The article is current to this study since it was published in September 2005. Also, the content of the article is directly related to the topic of copyright and massive book digitization projects. Lavoie was Senior Research Scientist in the Office of Research at Online Computer Library Center, Inc (OCLC) (D-Lib Magazine, 2005). Connaway was a Consulting Research Scientist, OCLC Office of Research and she has a Ph.D. in Library and Information Studies from the University of Wisconsin, Madison, an MS of Library Science from the University of Arizona, and a BS in Education and Library Science from

Edinboro State University (D-Lib Magazine, 2005). Dempsey was the VP of Research for OCLC (D-Lib Magazine, 2005).

**Palmquist, M., Busch, C., Maret, P. S. D., Flynn, T., Kellum, R., Le, S., et al. (2005).**

Content analysis. Retrieved March 27, 2007, from Colorado Statue University Department of English Web site: <http://writing.colostate.edu/guides/research/content/>.

- A. This reference is useful for this study in that it provides an overview of content analysis as a research methodology. Furthermore, this reference provides a step-by-step explanation of the conceptual content analysis process.
- B. This reference is used throughout this study. Specifically, this reference is used in the Brief and Full Purpose sections; in Appendix A: Definitions to define conceptual content analysis; and, most importantly, in Chapter 3 – Method to articulate the approach used to analyze the literature selected for this study.
- C. The credibility of this reference for use in this study is established by the primary author’s professional experience. Palmquist is a Professor of English and a University Distinguished Teaching Scholar at Colorado State University (Palmquist, n.d.). In addition, Palmquist holds a Ph.D. in rhetoric from Carnegie Melon University (Palmquist, n.d.).

**Toobin, J. (2007, February 5).** Google's moon shot [Electronic Version]. *The New Yorker*, 82, 30-35. Retrived March 18, 2007, from

[http://www.newyorker.com/reporting/2007/02/05/070205fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2007/02/05/070205fa_fact_toobin).

- A. Toobin's article is the inspiration of this study. The article is useful to this study in that it is a reporting of Google's massive book digitization project, the reasons behind Google's project, the corporate character of Google, the arguments against Google's project, and speculation about the possible outcome of the lawsuits against Google. This article provides useful insight into the Google Book Search project in general. Toobin (2007) writes, "To put it another way, being taken to court and charged with copyright infringement on a large scale might be the best thing that ever happens to Google's foray into the printed word" (p. 30).
- B. This article is used as data for this study. In addition, the article is used to provide the definition of the term *transformative*, which is one of the six pre-selected concepts for the conceptual content analysis coding. Toobin's article is also used in part to define the terms "massive" and "opt-out." Finally, Toobin's article is used throughout the Full Purpose section to frame the context of Google's massive book digitization project.
- C. Being published in February 2007, this article is current to this study. The topic of the article is closely related to copyright and massive book digitization projects. Toobin is a staff writer for *The New Yorker* magazine as a legal analyst (CNN, 2007). Toobin received a law degree from Harvard and was an assistant U.S. attorney (CNN, 2007).

**U.S. National Commission on Libraries and Information Science. (2006).** Mass digitization:

Implications for information policy [Electronic Version]. Retrieved March 31, 2007,

from <http://www.nclis.gov/digitization/MassDigitizationSymposium-Report.pdf>

A. This reference is a report from a symposium held at the University of Michigan in March, 2006, entitled *Scholarship and Libraries in Transition: A Dialogue about the Impacts of Mass Digitization Projects*. The reference is relevant to this study since it summarizes the general concerns related to copyright and massive book digitization projects as one of the nine issues it identifies. Additionally, this reference is useful for the purposes of this study because it provides an overview of the key issues related to Google's massive book digitization project raised at the symposium. The report identifies nine key issues:

1. How should important aspects of copyright—fair use, orphan works, opt-in vs. opt-out models—be handled in digitization projects?
2. Quality: When is the quality of OCR good enough? What about quality of content and authentication?
3. What are the roles and priorities for libraries in the digital age?
4. Who will assume long-term ownership of books and journals and other media? Who will take responsibility for long-term preservation of books and journals and other media, and preserving public record?
5. Standardization and interoperability: How can the silos of digital initiatives communicate with each other?
6. What are the roles of publishers and booksellers in the digital age?
7. What business models are needed in the era of mass digitization? How will the open access movement affect the economics of digitization?



8. Information literacy: What should be done about information illiteracy?
9. Assessment: What types of assessment are being used? How will we know if digitization and electronic access are meeting people's needs?

The first issue—the issue on how copyright should be handled in digitization projects—is the most useful to this study.

- B. This reference is used as data for this study. This reference is also used to assist in defining the opt-out/opt-in models. Additionally, this reference is used throughout this study to frame the issues surrounding copyright and massive book digitization projects. Specifically, this reference is used in both the Brief and Full Purpose sections as well as the Problem Area section.
- C. The reference's publication date of May 2006, establishes its currency. The quality of the authorship of this report is represented by the purpose of the U.S. National Commission on Libraries and Information Science. According to the U.S. National Commission on Libraries and Information Science (n.d.) website:

The U.S. National Commission on Libraries and Information Science (NCLIS) is a permanent, independent agency of the Federal government charged by Public Law 91-345 to advise the President and Congress on national and international library and information policies, to appraise and assess the adequacies and deficiencies of library and information resources and services, and to develop overall plans for meeting national library and information needs. Broadly speaking, NCLIS is responsible for addressing the information and learning needs of the American people (§ 1).

**Vaidhyathan, S. (2005).** A risky gamble with Google [Electronic Version]. *Chronicle of Higher Education*, 52, B7-B10. Retrieved April 18, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19034124&loginpage=Login.asp&site=ehost-live>.

- A. This article is useful to this study in that it provides a higher-education perspective of the Google massive book digitization project. The author discusses the social and copyright issues related to Google's project. The author also postulates that massive book digitization projects should not be carried by private companies. Vaidhyathan (2005) writes, "Libraries should not be relinquishing their core duties to private corporations for the sake of expediency" (§ 51).
- B. This article is used as data for this study. The article is also used to define the term "public domain" as it relates to copyright. Also, the article is used to describe the audience for this study and it is used in the Problem Area to establish the larger context of the issue of copyright and massive book digitization projects.
- C. The article was published by *The Chronicle of Higher Education* in December 2005, which makes it current for this study. The topic of the article is closely related to copyright and massive book digitization projects with the author specifically addressing this issue throughout the paper. Vaidhyathan holds a Ph.D. in American Studies from the University of Texas at Austin and is currently an associate professor in the department of Culture and Communication at New York University (New York University, 2007).

## CHAPTER III – METHOD

This study is designed as a literature review (Leedy & Ormrod, 2005) on the topic of selected legal concepts and massive book digitization. A literature review reports the findings in the research done on this topic to date (Leedy & Ormond, 2005). Literature review is the overall research design for this study. As such, the literature review provides the overall structure for the research procedures, data collection, and data analysis (Leedy & Ormond, 2005). A qualitative approach is used to formulate the purpose, process, data collection, data analysis, and reporting of findings (Leedy & Ormond, 2005). Therefore, this study describes the complex nature of selected legal concepts and massive book digitization by collecting textual data (Leedy & Ormond, 2005).

Factors associated with selected legal concepts concerning copyright and massive book digitization are identified in the selected literature through a coding process using conceptual content analysis (Palmquist, et al., 2005). Inferences are drawn from the identification of these factors in the literature to generate an interpretive narrative that represents the complexity of the discussions surrounding these selected legal concepts and massive book digitization (Palmquist, et al., 2005). The outcome is an interpretive narrative that is presented as a “snapshot-in-time” of the discourse on the topic of copyright and massive book digitization at present.

### *Literature Collection*

The search strategy used to collect literature for this study involves identifying words and key phrases that are related to copyright and massive book digitization. The initial list of words and key phrases is: books, copyright, digital archiving, Digital Millennium Copyright Act, Internet, and transformative. Based on the search results from this initial list, the list is expanded

to include the following words and key phrases: Amazon, Book Search Library Project, copyright violations, Google, and Search Inside. Using the search results from this second list, the list is again expanded and refined to the following:

- Digitization:
  - Massive
  - Text
- Copyright:
  - Copyright Infringement
  - Fair use
  - Intermediate copy
  - Library exception
  - Property
  - Transformative
- Organizations
  - Amazon, Inc.
  - Google, Inc.
  - Microsoft, Inc.
  - Open Content Alliance
  - Yahoo!, Inc.

A combination of library resources, electronic databases, and the World Wide Web are used to collect the literature for this study. The initial resource used to collect literature is the University of Oregon Libraries (<http://libweb.uoregon.edu>). This resource provides access to the following databases:

- Academic Search Premier
- ArticleFirst
- Business Source Premier
- ECO: Electronic Collections Online
- Google Scholar
- INSPEC
- JSTOR
- Lexis-Nexis Academic
- Newspaper Source
- Project Muse
- Summit Union Catalog

The following result set is derived by utilizing the aforementioned word and key phrase lists and the University of Oregon Libraries resource:

Table 1

Word and key phrase result set

Database	Search terms	Result qty.
Academic Search Premier	Digital Archive AND Google	10
Academic Search Premier	Google AND Copyright violations	5
Academic Search Premier	Book Search Library Project	2
Academic Search Premier	Amazon AND Search Inside	19
Academic Search Premier	Digitization AND Copyright infringement	11
Academic Search Premier	Google AND Digitization	71
ArticleFirst	Amazon AND Search Inside	1

Database	Search terms	Result qty.
Business Source Premier	Digital Archive AND Google	1
Business Source Premier	Google AND Copyright violations	2
Business Source Premier	Amazon AND Search Inside	10
Business Source Premier	Digitization AND Copyright infringement	2
ECO: Electronic Collections	Copyright law AND Text digitization	1
Online		
Google Scholar	Book Search Library Project	5
Google Scholar	Amazon AND Search Inside	1
Google Scholar	Copyright law AND Text digitization	15
INSPEC	Digitization AND Copyright infringement	2
JSTOR	Copyright law AND Text digitization	3
Newspaper Source	Google AND DMCA	1
Newspaper Source	Google AND Copyright violations	5
Newspaper Source	Amazon AND Search Inside	9
Project Muse	Digital Archive AND Published Books	1
Summit Union Catalog	Digitization AND Copyright infringement	1

The literature returned from this result set (primary literature) is mined to identify additional resources. Secondary literature referenced by the primary literature is collected using additional electronic databases and the World Wide Web. Also, websites of journals of original publication are searched for additional literature using the following words: Google AND Digitization. For example, some of the following search engines were used:

- American Libraries Online (<http://www.ala.org>)

- BusinessWeek Online (<http://www.businessweek.com>)
- D-Lib Magazine (<http://www.dlib.org/>)
- Google (<http://www.google.com>)
- Google Scholar (<http://scholar.google.com>)
- Guardian Unlimited (<http://www.guardian.co.uk>)
- Information Today (<http://www.infotoday.com>)
- Library Journal (<http://www.libraryjournal.com>)
- New York Times (<http://www.nytimes.com>)
- Telegraph (<http://www.telegraph.co.uk>)
- The Chronicle of Higher Education (<http://chronicle.com>)
- The Economist (<http://www.economist.com>)
- United States Copyright Office (<http://www.copyright.gov>)
- The Bookseller.com (<http://www.thebookseller.com>)
- Wikipedia ([http://en.wikipedia.org/wiki/Main\\_Page](http://en.wikipedia.org/wiki/Main_Page))

### *Data Analysis*

The literature selected using these collection methods frames the content of this study. A sub-set of this literature, consisting of 28 items (see Appendix B: Data Sources), forms the data set that is coded and analyzed using conceptual content analysis. According to Palmquist, et al. (2005), conceptual content analysis establishes the existence and frequency of concepts as represented by words or phrases. The coding process defined by Palmquist, et al. (2005) involves eight distinct steps:

1. Deciding the level of analysis: The researcher must decide whether to code for a single word or a set of words.
2. Deciding the quantity of concepts to code for: The researcher must decide the quantity of concepts for which to code. Furthermore, the researcher must decide if words can be added to the set during the course of coding.
3. Deciding whether to code for existence or frequency of a concept: The researcher must decide whether to code for the existence of a word within a text or the number of occurrences of the word within a text.
4. Deciding how to distinguish among concepts: The researcher must decide the level of generalization and the level of implication. The level of generalization refers to whether different forms of a word are the same as the word itself. The level of implication refers to whether synonyms or different tenses of a word are the same as the word itself.
5. Developing rules for coding texts: The researcher develops rules to ensure that coding is consistent throughout the literature.
6. Deciding what to do with irrelevant information: The researcher decides if irrelevant words are ignored or if they are used to alter the coding scheme.
7. Coding the texts: The researcher reads through the literature and writes down occurrences of the word, or uses a computer program to identify occurrences of the word within the literature, or uses some combination of the two.
8. Analyzing the results: The researcher analyzes the data resulting from the coding of the literature in order to draw conclusions and generalizations.



This study addresses the eight steps as follows:

1. Level of analysis: This study codes for both individual words and key phrases that relate to legal concepts pertaining to copyright and massive book digitization. This pre-selected set of words and key phrases is derived from an initial reading of the literature used for this study.
2. The quantity of concepts to code for: The quantity of concepts used for coding this study is based on an initial reading of the literature. Six legal concepts related to copyright are pre-selected and represented by the following words and key phrases: *copyright* (*infringement* (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007). This initial set of pre-selected works and key phrases is not changed by the coding process.
3. Coding for existence or frequency: This study codes for the existence of the six pre-selected legal concepts (coded as words and key phrases) within the literature selected for this study. Frequency is not used because the results of such coding are insignificant given the scope of the literature used for this study.
4. Distinguishing among concepts: This study uses a medium level of generalization as well as a medium level of implication. That is, slight variations of the defined set of words and key phrases are used to conduct the coding. Some synonyms of the words and key phrases are used in the coding process. For example, transformative is translated as transforming, transformed, transformation, and transformative use.
5. Rules for coding text: Because this study uses medium levels of generalization and implication, the translation rules for coding the text include coding for the existence of an

established set of the words and key phrases. The translation rules for the medium level of generalization and implication are as follows:

Table 2

Translation rules for medium levels of generalization and implication for pre-selected list of six words and key phrases

No.	Word or key phrase	Translation
1	Copyright Infringement	Infringement, Infringing, Infringed, Copyright Violation, Violation, Violating, Violated
2	Fair use	
3	Intermediate copy	Intermediate copying, Intermediate copies
4	Library exception	Library exemption
5	Property	Intellectual property (IP)
6	Transformative	Transforming, Transformed, Transformation, Transformative use

6. Irrelevant information: Irrelevant information for the purpose of this study is a word or key phrase that is not included in the set of legal concepts related to massive book digitization. Irrelevant information is skipped in the coding process and is not used to redefine the coding scheme.
7. The coding process is primarily done by hand (Palmquist, et al., 2005). Electronic methods including the use of search features in Microsoft Word and Adobe Acrobat, as well as Google Desktop Search and PaperPort All-in-One Search are used to identify the appearance of the words and phrases in the literature initially. However, these

appearances are vetted by hand to ensure the explicit meaning of the term matches the definition of the term provided in the Definitions section of this study.

8. Analyzing the results: See the Data Presentation section below.

### *Data Presentation*

The results of the coding process are presented in the form of six tables—one each to document the results of coding each of the six pre-selected concepts pertaining to copyright and massive book digitization. The results are presented in a tabular format to ensure an efficient presentation of word and key phrase occurrences and an overall orderly display of the data (*Publication Manual*, 2001). Key words and phrases from the contextual descriptions are identified and interpreted for use in the final outcome. Figure 1 is an example of the coding template used to report the legal concept of *fair use* (Jeweler, 2005).

Author	Location	Contextual Description
Band, 2006a	p. 4, ¶3	Google responds that this copying is permitted under the fair use doctrine, 17 U.S.C. §107.
Band, 2006a	p. 4, ¶3	The critical question in the litigation is whether the fair use doctrine excuses Google's copying.
Band, 2006a	p. 4, ¶4	The lower court found that Arriba's reproduction of the photographs was a fair use, and the Ninth Circuit affirmed.
<i>Article 2</i>	...	...

*Figure 1.* Coding template: Legal concept #2 - *fair use*

(*Note:* The actual coding template used may have more columns or rows and may be presented in a landscape perspective as is required by the amount of data recorded.)

The final outcome of the study is an interpretive narrative presented in the Analysis of Data chapter. The outcome is based on the extraction of key concepts and themes identified in the contextual descriptions derived from the coding process, in order to create a summary of the

present discourse on the topic of copyright and massive book digitization. The narratives represent a “snapshot-in-time” of these key concepts and themes as determined by an analysis of the current literature. This outcome can be used by information professionals (Dames, 2006a), libraries and universities (Vaidhyanathan, 2005), or the general public as a tool to comprehend the current issues related to copyright and massive book digitization. Furthermore, the outcome of this study can be used to determine issues that require further study as well as generate future baselines as the effects of massive book digitization on copyright become clearer. Figure 2 shows the narrative template used to present the outcome of the study.

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***Copyright Infringement***

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*Key Concepts*

Narrative...

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*Themes*

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***Fair Use***

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*Key Concepts*

Narrative...

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*Themes*

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***Intermediate Copy***

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*Key Concepts*

Narrative...

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*Themes*

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***Library exception***

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*Key Concepts*

Narrative...

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*Themes*

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***Property***

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*Key Concepts*

Narrative...

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*Themes*

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***Transformative Use***

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*Key Concepts*

Narrative...

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*Themes*

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*Figure 2. Interpretive narrative template*



## CHAPTER IV – ANALYSIS OF DATA

This chapter presents the details of the conceptual content analysis coding process (Palmquist, et. al, 2005) of 28 selected references (see Appendix B: Data Sources). Six pre-selected terms related to copyright and massive book digitization are coded for in the 28 references. These terms are: *copyright infringement* (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007).

The results of the coding process are presented in a set of six tables (See Appendix C), each one related to one of the six pre-selected coding concepts: *copyright infringement*, *fair use*, *intermediate copy*, *library exception*, *property*, and *transformative use*. Columns of each table identify the author of the source where data are found, the location in the source, and the contextual description surrounding the concept found.

These results are used to construct interpretive narratives of each of the six legal concepts that represent a “snapshot-in-time.” As described in the Data Presentation section of Chapter III – Method, each narrative is based on the extraction of key concepts and themes identified in the contextual descriptions derived from the coding process, in order to create a summary of the present discourse on the topic of copyright and massive book digitization. The narratives represent a “snapshot-in-time” of the discourse on the topic of copyright and massive book digitization projects. This “snapshot-in-time” can be used to comprehend the current issues related to copyright and massive book digitization projects.

Initially, each reference is examined to determine if it is searchable electronically using either Adobe Acrobat or Microsoft Word. If a reference is not searchable, it is converted into a

searchable format using PaperPort. Next, each reference is examined to determine if it contains paragraph or section delimiters. If a reference does not contain delimiters signifying paragraphs or sections, its paragraphs or sections are assigned sequential numbers. Paragraphs and sections are determined by looking at formatting changes between blocks of text—such as a line break or an indentation. If it is not clear when one paragraph ends and another one begins because of a page break, both blocks of text are assigned a different paragraph number. Next, the reference is searched for each occurrence of the six pre-selected concepts. Additional searches are conducted on the reference using the translation rules (see Table 2). Each occurrence of a pre-selected term is copied and pasted into the respective coding table. Also, each occurrence is noted with a reference citation and the appropriate delimiter signifying the occurrence's location within the reference. These coding tables are in turn analyzed to construct the following interpretive narrative figures.

The coding of the phrase *copyright infringement* (see Appendix C, Table 1: Coding Results for *Copyright Infringement*) includes 148 rows of extracted text from the selected references. Of the 28 selected references, seven references did not use *copyright infringement* as coded. The rows of extracted text demonstrate how this phrase is used in various contexts on the topic of copyright and massive book digitization.

The coding of the phrase *fair use* (see Table C2: Coding Results for *Fair Use*) includes 247 rows of extracted text from the selected references. Of the 28 selected references, six references did not use *fair use* as coded. The rows of extracted text utilize *fair use* as a concept related to an exception to copyright infringement liability.

The coding of the phrase *intermediate copy* (see Table C3: Coding Results for *Intermediate Copy*) includes 10 rows of extracted text from the selected references. Of the 28



selected references, 26 did not use *intermediate copy* as coded. The rows of extracted text establish *intermediate copy* as a term related to copyright infringement legal cases.

The coding of the phrase *library exception* (see Table C4: Coding Results for *Library Exception*) includes 17 rows of extracted text from the selected references. Of the 28 selected references, 26 did not use *library exception* as coded. The rows of extracted text present *library exception* as an exception to copyright infringement liability in addition to *fair use*.

The coding of the term *property* (see Table C5: Coding Results for *Property*) includes 135 rows of extracted text from the selected references. Of the 28 selected references, 15 did not use the term *property* as coded. The rows of extracted text show the relationship of *property* to a discussion of the concepts intellectual property, digital property rights, and copyright.

The coding of the term *transformative* (see Table C6: Coding Results for *Transformative*) includes 42 rows of extracted text from the selected references. Of the 28 selected references, 13 did not use the term *transformative* as coded. The rows of extracted text exhibit the consideration of *transformative* use in a finding of fair use.

### *Interpretive Narrative: Legal Concept #1 – Copyright Infringement*

#### *Key Concepts*

As a legal concept, the phrase *copyright infringement* is used throughout the literature to describe the lawsuits against Google because of its massive book digitization project (Band, 2006a; Bracha, 2006; Dames, 2006a; Dye, 2006; Gbegenon, 2006; Jeweler, 2005; Kupferschmid, 2005; Pike, 2005; Toobin, 2007; Vaidhyathan, 2005). The phrase is also used generally in the literature to describe other *copyright infringement* lawsuits (Band, 2006a; Hanratty, 2005; Vaidhyathan, 2005; Zeller, 2006); establishing the Google project as

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*infringing* (Bracha, 2006; Hanratty, 2005); using the phrase contractually (“Cooperative Agreement,” 2006); outlining the process for claiming *infringement* (Dames, 2006a); and actually claiming *infringement* in a lawsuit (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005).

Other terms and concepts that appear in the same sentence as *copyright infringement* include *commercial* (Bracha, 2006; Hanratty, 2005; “McGraw-Hill Companies,” 2005); *damages* (“Cooperative Agreement,” 2006; Dames, 2006a; Dye, 2006; Givler, 2006; “McGraw-Hill Companies,” 2005; “The Author’s Guild,”); *display* (Band, 2006a; Bracha, 2006; Hanratty, 2005; Kupferschmid, 2005; “McGraw-Hill Companies,” 2005); *distribution* (Bracha, 2006; Dames, 2006a; Kupferschmid, 2005; “McGraw-Hill Companies,” 2005); *reproduction* (Band, 2006a; Bracha, 2006; Hanratty, 2005; Kupferschmid, 2005; “McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005); and *massive* (Gbegnon, 2006; Givler, 2005; Jeweler, 2005; Pike, 2005; “The Author’s Guild,” 2005). The use and repetition of these terms suggest a relationship between concerns for copyright infringement along with *property* rights (*display*, *distribution*, and *reproduction*) and economic concerns (*commercial* and *damages*). The use of *massive* relates to a perspective on the scope of the alleged *copyright infringement* and not to the scope of the Google project.

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### *Themes*

Recurring themes that surface with *copyright infringement* in this context are allegations (Bracha, 2006; Dye, 2006; Gbegnon, 2006) and assumptions (Bracha, 2006; Jeweler, 2005) that Google’s massive book digitization project either potentially infringes (Bracha, 2006; Hanratty, 2005) or does infringe (Givler, 2005; “McGraw-Hill Companies, 2005”; “The Author’s Guild,” 2005) the rights of copyright holders. Another theme in the data

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is the impact of Google's massive book digitization project on the potential market (Hanratty, 2005; Givler, 2005) and commercial use (Bracha, 2006; "McGraw-Hill Companies," 2005; "The Author's Guild," 2005) of digital versions of copyrighted material.

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*Figure 3. Copyright infringement interpretive narrative*

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### *Interpretive Narrative: Legal Concept #2 – Fair Use*

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#### *Key Concepts*

As a legal concept, the phrase *fair use* is used throughout the literature to describe an exception to copyright infringement (Band, 2006a; Bracha, 2006; Dye, 2006; Gbegnon, 2006; Hanratty, 2005; Jeweler, 2005). The phrase is also used to define the four factors utilized to determine a finding of *fair use* (Bracha, 2006; Jeweler, 2005; Kupferschmid, 2005); to provide other copyright infringement lawsuits that involved a finding of *fair use* (Band, 2006a; Jeweler, 2005; Kupferschmid, 2005; Zeller, 2006); and speculation on whether or not a court would determine Google's massive book digitization project is indeed *fair use* (Hanratty, 2006).

Other terms used in conjunction with *fair use* include *commercial* (Bracha, 2006; Gbegnon, 2006; Hanratty, 2005; Jeweler, 2005; Kupferschmid, 2005; "McGraw-Hill Companies," 2005; U.S. National Commission on Libraries and Information Science, 2006; Vaidhyanathan, 2005; Zeller, 2006); *market* (Band, 2006a; Bracha, 2006; Gbegnon, 2006; Givler, 2005; Jeweler, 2005); and *opt-out* (Bracha, 2006; U.S. National Commission on Libraries and Information Science, 2006). The term *commercial* is used in the context of the first factor to be considered for a finding of *fair use*, which is "...the purpose and character of the use, including whether such a use is of a *commercial* nature or is for nonprofit education

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purposes” (Jeweler, p. 3, ¶ 8). The term *market* is used in the context of the fourth factor to be considered for a finding of *fair use*, which is “...the effect of the use upon the potential *market* for or value of the copyrighted work” (Jeweler, p. 3, ¶ 8). The term *opt-out* is used by Bracha (2006) to describe a model for a finding of *fair use*. The usage of these terms throughout the literature suggests a focus on defining how a finding of *fair use* relates to copyright and massive book digitization.

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### *Themes*

Recurring themes that surface with *fair use* in this context are disagreements over what constitutes *fair use* (Band, 2006a; Dye, 2006); a definition of *fair use* as an equitable rule of reason that relies on facts and circumstances (Band, 2006a; Bracha, 2006; Dye, 2006; Gbegnon, 2006; Givler, 2005; Jeweler, 2005; U.S. National Commission on Libraries and Information Science, 2006); and a discussion on the qualification of “snippets” as a small excerpt from a text that exemplifies *fair use* (Band, 2006a; Dye, 2006; “Cooperative Agreement,” 2006; Kelly, 2006a; Kupferschmid, 2005).

Search engines, with Google among them, rely on the *fair use* exception to copyright infringement liability in order to index copyright protected websites (Band, 2006a). Google is merely extending this theory of *fair use* to its massive book digitization project (U.S. National Commission on Libraries and Information Science, 2006). However, publishers (“McGraw-Hill Companies,” 2005) and authors (“The Author’s Guild,” 2005) do not agree that massive book digitization is allowed under copyright law (Band, 2006a).

The definition of *fair use* in the literature as an equitable rule of reason means that a court can be sensitive to the various facts and circumstances involved in Google’s massive book digitization project in order to make an optimally suited finding in the cases against

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Google (Bracha, 2006). However, a court will look to findings in previous cases as a guide when considering Google’s *fair use* claim (Jeweler, 2005).

Finally, the literature explores whether the display and reproduction of a small excerpt of text—termed a “snippet” in this context—is a *fair use* (Band, 2006a; Dye, 2006). In one of the company’s agreements for massive book digitization (“Cooperative Agreement,” 2006), Google asserts the right to display an excerpt that it reasonably determines would constitute *fair use*. These “snippets” are likened to a quote or excerpt from a review (Kelly, 2006a). However, some argue that “snippets” are not allowed because of the amount of copying done of the original material to generate them (Kupferschmid, 2005).

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*Figure 4. Fair use interpretive narrative*

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### *Interpretive Narrative: Legal Concept #3 – Intermediate Copy*

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#### *Key Concepts*

As a legal concept, *intermediate copy* is used in the literature to describe the entire digital copy of a book (Band, 2006a; Kupferschmid, 2005). The phrase is also used to describe copyright infringement lawsuits that were based on the use of *intermediate copies* by one of the parties involved (Kupferschmid, 2005).

A term used in conjunction with *intermediate copy* is *noninfringing* (Band, 2006; Kupferschmid, 2005). The term *noninfringing* is not coded for in the literature as it is an antonym of *copyright infringement* and antonyms are not included in the coding Translation Table (see Table 2). *Noninfringing* refers to the end use of the intermediate copy. In other words, if the *intermediate copy* leads to the creation of a new, *noninfringing* end use of the copyrighted material, then it is a *noninfringing intermediate copy* (Band, 2006a).

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*Themes*

Recurring themes that surface with *intermediate copy* in this context are the appropriation of *intermediate copy* from software-related copyright infringement cases (Band, 2006a) and defining the use of *intermediate copies* under *fair use*. *Intermediate copying* is necessary to access ideas not protected by copyright in software programs (Band, 2006a). Thus, *intermediate copying* is allowed under *fair* use if it results in an end use that doesn't infringe copyright (Band, 2006a). Google is applying this understanding of *intermediate copying* to its massive book digitization project (Band, 2006a; Kupferschmid, 2005). When *intermediate copies* were allowed in some cases, such copies were immediately destroyed after use (Band, 2006a; Kupferschmid, 2005). However, Google is retaining its *intermediate copies* of digitized books (Kupferschmid, 2005).

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*Figure 5. Intermediate copy interpretive narrative*

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*Interpretive Narrative: Legal Concept #4 – Library Exception*

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*Key Concepts*

As a legal concept, the phrase *library exception* is used in the literature to describe an exception to a finding of *copyright infringement* (Gbegnon, 2006; Hanratty, 2005). The phrase is also used to describe whether or not Google's massive book digitization project would qualify for such an exception (Gbegnon, 2006; Hanratty, 2005).

A term that appeared in the literature as a substitute for exception is *exemption* (Gbegnon, 2005; Hanratty, 2005). *Library exemption* was included in the Translation Table for *library exception* (see Table 2). It is possible that some of the literature referred to the *library exception* not by name, but by its section number in Title 17 of the United States Code:

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108. However, this terminology is not coded for per the conceptual content analysis Translation Table (see Table 2).

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*Themes*

Recurring themes that surface with *library exception* in this context are the qualification of Google's massive book digitization project as a digital library (Gbegnon, 2006; Hanratty, 2005) and an exploration of the restrictions placed on the *library exception* due to commercial interests (Gbegnon, 2006). Google could claim the library exemption to copyright infringement liability if its project were viewed as a library (Gbegnon, 2006). Even though commercialism and advertising are parts of the Google massive book digitization project, the project itself is done in a spirit that the library exception to copyright was created to protect (Gbegnon, 2006). However, virtual libraries such as Google's do not qualify for the library exemption because of the commercial nature of the project (Hanratty, 2005).

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*Figure 6. Library exception interpretive narrative*

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*Interpretive Narrative: Legal Concept #5 – Property*

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*Key Concepts*

As a legal concept, the term *property* is used in the literature to describe a bundle of entitlements (Bracha, 2006); a product (Coleman, 2006); a geographical piece of earth (Dye, 2006); books (Jensen, 2005); and libraries (Kelly, 2006a).

Two terms are used throughout the literature to modify *property* as well as each other. These terms are *intellectual* (Bracha, 2006; "Cooperative Agreement," 2006; Dye, 2006; Jensen, 2005; Kelly, 2006a; Lavoie, Connaway, & Dempsey, 2005; Rubin, 2007; Vaidhyanathan, 2005; Zeller, 2006) and *right* (Bracha, 2006; Gbegnon, 2006; Lavoie,

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Connaway, & Dempsey, 2005; Rubin, 2007; Vaidhyathan, 2005). *Intellectual property* is presented in the literature as a commodity (Coleman, 2005; Rubin, 2007) that requires laws (Bracha, 2006) and control (Jensen, 2005). The phrase *property right* is used a synonym for copyright (Bracha, 2006; Gbegnon, 2006; Rubin, 2007). The conjoined phrase *intellectual property rights* is used when describing issues related to the digitization of material—whether by Google for its massive book digitization project or by some other entity for a more general purpose (Bracha, 2006; Gbegnon, 2006; Lavoie, Connaway, & Dempsey, 2005; Rubin, 2007). The use of this three-word phrase in the literature suggests an association between Google’s massive book digitization project and a larger concern for *intellectual property rights* that is beyond the scope of Google’s project.

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### *Themes*

Recurring themes that surface with *property* in this context are the nature of *property* (Bracha, 2006; Dye, 2006) and a discussion of intellectual property rights in the digital age (Coleman, 2006; “Cooperative Agreement,” 2006; Gbegnon, 2006; Jensen, 2005; Rubin, 2007). The nature of *property* assumes that the burden of obtaining permission to use the *property* is always and inevitably placed on the intermeddler, but such a nature does not exist (Bracha, 2006). The rights associated with *property* are context-specific and do not give *property* owners absolute control over their copyrighted work (Bracha, 2006). Thus, an opt-out approach to using *property*, which places the duty of denying permission to digitize on the copyright owner, is possible (Bracha, 2006). However, an opt-out approach does not respect the rights of *property* owners (Rubin, 2007).

Intellectual *property* refers to the commoditization of the books used in Google’s massive book digitization project (Coleman, 2006). It is because of intellectual *property* usage

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that Google is being sued (Jensen, 2005). However, search, as is being facilitated by Google, is a concept that was not foreseen in the creation of intellectual *property* law (Kelly, 2006a).

Nonetheless, the interpretation of intellectual *property* rights will have a considerable impact on massive book digitization projects (Lavoie, Connaway, & Dempsey, 2005).

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*Figure 7. Property interpretive narrative*

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*Interpretive Narrative: Legal Concept #6 – Transformative Use*

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*Key Concepts*

As a legal concept, the term *transformative* is used in the literature to describe a use of a copyrighted work that adds to or changes the original copyrighted work without superseding it (Band, 2006a; Hanratty, 2005; Jeweler, 2005). The literature speculates on whether Google's digitization of entire books qualifies as *transformative* (Band, 2006a; Hanratty, 2005; Jeweler, 2005; Pike, 2005; Zeller, 2006).

The term *transformative* is used by Bracha (2006) to mean something different from the intended meaning as it relates to copyright and massive book digitization projects. Thus, the coding process captured Bracha's (2006) use of the term, but these results are ignored for the sake of this analysis (see Chapter III – Method). Also, similar results were deemed irrelevant and thus ignored in the work of Coleman (2006) and Kelly (2006a).

Other terms used in conjunction with *transformative* are *character* (Band, 2006a; Hanratty, 2005; Jeweler, 2005; Kupferschmid, 2005; Pike 2005; U.S. National Commission on Libraries and Information Science, 2006) and *purpose* (Band, 2006a; Hanratty, 2005; Jeweler, 2005; Kelly, 2006a; Kupferschmid, 2005; Pike, 2005; U.S. National Commission on Libraries and Information Science, 2006; Zeller, 2006). These two terms of *character* and *purpose* are

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used in reference to the first factor for a finding of fair use, which according to Jeweler (2005) is “...the *purpose* and *character* of the use, including whether such use is of commercial nature or is for nonprofit education purposes” (p. 3, ¶ 8). Some of the literature suggests that Google’s massive digitization project is *transformative* in that it is changing the contents of a book into an online search index (Band, 2006a; Jeweler, 2005). While some of the literature suggests that Google’s massive digitization project is not *transformative* because it only changes the format of a book (Hanratty, 2005). However, Kelly (2006a) cites a ruling by the United States District Court for Nevada that found search adds new social value to what it searches, which thereby makes it *transformative*.

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### *Themes*

A recurring theme that surfaces with *transformative* in this context is the purpose of the use of the digitized content (Hanratty, 2005; Kupferschmid, 2005; Pike, 2005; Zeller, 2006). Some consider Google’s massive book digitization project *transformative* because it creates a new tool (Band, 2006a; Toobin, 2007) or adds social value (Kelly, 2006a). While others believe it is not *transformative* because it doesn’t represent a new expression of the copyrighted work (Hanratty, 2005; Kupferschmid, 2005). The *copyright infringement* case of Kelly vs. Arriba is referenced to describe how the *intermediate copying* of digital content for the purpose of search was found to be *transformative* and thus *fair use* (Band, 2006a; Jeweler, 2005; U.S. National Commission on Libraries and Information Science, 2006; Vaidhyathan, 2005; Zeller, 2006).

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*Figure 8. Transformative use interpretive narrative*

## CHAPTER V – CONCLUSION

Massive book digitization has invited legal challenges on the grounds of copyright infringement (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005). More specifically, Google’s (“Google,” 2004) announcement on December 14, 2004 of a massive book digitization project that would span the contents of five research libraries has sparked current discourse on the legality of such a project under copyright law (Hanratty, 2005; Jeweler, 2005). This study explicates a pre-selected list of six legal concepts found in this discourse. The six pre-selected legal concepts are *copyright infringement* (“McGraw-Hill Companies,” 2005; “The Author’s Guild,” 2005), *fair use* (Jeweler, 2005), *intermediate copy* (Kupferschmid, 2005), *library exception* (Gbegnon, 2006), *property* (Bracha, 2006), and *transformative* (Toobin, 2007). Conceptual content analysis is used to code 28 references from the selected literature (Palmquist, et al., 2005), which represents the current discourse on the topic of copyright and massive book digitization. Interpretive narratives of each of the six pre-selected legal concepts are created from the analysis of the results of the coding process. These interpretive narratives serve as the basis for the conclusions of this study.

As put forth by the selected literature, Google’s massive book digitization project *infringes* on a massive scale (Gbegnon, 2006; Givler, 2005; Jeweler, 2005; Pike, 2005; “The Author’s Guild,” 2005) the display, distribution, and reproduction rights protected by copyright (Band, 2006a; Bracha, 2006; Dames, 2006a; Hanratty, 2005; Kupferschmid, 2005). Additionally, Google’s *copyright infringement* gives rise to market and commercial concerns on behalf of publishers (“McGraw-Hill Companies,” 2005) and authors (“The Author’s Guild,” 2005).

Google’s primary defense to *copyright infringement* liability is to invoke the fair use doctrine of copyright law (Band, 2006a; Bracha, 2006; Dye, 2006; Hanratty, 2005; Jeweler,

2005). *Fair use* is understood to be an equitable rule of reason (Band, 2006a; Jeweler, 2005) that requires a consideration of relevant facts and circumstances by a court (Bracha, 2005; Jeweler, 2005). Google's massive book digitization project is considered *fair use* because of its application of an opt-out model (Bracha, 2006) and use of "snippets" (Band, 2006a; "Cooperative Agreement," 2006). The opt-out model refers to the ability of a copyright owner to exclude his or her works from the massive book digitization project (Bracha, 2006). The term "snippet" refers to the use of a small excerpt of text protected by copyright or not that is presented in the search results (Band, 2006a; Dye, 2006). In addition, search technology, such as Google's, is based on the *fair use* of copying and indexing copyrighted websites (Band, 2006a).

However, the application of *fair use* to Google's massive book digitization project is questioned by many (Hanratty, 2005; Kupferschmid, 2005). In consideration of the four factors of *fair use* (Jeweler, 2005) some argue that Google is not making *intermediate copies* (Kupferschmid, 2005) or that its massive book digitization is not *transformative* (Hanratty, 2005). *Intermediate copies* are digital copies of a book for use in indexing the contents of the book itself (Band, 2006a; Kupferschmid, 2005). *Transformative* use is the use of a copyrighted work that adds to or changes the original copyrighted work without superseding it (Band, 2006a; Hanratty, 2005; Jeweler, 2005).

Others find that Google is indeed creating *intermediate copies* (Band, 2006a). Moreover, Google's use of the digitized version of a book is considered highly *transformative* (Jeweler, 2005; U.S. National Commission on Libraries and Information Science, 2006) especially in light of a recent court decision on the social value of search as it relates to search engine technology on the World Wide Web (Kelly, 2006a).

A secondary defense to Google's copyright infringement liability is the *library exception* to copyright (Gbegnon, 2006). It is possible for Google to invoke this exception because of the company's role as a digital library (Gbegnon, 2006). However, others disagree with this assessment of Google's use of the *library exception* because of Google being a commercial entity (Hanratty, 2005).

The discussion of copyright and massive book digitization fits within a larger context of intellectual *property* rights (Bracha, 2006; Gbegnon, 2006; Lavoie, Connaway, & Dempsey, 2005; Rubin, 2007). Some argue that *property* does not have a nature that places the burden of obtaining rights to use copyrighted material on the intended user (Bracha, 2006). Instead, *property* rights allow for an opt-out model as proposed by Google (Bracha, 2006). Additionally, intellectual *property* rights are challenged by search engines as a technology of the World Wide Web because the notion of "search" was not contemplated in the creation of copyright law (Kelly, 2006a).

While this study focused on the creation of an interpretive narrative to serve as a "snapshot-in-time" of six pre-selected legal concepts related to copyright and massive book digitization, other future studies could focus on several additional aspects of this topic. These aspects could include the changing understanding of these pre-selected terms in the literature as the arguments on *copyright infringement*, *fair use*, and *property* unfold. These aspects could also include additional legal concepts as they relate to copyright and massive book digitization. In addition, future studies could focus on the relationship between copyright, fair use, and search technology. As opposed to legal concerns, future studies could focus on the social and economic concepts related to massive book digitization. The purpose of this study's narrow focus on only

six pre-selected legal concepts is to facilitate an understanding of the issues related to copyright and massive book digitization by the general public.

## APPENDIX A: DEFINITIONS

***Book Digitization:*** To digitally scan a library collection with the intent of making the digital scan searchable online (“Google,” 2004).

***Conceptual Content Analysis:*** A concept is chosen for examination, and the analysis involves identifying its presence within a selected set of text (Palmquist, et al., 2005).

***Copyright:*** The U.S. Copyright Office (2006) defines copyright as, “...a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works” (§ 1, ¶ 1).

***Copyright Infringement:*** The use of a copyrighted work without permission from the work’s owner (Jeweler, 2005).

***Copyright Law:*** The United States copyright law and related laws as contained in Title 17 of the United States Code (“Copyright Law,” 2003).

***Digital Dilemma:*** The dilemma that exists because digital technology and the Internet facilitate global dissemination of information while simultaneously diminishing the control copyright owners have over their copyrighted works (Peukert, 2005).

***Digital Rights:*** A set of actions normally permitted in accordance with the rights of an individual as they exist in any other aspect of life but which have been impacted by a change to digital technology (“Digital Rights,” 2007).

***Digitization:*** To convert content from a tangible, analog form into a digital electronic representation of that content. Related terms: Digitize, Digitization and Digitized shall have corresponding meanings (“Cooperative Agreement,” 2006).

**Fair Use:** Criteria for a court to consider in determining whether an infringing use of copyrighted material is “fair” (Jeweler, 2005). According to 17 U.S.C. § 107:

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.

**Google Book Search Project:** GBS; Jeweler (2005) writes, “An effort by Google in conjunction with several library partners to scan books into a digital format so that they may be searched textually” (p. 1).

**Google Services:** According to the Google “Cooperative Agreement” (2006), “Google’s products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-based services accessible through the Google Sites and any Google syndication partner sites” (p.1).

**Intellectual Property (IP):** Various legal entitlements that attach to certain names, written and recorded media, and inventions. The entitlement’s holder is generally empowered to exercise exclusive rights in relation to the subject matter of the IP (“Intellectual property,” 2007).

**Intermediate Copy:** Copies of copyright protected material that are deleted immediately after use (Kupferschmid, 2005)



***Interpretive Narrative:*** “Qualitative researchers construct interpretive narratives from their data and try to capture the complexity of the phenomenon under study. They use a more personal, literary style, and they often include participants' own language and perspectives” (Leedy & Ormrod, 2005, p. 97).

***Library Exception:*** Exempts libraries and archives from copyright infringement provided five criteria are met (Gbegnon, 2006). According to Gbegnon (2006), these five criteria can be summarized as (1) the reproduction is a single copy, (2) it is made by a library or archive or its employees acting within the scope of their employment, (3) it not be associated with a commercial purpose, (4) it is copied from a collection that is open to the public or at least all researchers, and (5) it includes a notice of copyright (§ 35).

***Literature Review:*** To look again at related literature that describes theoretical perspectives and previous research findings regarding the problem at hand (Leedy & Ormrod, 2005).

***Market:*** Allowing buyers and sellers to discover information and have a voluntary exchange of goods or services (“Market,” 2007). In the case of digitized books, it is the place where licensing of copyrighted material can occur (Kupferschmid, 2005).

***Massive:*** Google intends to scan every book ever published; WorldCat, a database of titles from more than twenty-five thousand libraries around the world, lists thirty-two million books (Toobin, 2007).

***Opt-in/Opt-out Model:*** The Opt-in model allows copyright holders to submit copyrighted works for digitization to be included in the database (U.S. National Commission on Libraries and Information Science, 2006). The Opt-out model allows copyright holders to request that specific titles be omitted from the database that contains a digitized version of the copyrighted works (Toobin, 2007).

**Optical Character Recognition:** OCR is a type of computer software designed to translate pictures of characters into a standard encoding scheme representing them (e.g. ASCII or Unicode) (“Optical character recognition,” 2007).

**Orphan Works:** Dames (2006a) writes, “An “orphan work is any work protected by copyright for which the copyright owner cannot be located or contacted after a reasonable, diligent search” (§ 5).

**Program:** As opposed to the term “project,” the term “program” does not imply a limited duration. Ongoing maintenance and preservation are required (Dames & Hurst-Wahl, 2007).

**Property:** see *Intellectual Property (IP)*.

**Public Access:** A service provided to the public for free (Carlson, 2006).

**Public Domain:** Books not under copyright protection because they were published prior to 1923, or they were created by the government, or they were never protected by copyright (Vaidhyanathan, 2005).

**Research Libraries:** As represented by the first five libraries participating in the Google Book Search project: Harvard, Stanford, Oxford, the University of Michigan, and the New York Public Library (Carlson & Young, 2005).

**Search:** As related to search engines, such as those provided by Google, Yahoo, Ask and MSN, is a technology of the World Wide Web that allows users to find digitized content (Kelly, 2006a).

**Transformative:** Digitization of a book creates a new product and that digital text in a database is not the same as the book itself (Toobin, 2007).

## APPENDIX B: DATA SOURCES

1. Band, J. (2006b). Jonathan Band, PLLC. Retrieved May 6, 2007, from <http://www.policybandwidth.com/>.
2. Bracha, O. (2006). Standing copyright law on its head? The Googlization of everything and the many faces of property [Electronic Version]. Retrieved March 22, 2007 from <http://www4.cc.utexas.edu/law/conferences/ip/BrachaPaper.pdf>.
3. Coleman, M. S. (2006). Google, the Khmer Rouge and the public good [Electronic Version]. *Address to the Professional/Scholarly Publishing Division of the Association of American Publishers*. Retrieved April 24, 2007 from <http://www.law.pitt.edu/madison/downloads/coleman.pdf>.
4. Cooperative agreement [Electronic (2006). Version]. Retrieved March 28, 2007 from [http://www.cdlib.org/news/ucgoogle\\_cooperative\\_agreement.pdf](http://www.cdlib.org/news/ucgoogle_cooperative_agreement.pdf).
5. Coyle, K. (2006). Managing technology: Mass digitization of books [Electronic Version]. *The Journal of Academic Librarianship*, 32, 641-645. Retrieved April 19, 2007.
6. Crane, G. (2006). What do you do with a million books? [Electronic Version]. *D-Lib Magazine*, 12. Retrieved April 24, 2007 from <http://www.dlib.org/dlib/march06/crane/03crane.html>.
7. Dames, K. M. (2006a). Beyond Google [Electronic Version]. *Searcher*, 14, 21-24. Retrieved March 27, 2007 from <http://0-web.ebscohost.com.janus.uoregon.edu/ehost/detail?vid=1&hid=7&sid=1507b163-4a6e-427d-9fe1-36e1edeba844%40sessionmgr8>.
8. Dye, J. (2006). Scanning the stacks [Electronic Version]. *EContent*, 29, 32-37. Retrieved April 18, 2007 from

- <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19498043&loginpage=Login.asp&site=ehost-live>.
9. Ebbinghouse, C. (2005). Open access: The battle for universal, free knowledge [Electronic Version]. *Searcher*, 13, 8-17. Retrieved April 20, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16349078&loginpage=Login.asp&site=ehost-live>.
  10. Gbegnon, K. (2006). Digitized scholarship and the "library" concept: allowing the history of the library exemption to inform how we view Google's digitized library [Electronic Version]. *Hastings Communications and Entertainment Law Journal*, 29. Retrieved April 7, 2007.
  11. Givler, P. (2005). The University Press Assn.'s objections [Electronic Version]. Retrieved March 27, 2007 from [http://www.businessweek.com/bwdaily/dnflash/may2005/nf20050523\\_9039.htm](http://www.businessweek.com/bwdaily/dnflash/may2005/nf20050523_9039.htm).
  12. Grogg, J. E., & Ashmore, B. (2007). Google Book Search libraries and their digital copies [Electronic Version]. *Searcher*, 15. Retrieved April 7, 2007 from [http://www.infoday.com/searcher/apr07/Grogg\\_Ashmore.shtml](http://www.infoday.com/searcher/apr07/Grogg_Ashmore.shtml).
  13. Hanratty, E. (2005). Google library: beyond fair use? [Electronic Version]. Retrieved March 22, 2007 from <http://www.law.duke.edu/journals/dltr/articles/2005dltr0010.html>.
  14. Herring, M. Y. (2005). Don't get goggle-eyed over Google's plan to digitize [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.
  15. Jensen, M. (2005). Presses have little to fear from Google [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.

16. Jeweler, R. (2005). The Google Book Search project: Is online indexing a fair use under copyright law? [Electronic Version]. Washington, D.C.: The Library of Congress, Congressional Research Service.
17. Kelly, K. (2006b). Biography and other details. Retrieved May 7, 2007, from <http://www.kk.org/biography/>.
18. Kupferschmid, K. (2005). Are authors and publishers getting scroogled? [Electronic Version]. *Information Today*, 22, 1-51. Retrieved April 18, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19091457&loginpage=Login.asp&site=ehost-live>.
19. Lavoie, B., Connaway, L. S., & Dempsey, L. (2005). Anatomy of aggregate collections: The example of Google Print for libraries [Electronic Version]. *D-Lib Magazine*, 11. Retrieved April 23, 2007 from <http://www.dlib.org/dlib/september05/lavoie/09lavoie.html>.
20. McGraw-Hill Companies, Inc. vs Google, Inc. [Electronic (2005). Version]. Retrieved March 28, 2007 from <http://news.findlaw.com/hdocs/docs/google/mcggoog101905cmp.pdf>.
21. Pike, G. H. (2005). Google Print and the fair use doctrine [Electronic Version]. *Information Today*, 22, 17-19. Retrieved April 19, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18875729&loginpage=Login.asp&site=ehost-live>.
22. Rubin, T. C. (2007). Searching for principles: Online services and intellectual property. Retrieved March 13, 2007, from <http://www.microsoft.com/presspass/exec/trubin/03-05-07AmericanPublishers.msp>

23. The Author's Guild vs. Google, Inc. [Electronic (2005). Version]. Retrieved March 28, 2007 from  
[http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors\\_Guild\\_v\\_Google\\_Complaint.pdf](http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors_Guild_v_Google_Complaint.pdf).
24. Toobin, J. (2007, February 5). Google's moon shot [Electronic Version]. *The New Yorker*, 82, 30-35. Retrieved March 18, 2007, from  
[http://www.newyorker.com/reporting/2007/02/05/070205fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2007/02/05/070205fa_fact_toobin).
25. U.S. National Commission on Libraries and Information Science. (2006). Mass digitization: Implications for information policy [Electronic Version]. Retrieved March 31, 2007, from <http://www.nclis.gov/digitization/MassDigitizationSymposium-Report.pdf>
26. Vaidhyathan, S. (2005). A risky gamble with Google [Electronic Version]. *Chronicle of Higher Education*, 52, B7-B10. Retrieved April 18, 2007 from  
<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19034124&loginpage=Login.asp&site=ehost-live>.
27. Young, J. R. (2006). Scribes of the digital era [Electronic Version]. *The Chronicle of Higher Education*, 52, 34. Retrieved April 7, 2007.
28. Zeller, S. (2006). Limits of 'fair use' tested by Google library project [Electronic Version]. *CQ Weekly*, 64(25), 1669-1670.

## APPENDIX C: CODING RESULTS FOR SIX LEGAL CONCEPTS PERTAINING TO COPYRIGHT

Table 1

Coding results for *copyright infringement*

Author	Location	Contextual Description
Band, 2006a	p. 3, ¶ 12	On September 20, 2005, the Authors Guild and several individual authors sued Google for <i>copyright infringement</i> .
Band, 2006a	p. 4, ¶ 16	Kelly, a photographer, discovered that some of the photographs from his website were in the Arriba search database, and he sued for <i>copyright infringement</i> .
Band, 2006a	p. 3, ¶ 11	According to Pat Schroeder, AAP President, Google's opt-out procedure "shifts the responsibility for preventing <i>infringement</i> to the copyright owner rather than the user, turning every principle of copyright law on its ear."
Band, 2006a	p. 12, ¶ 57	Since displaying some of a book's text in response to a search query implicates both the reproduction right and the display right, an owner will be able to bring an <i>infringement</i> action against Google when it changes its policy, even if that occurs long after the original scanning of the book.
Band, 2006a	p. 14, ¶ 70	On the other hand, a court probably would find <i>infringement</i> if a library made the full text of in-copyright works available online to the general public.
Band, 2006a	p. 16, ¶ 76	However, copyright law is territorial; that is, one infringes the copyright laws of a particular country only with respect to acts of <i>infringement</i> that occurred in that country.
Bracha, 2006	p. 3, ¶ 2	If we are to believe the Authors Guild and a group of disgruntled copyright owners who filed two separate <i>copyright infringement</i> lawsuits against Google.
Bracha, 2006	p. 3, ¶ 4	Despite this architecture, the project still gives rise to complex questions of potential <i>copyright infringement</i> .
Bracha, 2006	p. 3, ¶ 4	Does the presentation of the short excerpts of text by Google constitute <i>copyright infringement</i> ?
Bracha, 2006	p. 3, ¶ 4	Is the scanning of the full texts into Google's digital database—an action which is necessary to facilitate the project— <i>infringing</i> , despite the fact that no human eye will see this scanned full text?

Author	Location	Contextual Description
Bracha, 2006	p. 6, ¶ 11	In many cases, the ability to rely on opt-out as a safe-haven from <i>infringement</i> claims would be a crucial element.
Bracha, 2006	p. 6, ¶ 12	First, I want to refute the claim that copyright, or any other property right, always and inevitably places the burden of obtaining permission on the intermeddler and that an opt-out option can never be enough to escape <i>infringement</i> of such a right.
Bracha, 2006	p. 21, footnote 66	The exemption does not apply, however, when a notice of <i>infringing</i> material by the copyright owner is accepted and the host does not act expeditiously to remove or disable the material.
Bracha, 2006	p. 32, ¶ 84	To the extent that digital-libraries make available to users copyrighted items in unsecured formats, they may facilitate <i>copyright infringement</i> .
Bracha, 2006	p. 32, footnote 92	The project is accused of facilitating massive <i>copyright infringement</i> , despite the fact that, absent the copyright owner's consent, Google's Print Library does not provide access to more than miniscule fragments of copyrighted text.
Bracha, 2006	p. 33, ¶ 85	Given the quality of near-perfect digital copies and the instant distribution power of a vast global computer network, the scale of <i>infringement</i> and the damage caused to copyright owners and to the social policies behind copyright law may be very substantial.
Bracha, 2006	p. 39, ¶ 105	The reader would remember that for the purposes of this article I chose to bracket the question of whether the various activities of Google or other digital-libraries are or should be <i>copyright infringement</i> .
Bracha, 2006	p. 39, ¶ 105	The hypothetical working assumption of this article, however, is that reproduction, display, and distribution (even in the very limited form practiced by Google Print Library) constitute <i>copyright infringement</i> .
Bracha, 2006	p. 42, ¶ 114	Assume that at least one use of each work, which is necessary for the library project, is <i>infringing</i> , in case that the work is protected by copyright.
Bracha, 2006	p. 43, footnote 122	The major inducement for affixing a notice is the disallowance of an "innocent <i>infringement</i> " defense by defendants, in mitigation of statutory damages. 17 U.S.C. §§401(d), 402(d).
Bracha, 2006	p. 43, footnote 123	Registration is also a formal prerequisite for initiating an <i>infringement</i> action concerning domestic works.
Bracha, 2006	p. 43, footnote 124	The risk undertaken by a user of an unregistered work may be somewhat smaller since statutory damages do not apply to acts of <i>infringement</i> committed prior to registration.



Author	Location	Contextual Description
Bracha, 2006	p. 54, ¶ 150	In most cases substantial gaps exist in information which is vital for avoiding the <i>infringement</i> risk: the status of works, the identity of their owners, the interest of the copyright owner in enforcing his rights, and the preferences of the owner regarding use in the digital-library project.
Bracha, 2006	p. 54, ¶ 150	Under an opt-in regime the lion-share of this cost is the result of attempts by digital-libraries to obtain the missing information in order to avoid the risk of <i>infringement</i> .
Bracha, 2006	p. 67, ¶ 188	As we move along the continuum toward works of a more appropriative character, the debate becomes stronger about whether subsequent uses of existing works should be banned as <i>copyright infringement</i> or allowed as valuable new creation.
Bracha, 2006	p. 72, ¶ 207	In such cases any allegedly <i>infringing</i> use by the digital-library that occurs prior to a notice of objection from the copyright owner would be deemed a fair use and hence non-infringing.
Bracha, 2006	p. 76, footnote 204	One recent example is Perfect 10 v. Google, Inc., 416 F. Supp. 2d 828 (D.Cal. 2006) where a federal district court in California found that thumbnail versions of copyrighted images displayed by an image search engine were <i>infringing</i> .
Bracha, 2006	p. 76, footnote 204	The district court acknowledged the relevant precedent but distinguished the case before it on two grounds: 1) the defendant, through its banner-ad program, had a commercial relationship with a few of the websites displaying <i>infringing</i> full-size copies of the copyrighted images; 2) there was evidence of an emerging licensing market of thumbnail images for cell-phone use.
Coleman, 2006	None	None
“Cooperative Agreement,” 2006	p. 9, § 10.1	Google shall defend, indemnify, and hold harmless University from and against any and all liabilities, damages, charges, fees, including reasonable attorneys' fees, costs, and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law, including, but not limited to, an allegation of <i>copyright infringement</i> : University's provision of Available Content to Google for digitization to the extent such provision is alleged to be direct or secondary <i>copyright infringement</i> ; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.

Author	Location	Contextual Description
“Cooperative Agreement,” 2006	p. 9, §10.2	University shall defend, indemnify, and hold harmless Google from and against any and all liabilities, damages, charges, fees, including reasonable attorneys fees, costs and expenses arising out of or in any way related to a third party claim, lawsuit, and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law including, but not limited to, an allegation of <i>copyright infringement</i> : University's use or University's distribution of the University Digital Copy.
“Cooperative Agreement,” 2006	p. 9, § 10.2	The foregoing indemnification excludes any third party claim that relates to University's provision of Available Content to Google for digitization to the extent such provision is alleged to be direct or secondary <i>copyright infringement</i> ; Google's Digitization of Available Content; the Google Digital Copy; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.
“Cooperative Agreement,” 2006	p. 10, § 11	The foregoing limitations, however, are not applicable to any damages arising from a breach of Section 6, Confidentiality, to any monetary obligations arising out of the indemnification obligations in Section 10, Indemnification, including, but not limited to, indemnification for allegations of <i>copyright infringement</i> , or to any damages related to actions for personal injury or willful misconduct.
Coyle, 2006	None	None
Crane, 2006	None	None
Dames, 2006a	¶ 2	Some of them ended up suing Google for <i>copyright infringement</i> in a New York federal court.
Dames, 2006a	¶ 6	And in today's hyperactively litigious copyright environment, this level of uncertainty makes users and their representatives fear <i>copyright infringement</i> lawsuits.
Dames, 2006a	¶ 9	Registering a copyright notice with the Copyright Office remains a prerequisite to filing an <i>infringement</i> lawsuit, a prerequisite to receiving statutory damages in an <i>infringement</i> lawsuit, and, if uncontested, solid evidence that a work is copyrighted.
Dames, 2006a	¶ 10	The failure to find a proper owner to credit or compensate often leads to preemptive abstention: Instead of using even a small portion of an orphan work without permission -- thereby risking a <i>copyright infringement</i> lawsuit -- creators bypass using that work altogether, effectively making that work unavailable to the public at large.

Author	Location	Contextual Description
Dames, 2006a	¶ 15	The 207-page report recommended that Congress amend Chapter 5 of the Act, which deals with <i>infringement</i> and remedies, to add a new Section 514 entitled "Limitation on Remedies: Orphan Works."
Dames, 2006a	¶ 16	Introduced by Rep. Lamar Smith, R-Texas, chair of the House's Judiciary Committee, the legislation essentially echoes the Office's proposal to add a new Section 514 and to limit <i>infringement</i> damages when a user cannot find a copyright owner after conducting a reasonable search for that owner's identity.
Dames, 2006a	¶ 24	A corollary issue was the extent to which libraries need to -- or should -- assist copyright owners (including publishers) in guarding against actual or suspected <i>infringement</i> of digital works, so easily copied and distributed.
Dames, 2006a	Endnote 3	Section 411(a) states, "no action for <i>infringement</i> of the copyright in any United States work shall be instituted until registration of the copyright claim has been made in accordance with this title."
Dames, 2006a	Endnote 4	Section 412 of the Act states in pertinent part that "no award of statutory damages ... shall be made for ... any <i>infringement</i> of copyright commenced ... before the effective date of its registration."
Dye, 2006	p. 36, ¶ 17	"The lawsuits against Google will inevitably draw attention to other practices, most notably caching of Web pages and, in fact, that is already happening with the Internet Archive," which is currently facing a <i>copyright infringement</i> lawsuit of its own.
Dye, 2006	p. 36, ¶ 20	The Authors Guild is seeking statutory damages on behalf of its entire membership for alleged <i>copyright infringement</i> as well as a court order to prevent Google from scanning copyrighted material in the future.
Ebbinghouse, 2005	¶ 17	Because OA uses copyright-holder consent, or the expiration of copyright, it does not require the abolition, reform, or <i>infringement</i> of copyright.
Gbegnon, 2006	¶ 1	In what has been called a "massive <i>copyright infringement</i> " on existing literary copyrights, Google has decided to copy millions of books into a database, and offer snippets of those books - free of charge - to its patrons.
Gbegnon, 2006	¶ 3	This will allow the Library to come within the library exemption to <i>copyright infringement</i> liability, which is essential because the Print Library reflects the spirit of innovation that the copyright laws were designed to protect.

Author	Location	Contextual Description
Gbegnon, 2006	¶ 3	Part V will then focus on the history of the library exception to <i>copyright infringement</i> .
Gbegnon, 2006	¶ 11	On September 20, 2005, the Authors Guild (an association of published authors with more than 8,000 members) and several individual authors sued Google for <i>copyright infringement</i> .
Gbegnon, 2006	¶ 11	The suit alleged that the multi-billion dollar search engine and advertising giant had been engaging in "massive <i>copyright infringement</i> " at the expense of the rights of individual writers.
Gbegnon, 2006	¶ 35	The Copyright Act exempts libraries and archives from <i>copyright infringement</i> liability provided certain requirements are met.
Gbegnon, 2006	¶ 38	By the 1960s, copying technologies had seen significant advancement, increasing the methods and ease by which libraries could serve the public, and the methods and ease by which copyrights could be <i>infringed</i> .
Gbegnon, 2006	¶ 54	Yet, the current law does not protect the Print Library from <i>copyright infringement</i> liability.
Gbegnon, 2006	Footnote 86	The fair use, implied license and "de minimis" defenses to <i>copyright infringement</i> have been discussed by other writers.
Givler, 2005	¶ 3	It had not been mentioned by Google representatives during any of the discussions they were having with our members, and Google's subsequent explanations of Google Print for Libraries have only increased that confusion and transformed it into mounting alarm and concern at a plan that appears to involve systematic <i>infringement</i> of copyright on a massive scale.
Givler, 2005	¶ 5	However, it also appears to be built on a fundamental violation of the copyright act, and this large-scale <i>infringement</i> has the potential for serious financial damage to the members of AAUP.
Givler, 2005	¶ 23	Among other reasons, it is irrelevant because all a publisher can do under this option is assert its control over the right to display by Google after the <i>infringing</i> copies have been made.
Givler, 2005	¶ 24	Several publishers associations have written to Google expressing concern on behalf of their members about the <i>copyright infringement</i> that appears to be built into Google Print for Libraries, and Google's replies have treated their concerns simply as a public relations issue.
Givler, 2005	¶ 27	Why aren't these copies <i>infringing</i> ?
Givler, 2005	¶ 35	<i>Copyright infringement</i> violates authors' rights and, like any other form of theft, increases the burden on those who abide by the law.

Author	Location	Contextual Description
Hanratty, 2005	¶ 3	In making the digital copy, Google is <i>infringing</i> on the reproduction right of the copyright holder and continues that <i>infringement</i> when it allows a portion of a copyrighted work to be displayed on a user's computer screen without permission from that copyright holder.
Hanratty, 2005	¶ 4	To prove <i>infringement</i> , a copyright holder only needs to show: (1) ownership of the copyright in the work and (2) that original elements of the work were copied.
Hanratty, 2005	¶ 4	If these elements are met, <i>infringement</i> has occurred and liability can only be negated if the infringer can offer a valid defense.
Hanratty, 2005	¶ 5	Assuming, <i>arguendo</i> , that Google is simply making a digital copy of the works that are still covered by copyright protection, and not subsequently posting the work to its index, would that action be enough to constitute <i>copyright infringement</i> ?
Hanratty, 2005	¶ 5	This question is essential to determining whether Google's actual actions constitute <i>infringement</i> .
Hanratty, 2005	¶ 5	Without this initial finding of an <i>infringement</i> , the rest of the inquiry is irrelevant; a fair use defense is unnecessary where <i>infringement</i> has not occurred.
Hanratty, 2005	¶ 6	Some case law supports the notion that when a copyright is infringed for "insubstantial purposes," i.e. when <i>infringement</i> is <i>de minimis</i> , a cause of action for <i>infringement</i> is unsupported.
Hanratty, 2005	¶ 7	Here, Google's digitization of the library collections constitutes a prima facie case of <i>copyright infringement</i> .
Hanratty, 2005	¶ 7	This copying is enough to establish a prima facie case of <i>infringement</i> .
Hanratty, 2005	¶ 7	It appears that only a valid defense would keep this <i>infringement</i> from being actionable.
Hanratty, 2005	¶ 8	The Copyright Act provides libraries and archives an explicit exemption from liability for <i>copyright infringement</i> under certain, designated circumstances.
Hanratty, 2005	¶ 9	The legislative history also makes clear that the statute would not excuse <i>infringement</i> liability if there was a "commercial motive behind the actual making or distributing of copies, if multiple copies were made or distributed, or if the photocopying activities were 'systematic' in the sense that their aim was to substitute for subscriptions or purchases."

Author	Location	Contextual Description
Hanratty, 2005	¶ 13	However, nothing in the library exemption precludes a finding of fair use with regards to an <i>infringing</i> copy.
Hanratty, 2005	¶ 14	Fair use is an affirmative defense to what would otherwise be an <i>infringing</i> act, such as reproducing a copyrighted work.
Hanratty, 2005	¶ 15	There is no bright line rule to distinguish what is reasonable fair use from what is actionable <i>infringement</i> .
Hanratty, 2005	¶ 16	If commerciality alone precluded fair use, it would be difficult to find any otherwise <i>infringing</i> use that could be deemed fair.
Hanratty, 2005	¶ 17	Exploitative, while not officially defined, relates to how much profit potential is being taken away from a copyright holder and how necessary the <i>infringing</i> use is to the user's ability to profit.
Hanratty, 2005	¶ 22	The second factor in a fair use analysis is the nature of the copyrighted work that is potentially <i>infringed</i> .
Hanratty, 2005	¶ 26	This factor relates to the effect that the potentially <i>infringing</i> use has on the prospective market for, or value of, the copyrighted work.
Hanratty, 2005	¶ 28	When sued for <i>infringement</i> by a number of record companies, MP3.COM maintained that the impact of its service would be positive since the service promoted purchase and ownership of the music.
Hanratty, 2005	¶ 29	Since the images were still only available in a useful, high quality form from the copyright owner and the copyright owner had the ability to license those quality images, the court did not find <i>infringement</i> .
Hanratty, 2005	¶ 30	At the same time, there could be a valuable licensing right for a copyright holder that Google is potentially <i>infringing</i> .
Hanratty, 2005	¶ 31	However, since Google's potentially infringed market is speculative; a court just may choose not to acknowledge it, as was done in <i>Kelly</i> .
Hanratty, 2005	¶ 31	While the court in <i>MP3.COM</i> saw the infringed market, the court in <i>Sony</i> did not see the potential market that the video tape recorder (VTR) might be <i>infringing</i> .
Hanratty, 2005	¶ 31	Additionally, most of the larger copyright holders that Google would be <i>infringing</i> the rights of have already voluntarily signed up for the similar Google Print program.

Author	Location	Contextual Description
Hanratty, 2005	¶ 33	In <i>Sony</i> , even though the copyright holders were painting a doom and gloom picture of the future, as the right holders would be apt to do here, the court was able to see past their vision and recognize the benefits of allowing the potential <i>infringement</i> of the VTR.
Herring, 2005	None	None
Jensen, 2005	None	None
Jeweler, 2005	p.1, ¶ 1	Complaints for <i>copyright infringement</i> were recently filed against Google, Inc. by a variety of authors and representatives of the book publishing industry.
Jeweler, 2005	p. 1, ¶ 1	Because of the unique facts and issues presented, there is scant legal precedent to legitimize Google's claim that its project is protected by copyright law's fair use exception to liability for <i>infringement</i> .
Jeweler, 2005	p. 2, ¶ 4	This contributes to the content holders' claim that Google is engaged in massive <i>copyright infringement</i> .
Jeweler, 2005	p. 2, ¶ 5	The complaint filed by plaintiff publishing companies (the Publishers) accuses defendant Google of massive <i>copyright infringement</i> .
Jeweler, 2005	p. 2, ¶ 6	Defendant Google essentially contends that its opt out program negates any <i>infringement</i> liability.
Jeweler, 2005	p. 2, ¶ 6	But, if <i>infringement</i> were found, Google argues that its activity is protected by copyright's fair use doctrine.
Jeweler, 2005	p. 3, ¶ 7	One cannot, they argue, generally announce one's intention to infringe multiple copyrighted works and collectively offer rights holders the opportunity <i>not</i> to have their work <i>infringed</i> .
Jeweler, 2005	p. 3, ¶ 8	Assuming a court were to find that Google's digitization of copyrighted works is <i>infringing</i> , the question becomes whether its activities are a fair use.
Jeweler, 2005	p. 3, ¶ 8	As codified in the Copyright Act, it establishes criteria for a court to consider in determining whether an <i>infringing</i> use is "fair."
Jeweler, 2005	p. 3, ¶ 8	... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an <i>infringement</i> of copyright.
Jeweler, 2005	p. 4, ¶ 10	There is little question that indexing basic information about any book alone, absent copying, would not constitute <i>copyright infringement</i> .

Author	Location	Contextual Description
Jeweler, 2005	p. 4, ¶ 10	While displaying “snippets” of text is closer to <i>infringing</i> activity, the prospective display, as described by Google, does not appear to usurp or negate the value of the underlying work.
Jeweler, 2005	p. 4, ¶ 11	Hence, is the digital reproduction incidental to an otherwise fair use or is it impermissibly <i>infringing</i> ?
Jeweler, 2005	p. 4, ¶ 14	Although a court’s finding that there is a fair use exception to <i>copyright infringement</i> is context-specific, it naturally looks to precedent for guidance.
Jeweler, 2005	p. 4, ¶ 14	Although providing indexing information alone does not implicate <i>copyright infringement</i> , displaying limited quotes from a literary work may be consistent with fair use.
Jeweler, 2005	p. 5, ¶ 15	Hence, the arguably unique question presented is whether apparent <i>prima facie infringing</i> activity that facilitates an arguably legitimate use is indeed a fair one.
Jeweler, 2005	p. 5, ¶ 15	In <i>Sony</i> , the Court held that the sale of the video recording machine to “time shift” broadcast television for personal home viewing was not contributory <i>copyright infringement</i> .
Jeweler, 2005	p. 5, ¶ 17	The digital scanning — the alleged <i>infringing</i> activity — is viewed as incidental to a valid and socially useful function, indexing.
Jeweler, 2005	p. 5, ¶ 18	Others view Google’s activity as <i>prima facie copyright infringement</i> , with little or no extenuating circumstances.
Kelly, 2006a	¶ 43	On both counts the authors and publishers accused Google of blatant <i>copyright infringement</i> .
Kupferschmid, 2005	p. 48, ¶ 12	In the following month, five publishers filed their own suit against Google, charging Google with large-scale, systematic <i>copyright infringement</i> .
Kupferschmid, 2005	p. 50, ¶ 22	While Google will likely claim that the purpose of its Print Library Project search tool is educational in nature (because it helps people locate hooks on topics of interest), that argument could be made in most <i>copyright infringement</i> cases.
Kupferschmid, 2005	p. 50, ¶ 22	Certainly, Napster and Grokster (both lost recent well-publicized <i>copyright infringement</i> cases) could have argued that they were merely making content more available to the masses.
Kupferschmid, 2005	p. 50, ¶ 28	Because Google copies the entire book as a precursor to displaying a snippet, Google's copying of the book gives rise to an additional claim of <i>infringement</i> of the reproduction right.
Kupferschmid, 2005	p. 50, ¶ 29	If, as Google insists, the court may consider only whether a snippet is <i>infringing</i> and not whether the full-text copy of the book is <i>infringing</i> —because the full-text copy from which the snippet is created is what Google terms a “noninfringing intermediate copy”—then the reproduction right will be effectively eviscerated.



Author	Location	Contextual Description
Kupferschmid, 2005	p. 50, ¶ 29	Under this reasoning, an <i>infringement</i> of the reproduction right could only be possible when there is a corresponding distribution or display.
Kupferschmid, 2005	p. 1, ¶ 1	On Oct. 19, five publishers sued Google claiming that the Google Print Library Project <i>violated</i> their exclusive rights provided by U.S. copyright law.
Lavoie, Connaway, & Dempsey, 2005	¶ 31	This measure, along with the intense debate over questions of <i>copyright infringement</i> and fair use associated with GPLP, suggests a need to examine the publication dates of the materials in the combined Google 5 print book collection.
“McGraw-Hill Companies,” 2005	¶ 2	Publishers bring this action to prevent the continuing, irreparable and imminent harm that Publishers are suffering, will continue to suffer and expect to suffer due to Google's willful <i>infringement</i> , to further its own commercial purposes, of the exclusive rights of copyright that Publishers enjoy in various books housed in, among others, the collection of the University Library of the University of Michigan in Ann Arbor, Michigan ("Michigan").
“McGraw-Hill Companies,” 2005	¶ 35	Google's continuing and future <i>infringements</i> are likely to usurp Publishers' present and future business relationships and opportunities for the digital copying, archiving, searching and public display of their works.
“McGraw-Hill Companies,” 2005	¶ 38	Google will infringe the copyrights of Publishers' books by unlawfully reproducing and publicly distributing and displaying copies of such works in violation of the Copyright Act.
“McGraw-Hill Companies,” 2005	¶ 39	Google's <i>infringements</i> are and will be willful, executed with full knowledge of Publishers' copyrights and in conscious disregard for Publishers' exclusive rights in the protected works.
“McGraw-Hill Companies,” 2005	¶ 40	Google's deliberate <i>infringement</i> of Publishers' copyrights has greatly and irreparably damaged Publishers and will continue to damage Publishers greatly and irreparably unless enjoined by this Court.
“McGraw-Hill Companies,” 2005	¶ 45	An Order that declares that Google's past, present and future conduct and practices constitute <i>infringement</i> of Publishers' exclusive rights of copyright in and to their works, including the works set out in Exhibit A.
Pike, 2005	p. 17, ¶ 3	Not surprisingly. The Authors Guild and several individual authors recently filed a federal lawsuit against Google claiming that the company is "engaging in massive <i>copyright infringement</i> ."

Author	Location	Contextual Description
Pike, 2005	p. 19, ¶ 7	A commercial artist claimed that the thumbnail versions of his works were a <i>violation</i> of his copyrights.
Rubin, 2007	¶ 7	The second principle is that those new services must respect the legitimate interests of copyright holders; put conversely, we must forcefully reject any business model that is based on the systematic <i>infringement</i> of copyrights.
Rubin, 2007	¶ 23	And Google has yet to come up with a plan to restrain the massive <i>infringements</i> on YouTube.
“The Author’s Guild,” 2005	¶ 3	By reproducing for itself a copy of those works that are not in the public domain (the "Works"), Google is engaging in massive <i>copyright infringement</i> .
“The Author’s Guild,” 2005	¶ 3	It has <i>infringed</i> , and continues to infringe, the electronic rights of the copyright holders of these works.
“The Author’s Guild,” 2005	¶ 6	By this action, plaintiffs, on behalf of themselves and all others similarly situated, seek damages, injunctive and declaratory relief with respect to Google’s present <i>infringement</i> , and declaratory and injunctive relief with respect to Google's planned unauthorized commercial use of the Works.
“The Author’s Guild,” 2005	¶ 7	This <i>copyright infringement</i> action arises under 17 U.S.C. § 101 et seq.
“The Author’s Guild,” 2005	¶ 23	Whether the reproduction by Google of such copies constitutes <i>copyright infringement</i> ;
“The Author’s Guild,” 2005	¶ 34	continued <i>copyright infringement</i> of the Works and/or the effectuation of new and further <i>infringements</i> ;
“The Author’s Guild,” 2005	¶ 35	Google acted willfully or knew or should have known that its actions constitute <i>infringement</i> .
“The Author’s Guild,” 2005	¶ 41	Google's <i>infringement</i> of the copyrights of the Works was willful.
“The Author’s Guild,” 2005	¶ 42	As a result of Google's acts of <i>copyright infringement</i> and the foregoing allegations, the Named Plaintiffs and the Class have suffered damages.
“The Author’s Guild,” 2005	¶ 46	Google's planned imminent commercial use of the Works would constitute additional wholesale <i>copyright infringement</i> .
“The Author’s Guild,” 2005	¶ 48	Plaintiffs and the Class are likely to succeed on the merits of their <i>copyright infringement</i> claim because Google's existing and planned use of the Works does not fall within any of the statutory exceptions to <i>copyright infringement</i> and is in violation of the copyright laws.

Author	Location	Contextual Description
“The Author’s Guild,” 2005	¶ 50	Plaintiffs are therefore entitled to an injunction barring Google from continued <i>infringement</i> of the copyrights of the Named Plaintiffs and the Class, and other equitable relief as more fully set forth in the Prayer for Relief.
“The Author’s Guild,” 2005	¶ 52	An actual controversy exists between The Authors Guild, the Named Plaintiffs and the Class on one hand, and Google on the other hand, by reason of Google's announced present and continuing <i>infringement</i> of the Named Plaintiffs' and the Class's copyrights, and announcement that it will not cease and desist from, or remedy, its wholesale <i>infringement</i> of the Works.
“The Author’s Guild,” 2005	¶ 53	Plaintiffs are entitled to a judgment declaring that Google's actions are unlawful and, specifically, that Google <i>infringed</i> and continues to infringe the Named Plaintiffs' and the Class's copyrights in <i>violation</i> of the Copyright Act.
“The Author’s Guild,” 2005	¶ 54	For an injunction (a) barring Google from continued <i>infringement</i> of the copyrights of the Named Plaintiffs and the Class, and/or (b) other equitable relief to redress any continuing <i>violations</i> of the Act;
“The Author’s Guild,” 2005	¶ 54	For (a) permanent injunctive and declaratory relief barring Google from continued <i>infringement</i> of the copyrights of the Named Plaintiffs and the Class, and/or (b) other equitable relief to redress any continuing <i>violations</i> of the Act;
Toobin, 2007	p. 30, ¶ 5	To put it another way, being taken to court and charged with <i>copyright infringement</i> on a large scale might be the best thing that ever happens to Google’s foray into the printed word.
Toobin, 2007	p. 33, ¶ 17	However, according to the plaintiffs in the cases against Google, the act of copying the complete text amounts to an <i>infringement</i> , even if only portions are made available to users.
U.S. National Commission on Libraries and Information Science, 2006	None	None
Vaidhyanathan, 2005	¶ 8	In recent lawsuits, the Authors Guild and the Association of American Publishers, which is representing five of its members, have charged Google with <i>copyright infringement</i> for scanning works still under copyright.
Vaidhyanathan, 2005	¶ 26	Plenty of other companies, like airlines, have <i>violated</i> their own privacy policies.

Author	Location	Contextual Description
Vaidhyanathan, 2005	¶ 31	What if stockholders decide that Google Library is a money loser or too much of a <i>copyright-infringement</i> liability?
Vaidhyanathan, 2005	¶ 35	Almost nothing stops bad actors (like DVD pirates) from <i>infringing</i> copyrights for profit.
Vaidhyanathan, 2005	¶ 41	So the <i>copyright-infringement</i> suits brought by authors and by publishers against Google Library will present the courts with an interesting dilemma: Should they favor the norms of the Web (opt out) over the norms of the real world (opt in)?
Vaidhyanathan, 2005	¶ 45	The recording industry disagreed, and so did the court, ruling that MP3.com had <i>infringed</i> on the exclusive right to copy.
Young, 2005	None	None
Zeller, 2006	¶ 17	In 2003, the U.S. 9th Circuit Court of Appeals in San Francisco ruled that a Web search company called Arriba Soft had not <i>violated</i> the copyright of photographer Leslie A. Kelly when it reproduced thumbnail versions of her work in response to searches.

Table 2

Coding results for *fair use*

Author	Location	Contextual Description
Band, 2006a	p. 4, ¶ 3	Google responds that this copying is permitted under the <i>fair use</i> doctrine, 17 U.S.C. §107.
Band, 2006a	p. 4, ¶ 3	The critical question in the litigation is whether the <i>fair use</i> doctrine excuses Google's copying.
Band, 2006a	p. 4, ¶ 4	The lower court found that Arriba's reproduction of the photographs was a <i>fair use</i> , and the Ninth Circuit affirmed.
Band, 2006a	p. 4, ¶ 5	The court's <i>fair use</i> analysis focused on three of the four <i>fair use</i> factors set forth in Section 107

Author	Location	Contextual Description
Band, 2006a	p. 5, ¶ 2	The court closed its discussion of the first <i>fair use</i> factor by concluding that Arriba's use of Kelly's images promotes the goals of the Copyright Act and the <i>fair use</i> exception.
Band, 2006a	p. 7, ¶ 4	MP3.com argued that the copies it made on its server constituted <i>fair use</i> .
Band, 2006a	p. 8, ¶ 3	Google's supporters contend that the "intermediate copying" cases also demonstrate the <i>fair use</i> nature of the Library Project
Band, 2006a	p. 8, ¶ 3	In these cases, courts found that <i>fair use</i> permitted the translation of machine-readable object code into human-readable source code as an essential step in the development of noninfringing interoperable computer programs
Band, 2006a	p. 8, ¶ 5	Although courts typically focus on the four <i>fair use</i> factors and technical questions such as whether a use is transformative, the Supreme Court has stressed that <i>fair use</i> is an equitable rule of reason which permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster. <i>Stewart v. Abend</i> , 495 U.S. 207, 237 (1990).
Band, 2006a	p. 14, ¶ 1	Rather, the search engine firms believe that their activities constitute <i>fair use</i> .
Band, 2006a	p. 14, ¶ 1	In other words, the billions of dollars of market capital represented by the search engine companies are based primarily on the <i>fair use</i> doctrine.
Band, 2006a	p. 14, ¶ 1	If a court concludes that Google's scanning of millions of books is not a privileged <i>fair use</i> , then search engines' scanning of millions of websites might not constitute <i>fair use</i> either, unless the court takes pains to distinguish one situation from the other.
Band, 2006a	p. 14, ¶ 1	But the Ninth Circuit in <i>Kelly v. Arriba Soft</i> relied on <i>fair use</i> , not implied license.
Band, 2006a	p. 15, ¶ 3	This public distribution of entire orphan works will limit the availability of a <i>fair use</i> defense in many cases
Band, 2006a	p. 15, ¶ 3	Conversely, Google can make a stronger <i>fair use</i> argument because it will display only snippets, and not entire works.
Band, 2006a	p. 15, ¶ 2	<i>Fair use</i> under the U.S. Copyright Act is generally broader and more flexible than the copyright exceptions in other countries, including fair dealing in the U.K
Bracha, 2006	p. 3, ¶ 4	Can any or all of these activities enjoy the <i>fair use</i> defense?

Author	Location	Contextual Description
Bracha, 2006	p. 8, ¶ 19	The first is incorporating, through judicial interpretation, an opt-out mechanism into the <i>fair use</i> defense.
Bracha, 2006	p. 9, ¶ 20	Finally, I discuss briefly the possibility of combining the <i>fair use</i> alternative and either variations of the statutory safe-haven.
Bracha, 2006	p. 40, footnote 116	Thus one common, although often overly narrow, understanding of the <i>fair use</i> defense is as a mechanism for correcting market-failures.
Bracha, 2006	p. 40, footnote 116	In other words, this view assumes that the <i>fair use</i> defense comes into play, and prevents a protection of a particular entitlement, only when market conditions would produce so much transaction costs as to frustrate efficient exchanges.
Bracha, 2006	p. 72, ¶ 206	The first is incorporation of the opt-out rule into copyright's <i>fair use</i> doctrine.
Bracha, 2006	p. 72, ¶ 207	The easiest way to implement an opt-out rule for digital-libraries uses is to incorporate it into the existing <i>fair use</i> defense.
Bracha, 2006	p. 72, ¶ 207	Under This option the <i>fair use</i> doctrine would be used to create a safe-haven whenever an appropriate opt-out option was given by a digital-library user.
Bracha, 2006	p. 72, ¶ 207	In such cases any allegedly infringing use by the digital-library that occurs prior to a notice of objection from the copyright owner would be deemed a <i>fair use</i> and hence non-infringing.
Bracha, 2006	p. 73, ¶ 208	Alternatively, the existence of proper opt-out option can be treated not as preemptively decisive, but rather as an important factor to be accorded heavy weight when considered alongside the other <i>fair use</i> factors.
Bracha, 2006	p. 73, ¶ 208	Under this approach, an opt-out option would not guarantee a <i>fair use</i> finding in all circumstance, but it would tilt the balance in many cases.
Bracha, 2006	p. 73, ¶ 209	Technically, incorporating an opt-out rule into the <i>fair-use</i> doctrine is easy.
Bracha, 2006	p. 73, ¶ 209	A court may consider the relevant circumstance either under the first <i>fair use</i> factor—the purpose and character of the use, or as an independent factor, supplemental to the four statutory ones.
Bracha, 2006	p. 73, ¶ 209	In addition to this technical smoothness implementing opt-out through the <i>fair use</i> doctrine has several advantages.
Bracha, 2006	p. 73, ¶ 209	<i>Fair use</i> is an open-ended standard that leaves ample room for court's discretion in applying the doctrine to new situations and in fine-tuning it to deal with the specific circumstances of cases.

Author	Location	Contextual Description
Bracha, 2006	p. 73, footnote 187	The four, non-exhaustive, factors that a court is guided to consider when making a <i>fair use</i> decision are: 1) the purpose and character of the use; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used; 4) the effect of the use on the potential market for or the value of the copyrighted work. 17 U.S.C. §107.
Bracha, 2006	p. 73, footnote 189	It is generally acknowledged that the four statutory <i>fair use</i> factors are not exhaustive and that courts are allowed to consider other relevant facts and circumstances when determining a <i>fair use</i> question.
Bracha, 2006	p. 74, ¶ 210	The flexibility of the <i>fair use</i> doctrine would enable a court to be sensitive to all of these various circumstances and generate a determination that is optimally suited for the specific case.
Bracha, 2006	p. 74, ¶ 211	In addition, the statutory <i>fair use</i> factors seem to mesh well with the opt-out considerations.
Bracha, 2006	p. 74, ¶ 211	Thus the open or exclusionary character of the library and its commercial nature can be easily considered under the character and purpose of the use <i>fair use</i> factor.
Bracha, 2006	p. 74, ¶ 211	More importantly, the circumstances that go to the opt-out question can be aggregated with those that affect the general <i>fair use</i> analysis.
Bracha, 2006	p. 74, ¶ 211	Assume, for example, that a court finds under the fourth <i>fair use</i> factor that the effect of a particular use on the copyrighted work's market would be small.
Bracha, 2006	p. 74, ¶ 211	Assume further that in itself this finding makes only a borderline <i>fair use</i> case.
Bracha, 2006	p. 74, ¶ 211	Aggregating the two findings would make a very strong case for the opt-out version of a <i>fair use</i> finding; that is to say, a finding of non-infringement, at least until the moment of objection notice.
Bracha, 2006	p. 74, ¶ 212	Unfortunately, alongside its advantages, the <i>fair use</i> doctrine also suffers from serious drawbacks as a mechanism for implementing an opt-out rule.
Bracha, 2006	p. 74, ¶ 212	The source of the meritorious flexibility of <i>fair use</i> —its open-ended and discretionary character—is also the main cause of its deficiencies.
Bracha, 2006	p. 75, ¶ 213	Most courts today treat <i>fair use</i> as an affirmative defense, protests from some scholars and courts notwithstanding.
Bracha, 2006	p. 75, ¶ 213	<i>Fair use</i> thus has a strong ex-post nature. More importantly, the application of <i>fair use</i> in specific cases is notoriously volatile and unpredictable.
Bracha, 2006	p. 75, ¶ 213	The cartoon depicts a weary climber as he reaches a snowy-caped summit and humbly asks a wise-looking monk the ultimate question: “what is <i>fair use</i> ?”

Author	Location	Contextual Description
Bracha, 2006	p. 75, ¶ 214	The open-ended <i>fair use</i> standard leaves much room for discretion and for changes from one case to the other.
Bracha, 2006	p. 75, ¶ 214	Most courts consciously treat <i>fair use</i> as a case by case determination and reject or doubt the possibility of broadly applicable interpretations.
Bracha, 2006	p. 75, footnote 196	Some courts went further and placed the burden of proof in respect to <i>fair use</i> on the defendant in the preliminary injunction stage
Bracha, 2006	p. 76, ¶ 215	Thus <i>fair use</i> decisions are hotly contested and difficult to make and predict.
Bracha, 2006	p. 76, ¶ 215	<i>Fair use</i> cases that make it up the judicial hierarchy are often reversed, and sometimes re-reversed.
Bracha, 2006	p. 76, ¶ 216	The result is that the <i>fair use</i> defense is highly unpredictable and a shaky ex-ante support to users.
Bracha, 2006	p. 76, ¶ 216	Consequently <i>fair use</i> is particularly ill-suited to serve as the basis of an opt-out safe-haven for digital-libraries.
Bracha, 2006	p. 77, ¶ 217	Instead of a firm safe-haven that creates certainty, reduces risk and chilling of innovation, a fair-use-based opt-out rule would function as a black box or a lottery ticket.
Bracha, 2006	p. 77, ¶ 217	Given these conditions, it is easy to imagine the lawyers' advice to clients inquiring whether an opt-out scheme could be relied on to guarantee a <i>fair use</i> exemption.
Bracha, 2006	p. 77, ¶ 219	The shortcomings of the <i>fair use</i> doctrine as a basis for an opt-out scheme could be significantly ameliorated.
Bracha, 2006	p. 77, ¶ 219	Courts could follow a more patterned and predictable approach to <i>fair use</i> , develop broader and more stable categories of protected uses, and refuse to distinguish precedents on the basis of highly specific circumstances.
Bracha, 2006	p. 77, ¶ 219	Private individuals and organizations in the field could develop statements of “best practices”—consensual guidelines for <i>fair use</i> by digital-libraries.
Bracha, 2006	p. 77, ¶ 219	If developed within the proper procedural settings, such guidelines may fare better than the controversial Guidelines for Classroom Copying in achieving two goals: provide practical guidance and predictability to players in the field; and guide courts as a source of bottom-up customary practices that inform the legal standard of <i>fair use</i> .
Bracha, 2006	p. 77, footnote 206	The Guidelines for Classroom Copying have been criticized as creating a chilling-effect due to their transformation from an intended minimum to a de facto maximum of allowed <i>fair use</i> .



Author	Location	Contextual Description
Bracha, 2006	p. 78, ¶ 220	However, absent such developments, and particularly given the current typical judicial approach, the defects of <i>fair use</i> as a vehicle for opt-out are substantial.
Bracha, 2006	p. 79, ¶ 223	In order to avoid replicating the pitfalls of the <i>fair use</i> doctrine the statutory safe-haven will have to be located close to the rule end of the standard/rule continuum.
Bracha, 2006	p. 84, ¶ 235	An administrative-discretion-based opt-out scheme seems to combine the advantages of the <i>fair use</i> alternative and those of the pure legislative option.
Bracha, 2006	p. 86, ¶ 239	It should be briefly mentioned that the choice between the <i>fair use</i> doctrine and a statutory scheme (including its administrative variant) does not have to be a strict either/or decision.
Bracha, 2006	p. 86, ¶ 239	The technical way of achieving this outcome is to create a statutory safe-haven that explicitly preserves all other defenses and exemptions including <i>fair use</i> .
Bracha, 2006	p. 86, ¶ 239	Courts would be left free to apply the <i>fair use</i> defense in cases that fall outside the ambit of the statutory safe-haven.
Bracha, 2006	p. 86, ¶ 240	The <i>fair use</i> option, despite its deficiencies, would function as a corrective mechanism that can be operated whenever the shortcomings of the statutory regime come into play.
Bracha, 2006	p. 86, ¶ 240	While in most cases the statutory arrangement would govern particular cases, the flexibility of the <i>fair use</i> standard would operate on the margin to correct the underinclusiveness of rules.
Bracha, 2006	p. 86, ¶ 240	In those cases where the inaccuracy of the statutory rules causes the safe-haven to be denied although it was optimal to apply it, a <i>fair use</i> finding by a court would achieve that outcome.
Bracha, 2006	p. 86, ¶ 240	To be sure, the effectiveness of the <i>fair use</i> doctrine would be limited, for all the reasons explained above.
Bracha, 2006	p. 86, ¶ 240	Similarly, the value of <i>fair use</i> precedents in this field would be limited, due to the tendency of courts to draw hairsplitting distinctions.
Bracha, 2006	p. 86, ¶ 240	In sum, although the <i>fair use</i> doctrine is not a complete remedy to the deficiencies of a statutory regime, a combination of the two seems to be the optimal alternative that minimizes imperfections.
Coleman, 2006	p. 2, ¶ 17	Legal because we believe copyright law allows us the <i>fair use</i> of millions of books that are being digitized.

Author	Location	Contextual Description
"Cooperative Agreement," 2006	p. 4, ¶ 4.3	For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has permission or license from the copyright owner to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute <i>fair use</i> under copyright law and (2) bibliographic (e.g., title, author, date, etc) and other non-copyrighted information.
Coyle, 2006	None	None
Crane, 2006	None	None
Dames, 2006a	¶ 2	The Google Book Search (GBS) litigation has captured the fancy of information professionals nationwide. And as far as legal developments go in the information profession, the GBS litigation -- with its high-profile, "Do No Evil" defendant fighting the comparatively less well-regarded publishing industry and theories of <i>fair use</i> dancing around lawyers" heads -- is the sexiest legal issue out there right now.
Dames, 2006a	¶ 14	Even if some of the uses might arguably qualify as <i>fair uses</i> , the uncertainty inherent in Section 107, when combined with the possibility of significant statutory damages ..., have caused various "gatekeepers" -- typically publishers or in-house counsel at universities -- to forbid the uses.
Dames, 2006a	¶ 20	The seeds of the current effort to amend Section 108 were sown during the Conference on <i>Fair Use</i> ("CONFU"), which began in September 1994.
Dames, 2006a	¶ 20	During CONFU, the content industry and library representative organizations tried to "negotiate guidelines for the <i>fair use</i> of electronic materials in a variety of nonprofit educational contexts."
Dames, 2006a	¶ 27	Despite the sex appeal of publishers' and authors' lawsuits against Google over the Book Search project, there is no guarantee that the core legal issue in that contest -- applying <i>fair use</i> principles in a digital and online environment -- ever will be resolved.
Dye, 2006	p. 33, ¶ 2	As Google, Yahoo!, and Microsoft gear up for the grueling scanning process ahead, the debate continues over what constitutes " <i>fair use</i> ," what copyright is meant to protect, and what we'll be able to find on the shelves of the digital library in the future.
Dye, 2006	p. 34, ¶ 7	He reaffirms Google's belief that their partnership falls within the spectrum of <i>fair use</i> : "The goal of a research library like ours is to secure, preserve, and archive knowledge—all of it, because... if we don't preserve and protect it, no one else will."

Author	Location	Contextual Description
Dye, 2006	p. 34, ¶ 11	The courts have asked Google to prove its intentions constitute <i>fair use</i> by November 30.
Dye, 2006	p. 36, ¶ 19	Based on factors like what the copyrighted work is, how much is used, and for what purpose it's being used, courts determine whether or not each case of copyright violation constitutes <i>fair use</i> .
Dye, 2006	p. 37, ¶ 26	Google CEO Eric Schmidt wrote an editorial piece for the <i>Wall Street Journal</i> defending the legal ground on which his company is staking Google Print Library: "Even those critics who understand that copyright law is not absolute argue that making a full copy of a given work, even just to index it, can never constitute <i>fair use</i> ."
Dye, 2006	p. 37, ¶ 27	Google hopes that its estimation of a snippet will be short enough to qualify for the <i>fair use</i> exemption outlined in this landmark case for digital copyright law.
Ebbinghouse, 2005	¶ 30	Professor Peter Jaszi notes, "In some cases, the <i>fair-use</i> doctrine in copyright law may actually not be adequate in its present form for the uses of researchers. ... The likelihood of litigation is low to begin with. ... There are no disciplinary rules of best practice for cultural historians or film scholars or medical historians."
Ebbinghouse, 2005	¶ 31	Fearing that authors will self-censure themselves before testing the <i>fair use</i> and self-publication boundaries, some encourage boldness.
Gbegnon, 2006	¶ 24	In the <i>fair use</i> context, we do not ask merely if there exists a commercial use or benefit.
Gbegnon, 2006	¶ 34	To best serve the public interest in dissemination of works, copyright law also balances the exclusive rights of creators and publishers against the interests of information-seekers and those who provide access to works by providing certain exceptions to the authors' exclusive rights, including provisions such as <i>fair use</i> and the section 108 exception for libraries and archives.
Gbegnon, 2006	¶ 39	The Register said that a legislative revision was necessary because the growing uncertainty over the limits on <i>fair use</i> was negatively affecting researchers and undermining intellectual progress
Gbegnon, 2006	¶ 46	In the <i>fair use</i> context, mere commerciality does not disqualify a use from protection under the copyright law.
Gbegnon, 2006	¶ 46	In <i>Kelly v. Ariba Soft</i> , a <i>fair use</i> case, the court found that the defendant search engine's commercial copying activities did not militate against a finding of <i>fair use</i> , because those activities did not "supplant[] the need for the originals," and most importantly, they "benefited the public by enhancing information gathering techniques of the internet."

Author	Location	Contextual Description
Gbegnon, 2006	¶ 46	This reflects the "balancing of the equities" type of approach that courts have consistently used in the <i>fair use</i> context.
Gbegnon, 2006	¶ 46	Courts have repeatedly said that " <i>fair use</i> is an 'equitable rule of reason,' which is to be applied in light of the statute."
Gbegnon, 2006	¶ 53	Thus, it has been accepted - in the <i>fair use</i> context - that mere commerciality does not by itself disallow an entity from seeking protection under the copyright law; the relevant inquiry is whether the commercial use harms the author's market.
Gbegnon, 2006	¶ 54	The questions posed by a balance approach to the library exemption are slightly different from those in the <i>fair use</i> context.
Gbegnon, 2006	Footnote 60	But see generally Hanratty, <i>supra</i> note 14 (concluding that Google's advertising activities and commercial nature militate against a finding of <i>fair use</i> and disqualify it from taking advantage of the library exception.).
Gbegnon, 2006	Footnote 86	The <i>fair use</i> , implied license and "de minimis" defenses to copyright infringement have been discussed by other writers.
Givler, 2005	¶ 4	Google asserts that it can make these copies without seeking permission as a <i>fair use</i> under Section 107 of the Copyright Act, and Google plans to give copies of those digitized works to the participating libraries.
Givler, 2005	¶ 9	Google's claim that it is <i>fair use</i> to make copies of every copyrighted work in even one major library, let alone three of them, is completely unprecedented in scale; it is tantamount to saying that Google can make copies of every copyrighted work ever published, period.
Givler, 2005	¶ 9	Courts have never recognized a <i>fair use</i> claim of that magnitude.
Givler, 2005	¶ 10	Under U.S. law, a <i>fair use</i> determination requires an analysis of the four factors specified in Section 107, and is highly fact- and circumstance-specific.
Givler, 2005	¶ 11	In a <i>fair use</i> analysis the courts have made plain that the analysis of market harm under the fourth factor can't be limited to the question of immediate market harm, but must also consider what would happen if the practice at issue were to become widespread.
Givler, 2005	¶ 15	The single case you have cited to support Google's <i>fair use</i> claim, <i>Kelly v Arriba Soft</i> , has a pattern of facts substantially different from those in Google Print for Libraries.
Givler, 2005	¶ 17	There are also recent cases in which the courts found against a claim of <i>fair use</i> , like <i>Buena Vista v Pipeline Video</i> (which, interestingly, cites the <i>Arriba Soft</i> decision).

Author	Location	Contextual Description
Givler, 2005	¶ 17	How does your <i>fair use</i> argument deal with these countervailing decisions?
Grogg & Ashmore, 2007	¶ 21	And then Google is clearly navigating some uncharted waters for <i>fair use</i> .
Grogg & Ashmore, 2007	¶ 26	Jim Milliot summed up the major issues behind the AAP's suit in an Oct. 24, 2006, column in Publisher's Weekly: "The lawsuit reflects a deep division between publishers and Google over the meaning of <i>fair use</i> ."
Grogg & Ashmore, 2007	¶ 26	The fact that there is so much ambiguity over what constitutes <i>fair use</i> will come as no surprise to information professionals, but the serious way in which a critical mass of the publishing community has banded together on this issue is noteworthy.
Grogg & Ashmore, 2007	¶ 28	With both Google and publishers seemingly equally convinced of their legal footing in the ensuing battle over <i>fair use</i> , most library administrators appear to be taking a safe approach to scanning.
Grogg & Ashmore, 2007	¶ 28	It is not easy for librarians to let go of years of cautious interpretation of <i>fair use</i> , but some are making an effort.
Hanratty, 2005	¶ 3	Without a significant change in interpretation of the law, it is unlikely that Google will be able to successfully claim its actions constitute <i>fair use</i> , and the project clearly does not qualify for protection under the Copyright Act's library exemption.
Hanratty, 2005	¶ 5	Without this initial finding of an infringement, the rest of the inquiry is irrelevant; a <i>fair use</i> defense is unnecessary where infringement has not occurred.
Hanratty, 2005	¶ 6	One commentator looking at the <i>de minimis</i> jurisprudence determined that it is a "defense [that] should be limited largely to its role in determining substantial similarity or <i>fair use</i> ."
Hanratty, 2005	Footnote 25	Neither substantial similarity nor <i>fair use</i> , as they relate to the concept of <i>de minimis</i> , is in question here.
Hanratty, 2005	Footnote 25	<i>Fair use</i> is generally not available when a work is copied in its entirety.
Hanratty, 2005	¶ 13	However, nothing in the library exemption precludes a finding of <i>fair use</i> with regards to an infringing copy.
Hanratty, 2005	¶ 13	Although not protected by the library exemption, Google's library project is not necessarily unlawful. In order to determine its lawfulness, a full <i>fair use</i> analysis must be undertaken.
Hanratty, 2005	¶ 14	<i>Fair use</i> is an affirmative defense to what would otherwise be an infringing act, such as reproducing a copyrighted work.

Author	Location	Contextual Description
Hanratty, 2005	¶ 14	<i>Fair use</i> allows “others than the owner of the copyright” to use, without permission, copyrighted work when “reasonable” to promote “science and the useful arts.”
Hanratty, 2005	¶ 15	There is no bright line rule to distinguish what is reasonable <i>fair use</i> from what is actionable infringement.
Hanratty, 2005	¶ 15	The statute provides a list of examples of <i>fair use</i> , including “teaching . . . , scholarship, or research,” but the list is not exhaustive.
Hanratty, 2005	¶ 15	Instead a court is to “apply an equitable rule of reason” by weighing four non-exclusive statutory factors, none of which are singularly determinative, to decide if a use is a “ <i>fair use</i> .”
Hanratty, 2005	¶ 15	This balancing was best described when the Supreme Court explained that “[a]lthough copying to promote a scholarly endeavor certainly has a stronger claim to <i>fair use</i> than copying to avoid interrupting a poker game, the question is not simply two-dimensional.”
Hanratty, 2005	¶ 16	The first factor of a <i>fair use</i> analysis is the purpose and character of the potential infringer’s use of the copyrighted work.
Hanratty, 2005	¶ 16	If the use is for commercial purposes, a presumption weighs against <i>fair use</i> .
Hanratty, 2005	¶ 16	In a practical sense, however, the Court has found that commerciality is not very helpful in determining <i>fair use</i> because “most secondary uses of copyrighted material, including nearly all the uses listed in the statutory preamble [as <i>fair use</i> examples], are commercial.”
Hanratty, 2005	¶ 16	If commerciality alone precluded <i>fair use</i> , it would be difficult to find any otherwise infringing use that could be deemed fair.
Hanratty, 2005	¶ 17	For example, copying a television show so that one can watch it later is not commercial and supports a finding of <i>fair use</i> .
Hanratty, 2005	¶ 17	Making a low quality “thumbnail” copy of an image for display by a website search engine is not “highly exploitive” and accordingly “weighs only slightly” against <i>fair use</i> .
Hanratty, 2005	¶ 17	But copying a small number of words that comprise the “heart” of an unpublished book to “scoop” its publication in a headline magazine story is exploitative, commercial and weighs strongly against <i>fair use</i> .
Hanratty, 2005	¶ 18	As a result, the more transformative the work is, the more the balance will be shifted towards <i>fair use</i> .
Hanratty, 2005	¶ 19	However, it is difficult to distinguish this from the thumbnail images that were deemed commercial but only slightly tipped the balance against <i>fair use</i> .

Author	Location	Contextual Description
Hanratty, 2005	¶ 19	It seems likely that the commercial aspect of Google’s use of the copyrighted books would be analyzed in much the same way and would be found to be of minimal significance in the overall <i>fair use</i> analysis.
Hanratty, 2005	Footnote 71	<i>See also</i> Williams & Wilkins v. U.S., 487 F.2d 1345, 1354 (Ct. Cl. 1973), <i>aff’d</i> , 420 U.S. 376 (1975) (finding that “in general, the law gives copying for scientific purposes a wide scope” and since the instant case involved a non-profit institution seeking only to advance medical knowledge that supported a finding of <i>fair use</i> until the legislature acted.).
Hanratty, 2005	¶ 22	The second factor in a <i>fair use</i> analysis is the nature of the copyrighted work that is potentially infringed.
Hanratty, 2005	¶ 22	The more creative the expression embodied in a work, the more likely a copy will not be <i>fair use</i> since the copyright system is meant to provide a monopoly to authors to provide “incentive to create.”
Hanratty, 2005	¶ 22	Correspondingly, copying factual works, including factual elements of creative works, is more likely to be <i>fair use</i> .
Hanratty, 2005	¶ 22	An unpublished work is less likely to be subject to <i>fair use</i> .
Hanratty, 2005	¶ 23	Google fails to show some accepted <i>fair use</i> reason, such as parody, for the copies.
Hanratty, 2005	¶ 24	The third <i>fair use</i> factor is the amount and substantiality of the portion of the copyrighted work used in relation to the entirety of the copyrighted work and the purpose of the copy.
Hanratty, 2005	¶ 24	Even making a copy that is not significant in terms of size might preclude <i>fair use</i> if the copy substantively captures the essence of the work. <sup>94</sup>
Hanratty, 2005	¶ 24	At one end of the <i>fair use</i> spectrum, copying an entire work generally precludes a finding of <i>fair use</i> .
Hanratty, 2005	¶ 24	Usually when a “user reproduces an entire work and uses it for its original purpose, with no added benefit to the public, the doctrine of <i>fair use</i> ” is inapplicable.
Hanratty, 2005	¶ 24	However, under the right circumstances a copy of an entire creative work might still be <i>fair use</i> .
Hanratty, 2005	¶ 24	For example, making a copy of a television program for home viewing at a later time entails copying the entirety of a creative work but has been found to be <i>fair use</i> .

Author	Location	Contextual Description
Hanratty, 2005	¶ 25	In Google's case, examination of the amount and substantiality seems to weigh against a finding of <i>fair use</i> .
Hanratty, 2005	¶ 25	Google is copying books in their entirety, which would normally preclude <i>fair use</i> unless mitigating circumstances were found.
Hanratty, 2005	¶ 25	In viewing Google's work in this light, this factor weighs in favor of <i>fair use</i> .
Hanratty, 2005	¶ 25	The interplay of this factor with factors one and four balances out and results in this factor neither strongly supporting nor denying <i>fair use</i> .
Hanratty, 2005	¶ 26	The fourth factor is generally considered the "single most important" in a <i>fair use</i> analysis.
Hanratty, 2005	¶ 27	A use that substitutes for the original is not <i>fair use</i> because it harms the market for the original: users turn to the substitute instead of the original.
Hanratty, 2005	¶ 27	This factor does not just encompass loss of value; even if use causes the copyright owner to gain, this factor can still weigh against <i>fair use</i> .
Hanratty, 2005	¶ 30	Google is preempting this right without providing any consideration and that would cut against <i>fair use</i> .
Hanratty, 2005	¶ 32	As such, this factor would weigh against a finding of <i>fair use</i> .
Hanratty, 2005	¶ 33	Even an analysis of the four <i>fair use</i> factors fails to predict a ruling on Google's library digitization project with any certainty.
Hanratty, 2005	¶ 33	However, it is possible that if a court battle were to ensue over this project, that it could be deemed a <i>fair use</i> .
Hanratty, 2005	¶ 33	Past decisions dealing with <i>fair use</i> in hotly contested situations involving equally innovative technology have come down on the side of expanding the rights of the public over those of the copyright holders.
Hanratty, 2005	¶ 34	While, as one scholar points out, Google might have the money to take this chance on litigation and appears to be willing to do so, in a climate of such rapid technological change, the final outcome of the litigation might be irrelevant by the time it is reached as a new challenge or opportunity might be pushing the boundaries of <i>fair use</i> in some other novel way.
Herring, 2005	None	None



Author	Location	Contextual Description
Jensen, 2005	None	None
Jeweler, 2005	p. 1, ¶ 1	Because of the unique facts and issues presented, there is scant legal precedent to legitimize Google's claim that its project is protected by copyright law's <i>fair use</i> exception to liability for infringement.
Jeweler, 2005	p. 2, ¶ 6	But, if infringement were found, Google argues that its activity is protected by copyright's <i>fair use</i> doctrine.
Jeweler, 2005	p. 2, ¶ 6	Google cites the U.S. Court of Appeals for the Ninth Circuit's decision in <i>Kelly v. Arriba Soft Corp.</i> as support for the proposition that Internet search engines' indexing activities constitute a <i>fair use</i> .
Jeweler, 2005	p. 3, ¶ 8	Assuming a court were to find that Google's digitization of copyrighted works is infringing, the question becomes whether its activities are a <i>fair use</i> .
Jeweler, 2005	p. 3, ¶ 8	The <i>fair use</i> exemption derives from common law and the First Amendment.
Jeweler, 2005	p. 3, ¶ 8	In determining whether the use made of a work in any particular case is a <i>fair use</i> the factors to be considered shall include — (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.
Jeweler, 2005	p. 3, ¶ 8	Because <i>fair use</i> is an "equitable rule of reason" to be applied in light of the overall purposes of the Copyright Act, other relevant factors may also be considered.
Jeweler, 2005	p. 3, ¶ 9	The court hearing the case will make findings of fact and assign relative value and weight to the <i>fair use</i> factors in its analysis.
Jeweler, 2005	p. 3, ¶ 9	This report will not attempt to predict an outcome in the pending litigation but does make some observations with respect to <i>fair use</i> analysis and the issues at hand.
Jeweler, 2005	p. 4, ¶ 11	In order to create its megadatabase, Google will scan the entire copyrighted work, a major consideration weighing against <i>fair use</i> .

Author	Location	Contextual Description
Jeweler, 2005	p. 4, ¶ 11	Hence, is the digital reproduction incidental to an otherwise <i>fair use</i> or is it impermissibly infringing?
Jeweler, 2005	p. 4, ¶ 14	Although a court's finding that there is a <i>fair use</i> exception to copyright infringement is context-specific, it naturally looks to precedent for guidance.
Jeweler, 2005	p. 4, ¶ 14	Google asserts that <i>Kelly v. Arriba Soft Corp.</i> supports its claim of <i>fair use</i> , and in many respects it does.
Jeweler, 2005	p. 4, ¶ 14	In <i>Kelly</i> , the court found that Arriba Soft's search engine, which, in response to a user's inquiry, compiled a database of images by copying pictures from websites (without authorization) and displayed them as thumbnail images, was a sufficiently transformative use of copyrighted material to be a <i>fair use</i> .
Jeweler, 2005	p. 4, ¶ 14	Although providing indexing information alone does not implicate copyright infringement, displaying limited quotes from a literary work may be consistent with <i>fair use</i> .
Jeweler, 2005	Footnote 10	In addition to <i>fair use</i> , the Copyright Act contains additional limitations on exclusive rights of copyright holders.
Jeweler, 2005	p. 5, ¶ 15	The Court articulated a new category of <i>fair use</i> , namely, time shifting.
Jeweler, 2005	p. 5, ¶ 16	Although <i>Sony</i> sanctioned "time shifting" of in-home television broadcasting, neither the U.S. Supreme Court nor the lower courts have evidenced willingness to expand this judicially created category of <i>fair use</i> .
Jeweler, 2005	p. 5, ¶ 16	In <i>UMG Recordings v. MP3.Com, Inc.</i> , a U.S. district court rejected out-of-hand the defendant's proffered <i>fair use</i> defense as a justification for unauthorized copying of plaintiffs' audio CDs.
Jeweler, 2005	p. 5, ¶ 18	Viewed expansively, the court may find that copying to promote online searching and indexing of literary works is a <i>fair use</i> .
Jeweler, 2005	Footnote 13	92 F.Supp.2d 349, 352 (S.D.N.Y. 2000)("[D]efendant's ' <i>fair use</i> ' defense is indefensible and must be denied as a matter of law.")
Jeweler, 2005	p. 6, ¶ 18	If the court adopts a more narrow view of <i>fair use</i> that precludes Google's digitization project, searchable literary databases are likely to evolve in a less comprehensive manner but with the input and control of rights holders who view them as desirable and participate accordingly
Kelly, 2006a	¶ 32	These are now known as " <i>fair uses</i> ."

Author	Location	Contextual Description
Kelly, 2006a	¶ 40	Google's lawyers argued that the snippets the company was proposing were something like a quote or an excerpt in a review and thus should qualify as a " <i>fair use</i> ."
Kupferschmid, 2005	p. 48, ¶ 14	The best known is the <i>fair use</i> exception.
Kupferschmid, 2005	p. 48, ¶ 14	Second, the person must show that the use qualifies as a " <i>fair use</i> " after considering the following four factors: 1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work (in other words, whether the book is fiction or nonfiction); 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work.
Kupferschmid, 2005	p. 48, ¶ 15	Google defends its right to manage the Google Print Library Project by asserting that its activities are covered by the <i>fair use</i> exception.
Kupferschmid, 2005	p. 48, ¶ 15	Before engaging in any <i>fair use</i> analysis, it should be noted that any such analysis in this case will be extremely difficult because of the sheer volume and variety of books and authors at issue.
Kupferschmid, 2005	p. 48, ¶ 15	<i>Fair use</i> claims usually involve a work or a handful of works all owned by one or a few authors.
Kupferschmid, 2005	p. 48, ¶ 15	There does not appear to ever have been any case involving <i>fair use</i> that has been applied on such a broad scale to so many works by so many authors and publishers being copied by one entity.
Kupferschmid, 2005	p. 48, ¶ 15	That fact alone may be sufficient cause to deny Google's <i>fair use</i> claim.
Kupferschmid, 2005	p. 48, ¶ 16	Google claims that, although it is copying entire books, such copies are allowed as a <i>fair use</i> because it is making only small excerpts of the books available online and the copies made are only intermediate copies.
Kupferschmid, 2005	p. 48, ¶ 16	It cites <i>Kelly v. Arriba Soft Corp.</i> , an anomalous case decided in 2003 by the Ninth Circuit, for the proposition that such intermediate copying is permissible under <i>fair use</i> .
Kupferschmid, 2005	p. 50, ¶ 16	The court concluded that the use of the images constituted a <i>fair use</i> because, among other things, Kelly's use of the images was an artistic one, while Arriba's use was as part of a tool that indexes images on the Web, which was unrelated to any artistic purpose.
Kupferschmid, 2005	p. 50, ¶ 17	Here is a list of factors for <i>fair use</i> .

Author	Location	Contextual Description
Kupferschmid, 2005	p. 50, ¶ 18	The first <i>fair use</i> factor requires an analysis of "the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes."
Kupferschmid, 2005	p. 50, ¶ 18	If the use is educational in nature, it is more likely to be a <i>fair use</i> ; if it is more commercial in nature, it is likely not to be.
Kupferschmid, 2005	p. 50, ¶ 20	In <i>Kelly</i> , the court concluded that the first <i>fair use</i> factor favored Arriba because Arriba's use was neither to "directly promote its [Web site] nor ... to profit by selling Kelly's images.
Kupferschmid, 2005	p. 50, ¶ 23	Google may also attempt to convince the courts that its copying is "transformative," another consideration under the first <i>fair use</i> factor.
Kupferschmid, 2005	p. 50, ¶ 25	The more creative and expressive the book, the less likely the book can be subject to <i>fair use</i> .
Kupferschmid, 2005	p. 50, ¶ 26	The court in <i>Kelly</i> acknowledged that "copying an entire work militates against a finding of <i>fair use</i> " but ultimately found that this factor did not favor either party because "if the secondary user only copies as much as is necessary for his or her intended use, then the factor will not weigh against him or her."
Kupferschmid, 2005	p. 50, ¶ 27	Google also contends that since users will see only small snippets of the book text and not the complete text of the digitized books, these complete text copies are "intermediate copies," which are allowed under <i>fair use</i> .
Kupferschmid, 2005	p. 50, ¶ 32	If Google succeeds on its <i>fair use</i> claim, it will no longer be necessary for aggregators and others that make nondigital content searchable online to get permission from the owners of that content or to compensate those owners.
Kupferschmid, 2005	p. 50, ¶ 33	If Google's <i>fair use</i> claim is allowed, the PPP will become obsolete.
Kupferschmid, 2005	p. 51, ¶ 35	Holding <i>fair use</i> in favor of Google would turn copyright on its head.
Lavoie, Connaway, & Dempsey, 2005	¶ 31	This measure, along with the intense debate over questions of copyright infringement and <i>fair use</i> associated with GPLP, suggests a need to examine the publication dates of the materials in the combined Google 5 print book collection.

Author	Location	Contextual Description
“McGraw-Hill Companies,” 2005	¶ 7	Because Google's entirely commercial endeavor requires, among other things, massive, wholesale and systematic copying of entire books still protected by copyright for public distribution and public display, it infringes one or more of each Publisher's exclusive rights under the Copyright Act, 17 U.S.C. § 106. Neither (a) the <i>fair use</i> provisions of 17 U.S.C. § 107 nor (b) the narrow provisions of 17 U.S.C. § 108, which in very different circumstances would allow a library but, in no event, Google, to make digital copies of these works in a library's collection, excuse Google's wholesale unauthorized copying.
“McGraw-Hill Companies,” 2005	¶ 8	Google, claiming <i>fair use</i> , has declared that it is not required to obtain such permission.
Pike, 2005	p. 17, ¶ 4	According to Google, scanning library materials is permitted within the <i>fair use</i> doctrine and "principles underlying copyright law."
Pike, 2005	p. 17, ¶ 5	The <i>fair use</i> doctrine has been challenged and scrutinized with the rise of digital content.
Pike, 2005	p. 17, ¶ 5	<i>Fair use</i> is intended to be a limited exemption from copyright for specific purposes that benefit society, such as teaching, research, and commentary.
Pike, 2005	p. 18, ¶ 5	The distribution of billions of perfect copies has made it more difficult to keep both the letter and spirit of the <i>fair use</i> doctrine in check.
Pike, 2005	p. 18, ¶ 6	The validity of Google's claim will rest on <i>fair use</i> 's four factors test
Pike, 2005	p. 19, ¶ 7	Google is likely to argue that even its scanning of the material is transformative, which would make it <i>fair use</i> .
Pike, 2005	p. 19, ¶ 7	The court, however, found that these small images served an "entirely different function" than the originals, which served a public benefit through the search engine and within the realm of <i>fair use</i> .
Pike, 2005	p. 19, ¶ 8	While the artist's images were already on his Web site when captured by the search engine, Google is actively copying the content and placing it on the Web. It will be up to the court to determine whether this difference is significant enough to eliminate <i>fair use</i> .
Pike, 2005	p. 19, ¶ 9	Normally, scanning an entire work would support a finding against <i>fair use</i> .
Pike, 2005	p. 19, ¶ 10	Some works of parody, such as 2 Live Crew's sendup of the song "Oh Pretty Woman," also incorporate the entire work, yet they are considered <i>fair use</i> .

Author	Location	Contextual Description
Pike, 2005	p. 19, ¶ 10	Traditional <i>fair use</i> has been more supportive of copying portions of text rather than the entire work.
Rubin, 2007	¶ 16	Concocting a novel “ <i>fair use</i> ” theory, Google bestowed upon itself the unilateral right to make entire copies of copyrighted books not covered by these publisher agreements without first obtaining the copyright holder’s permission.
Rubin, 2007	¶18	Google defends its actions primarily by arguing that its unauthorized copying and future monetization of your books are protected as <i>fair use</i> .
Rubin, 2007	¶ 19	To be sure, Microsoft has a long history of strong support for the <i>fair use</i> doctrine.
Rubin, 2007	¶ 19	In 2001, for instance, we were proud to author an amicus brief in The Wind Done Gone appeal in support of Houghton Mifflin’s argument that Alice Randall had made <i>fair use</i> of copyrighted material from Gone With the Wind. In the case of book search, however, suffice it to say that there are serious questions about the merits of Google’s <i>fair use</i> defense.
“The Author’s Guild,” 2005	None	None
Toobin, 2007	p. 32, ¶ 15	Copyright law has never forbidden all “copying” of a protected work; scholars and journalists have long been allowed to quote portions of copyrighted material under the doctrine of <i>fair use</i> .
Toobin, 2007	p. 32, ¶ 15	Google maintains that the chunks of copyrighted material that it makes available on its books site are legal under <i>fair use</i> .
Toobin, 2007	p. 32, ¶ 15	“We really analogized book search to Web search, and we rely on <i>fair use</i> every day on Web search,” David C. Drummond, a senior vice-president at Google who is overseeing the response to the lawsuits, told me.
Toobin, 2007	p. 33, ¶ 17	“A key part of the line between what’s <i>fair use</i> and what’s not is transformation,” Drummond said.
Toobin, 2007	p. 33, ¶ 17	But the publishers cite another factor in fair-use analysis: the amount of the copyrighted work that is used in the creation of the new one. Google is copying entire books, which doesn’t sound “fair” to the plaintiff publishers and authors.
Toobin, 2007	p. 33, ¶ 17	“Copying the entire work, which is what Google is doing, does not preclude a finding of <i>fair use</i> , but it does fall outside the traditional paradigm.”

Author	Location	Contextual Description
U.S. National Commission on Libraries and Information Science, 2006	p. 3, ¶ 5	How should important aspects of copyright— <i>fair use</i> , orphan works, opt-in vs. opt-out models—be handled in digitization projects?
U.S. National Commission on Libraries and Information Science, 2006	p. 3, ¶ 5	Google believes that opt-out is allowable under <i>fair use</i> , and that the alternative model, opt-in, has large transaction costs that include search and negotiation, which are particularly time-consuming with orphan works.
U.S. National Commission on Libraries and Information Science, 2006	p. 7, ¶ 22	How should important aspects of copyright— <i>fair use</i> , orphan works, opt-in vs. opt-out models—be handled in digitization projects?
U.S. National Commission on Libraries and Information Science, 2006	p. 8, ¶ 29	An important concept in understanding how copyright relates to digitization is the “ <i>fair use</i> ” exclusion in U.S. copyright law.
U.S. National Commission on Libraries and Information Science, 2006	p. 8, ¶ 29	<i>Fair use</i> depends on the purpose and character of the use—whether the use is commercial; whether the use is for criticism, comment, news reporting, teaching, scholarship, or research; and whether the use is transformative vs. consumptive.
U.S. National Commission on Libraries and Information Science, 2006	p. 10, ¶ 35	Google says that what they are doing is allowable under <i>fair use</i> ; they prefer opt-out.

Author	Location	Contextual Description
U.S. National Commission on Libraries and Information Science, 2006	p. 10, ¶ 39	Google's Library Project uses the same model as the Web: <i>fair use</i> and opt-out.
U.S. National Commission on Libraries and Information Science, 2006	p. 10, ¶ 39	However, even though it is <i>fair use</i> , Google picked a Web model—where you sometimes cannot copy pages.
Vaidhyanathan, 2005	¶ 33	On its corporate blog, the company announced the hiring of a new Washington, D.C., lobbyist by declaring that part of his portfolio is to defend the public-interest notions of "Net neutrality" (keeping the Internet open and competitive), "copyrights and <i>fair use</i> " (protecting both the principles of exclusive rights and the limits on them like <i>fair use</i> ), and limited "intermediary liability" for tech companies (protecting them from suits over what users might do with their technology).
Vaidhyanathan, 2005	¶ 40	The clearest example is <i>fair use</i> for scholarship, education, commentary, and news.
Vaidhyanathan, 2005	¶ 42	Google is confident that legal rulings about <i>fair use</i> on the Web will support its claim.
Vaidhyanathan, 2005	¶ 45	Because it was a commercial service, not a private person or educational institution, and because it did not "transform" the music into anything new, it could not claim <i>fair use</i> as a defense.
Vaidhyanathan, 2005	¶ 48	And because libraries and universities are partners in the effort, a fundamentalist ruling could frighten university counsels when they give advice to faculty members and librarians about what we may all do under the <i>fair use</i> of copyrighted material.
Vaidhyanathan, 2005	¶ 49	It goes beyond the intricacies of copyright and <i>fair use</i> to the fear that Google's power to link files to people will displace the library from our lives.
Young, 2005	None	None
Zeller, 2006	¶ 8	The case hinges on a doctrine in copyright law allowing for the " <i>fair use</i> " of protected material in ways that allow free speech — in book reviews, for instance, or news stories, parodies, teaching and academic research.



Author	Location	Contextual Description
Zeller, 2006	¶ 8	To meet the <i>fair use</i> standard, the party using the material has to show it has made a “transformative” use of the work — i.e., putting the work to a use that is not commercially competitive with the work’s originally intended purpose.
Zeller, 2006	¶19	In another case decided just last month, the 2nd Circuit Court of Appeals in New York ruled that it was <i>fair use</i> for Dorling Kindersley Publishing to include small unlicensed reproductions of Grateful Dead posters in a book about the band.
Zeller, 2006	¶ 24	In the Perfect 10 case, he says, the attractions of Google’s search function as a “cool, neat, very useful” digital tool “didn’t trump the court’s reasoned analysis of <i>fair use</i> .”
Zeller, 2006	¶ 33	Google clearly is betting that the New York court will build on the Arriba Soft case and conclude that a comprehensive database of published works — a 21st-century version of a globally accessible card catalogue — is sufficiently transformative to qualify as a <i>fair use</i> application.

Table 3

Coding results for *intermediate copy*

Author	Location	Contextual Description
Band, 2006a	p. 8, ¶ 36	Google’s supporters contend that the “ <i>intermediate copying</i> ” cases also demonstrate the fair use nature of the Library Project.
Band, 2006a	p. 8, ¶ 37	The owners respond that the <i>intermediate copying</i> cases are distinguishable because they address a problem specific to software: translation of the programs is the only means of accessing ideas unprotected by copyright that are contained within the program.
Band, 2006a	p. 8, ¶ 37	Furthermore, in the <i>intermediate copying</i> cases, the software developer discarded the translation once it developed its new, noninfringing program.
Band, 2006a	p. 8, ¶ 37	While acknowledging these factual differences, Google’s supporters stress the underlying principle of the <i>intermediate copying</i> cases: that copying may be excused if it is necessary for a noninfringing end use.
Bracha, 2006	None	None

Author	Location	Contextual Description
Coleman, 2006	None	None
“Cooperative Agreement,” 2006	None	None
Coyle, 2006	None	None
Crane, 2006	None	None
Dames, 2006a	None	None
Dye, 2006	None	None
Ebbinghouse, 2005	None	None
Gbegnon, 2006	None	None
Givler, 2005	None	None
Grogg & Ashmore, 2007	None	None
Hanratty, 2005	None	None
Herring, 2005	None	None
Jensen, 2005	None	None
Jeweler, 2005	None	None
Kelly, 2006a	None	None

Author	Location	Contextual Description
Kupferschmid, 2005	p. 48, ¶ 16	Google claims that, although it is copying entire books, such copies are allowed as a fair use because it is making only small excerpts of the books available online and the copies made are only <i>intermediate copies</i> .
Kupferschmid, 2005	p. 48, ¶ 16	It cites <i>Kelly v. Arriba Soft Corp.</i> , an anomalous case decided in 2003 by the Ninth Circuit, for the proposition that such <i>intermediate copying</i> is permissible under fair use.
Kupferschmid, 2005	p. 50, ¶ 27	Google also contends that since users will see only small snippets of the book text and not the complete text of the digitized books, these complete text copies are " <i>intermediate copies</i> ," which are allowed under fair use.
Kupferschmid, 2005	p. 50, ¶ 27	First, in cases where the courts have allowed the making of so-called <i>intermediate copies</i> , the copies were deleted immediately after they were used.
Kupferschmid, 2005	p. 50, ¶ 27	Here, Google is retaining permanent copies of the digitized books, so, in fact, they are not <i>intermediate copies</i> at all.
Kupferschmid, 2005	p. 50, ¶ 29	If, as Google insists, the court may consider only whether a snippet is infringing and not whether the full-text copy of the book is infringing—because the full-text copy from which the snippet is created is what Google terms a "noninfringing <i>intermediate copy</i> "—then the reproduction right will be effectively eviscerated.
Lavoie, Connaway, & Dempsey, 2005	None	None
"McGraw-Hill Companies," 2005	None	None
Pike, 2005	None	None
Rubin, 2007	None	None
"The Author's Guild," 2005	None	None
Toobin, 2007	None	None

Author	Location	Contextual Description
U.S. National Commission on Libraries and Information Science, 2006	None	None
Vaidhyanathan, 2005	None	None
Young, 2005	None	None
Zeller, 2006	None	None

Table 4

Coding results for *library exception*

Author	Location	Contextual Description
Band, 2006a	None	None
Bracha, 2006	None	None
Coleman, 2006	None	None
“Cooperative Agreement,” 2006	None	None
Coyle, 2006	None	None
Crane, 2006	None	None

Author	Location	Contextual Description
Dames, 2006a	None	None
Dye, 2006	None	None
Ebbinghouse, 2005	None	None
Gbegnon, 2006	¶ 3	This will allow the Library to come within the <i>library exemption</i> to copyright infringement liability, which is essential because the Print Library reflects the spirit of innovation that the copyright laws were designed to protect.
Gbegnon, 2006	¶ 3	Part V will then focus on the history of the <i>library exemption</i> to copyright infringement.
Gbegnon, 2006	¶ 5	Although it seems that Google's latest effort to make information "universally accessible" to all may prove too bold for current confines of copyright law, the media giant may find sanctuary in what heretofore has appeared to be the unlikeliest of places: The <i>Library exemption</i> .
Gbegnon, 2006	¶ 24	Analogously, in the <i>library exemption</i> context, we must ask whether commercialism and advertising bias how the commercial enterprise delivers information to users.
Gbegnon, 2006	¶ 44	And indeed, neither case involved the Internet, which presumably would have affected how those defendants were viewed by the courts. It is thus consistent with the history of section 108 to say that those businesses should not be able to take advantage of the <i>library exemption</i> because their objectives seem entirely commercial and they harm the markets of rights-holders.
Gbegnon, 2006	¶ 46	It is difficult to think of a reason why this balance approach should not be used in the <i>library exemption</i> context, although it is necessary to act cautiously in this area.
Gbegnon, 2006	¶ 46	But as the law currently stands, Google cannot take advantage of the <i>library exemption</i> , even though it furthers all of the objectives that the exception was intended to protect.
Gbegnon, 2006	¶ 48	The House Report accompanying the Copyright Act of 1976 states that the <i>library exemption</i> does not permit "a non-profit institution, by means of contractual arrangement with a commercial copying enterprise, to authorize the enterprise to carry out copying and distribution functions that would be exempt if conducted by the non-profit institution itself."
Gbegnon, 2006	¶ 53	This same type of thinking has not been adopted in the <i>library exemption</i> context, although it seems equally applicable.

Author	Location	Contextual Description
Gbegnon, 2006	¶ 54	The questions posed by a balance approach to the <i>library exemption</i> are slightly different from those in the fair use context.
Gbegnon, 2006	Footnote 60	But see generally Hanratty, supra note 14 (concluding that Google's advertising activities and commercial nature militate against a finding of fair use and disqualify it from taking advantage of the <i>library exemption</i> ).
Gbegnon, 2006	Footnote 86	In addition, Hanratty conducts a brief <i>library exemption</i> analysis in her article, but reaches different conclusions.
Givler, 2005	None	None
Grogg & Ashmore, 2007	None	None
Hanratty, 2005	¶ 3	Without a significant change in interpretation of the law, it is unlikely that Google will be able to successfully claim its actions constitute fair use, and the project clearly does not qualify for protection under the Copyright Act's <i>library exemption</i> .
Hanratty, 2005	¶ 10	To address this concern, the Senate clarified that "digital libraries and archives that exist only in the virtual (rather than physical) sense on . . . the Internet" do not fall under the <i>library exemption</i> .
Hanratty, 2005	¶ 11	Google's library digitization program does not appear to meet the rigid requirements of the <i>library exemption</i> .
Hanratty, 2005	¶ 13	However, nothing in the <i>library exemption</i> precludes a finding of fair use with regards to an infringing copy.
Hanratty, 2005	¶ 13	Although not protected by the <i>library exemption</i> , Google's library project is not necessarily unlawful.
Herring, 2005	None	None
Jensen, 2005	None	None
Jeweler, 2005	None	None
Kelly, 2006a	None	None

Author	Location	Contextual Description
Kupferschmid, 2005	None	None
Lavoie, Connaway, & Dempsey, 2005	None	None
“McGraw-Hill Companies,” 2005	None	None
Pike, 2005	None	None
Rubin, 2007	None	None
“The Author’s Guild,” 2005	None	None
Toobin, 2007	None	None
U.S. National Commission on Libraries and Information Science, 2006	None	None
Vaidhyanathan, 2005	None	None
Young, 2005	None	None
Zeller, 2006	None	None

Table 5

Coding results for *property*

Author	Location	Contextual Description
Band, 2006a	None	None
Bracha, 2006	p. 5, ¶ 9	Google got <i>property</i> and copyright law backwards, they explained.
Bracha, 2006	p. 6, ¶ 12	First, I want to refute the claim that copyright, or any other <i>property</i> right, always and inevitably places the burden of obtaining permission on the intermeddler and that an opt-out option can never be enough to escape infringement of such a right.
Bracha, 2006	p. 6, ¶ 12	Once the universal assumption about the nature of <i>property</i> rights is abandoned, the question of how to structure <i>property</i> entitlements becomes a context-specific, normative choice.
Bracha, 2006	p. 6, ¶ 13	In part I, I argue that the idea that <i>property</i> has a “nature” that necessitates any particular result concerning the opt-out question is a myth, albeit a powerful and tempting myth, that needs to be demystified (although it has been demystified time and again during the previous century).
Bracha, 2006	p. 7, ¶ 14	Instead of the nature of <i>property</i> image, I suggest an alternative model for discussing <i>property</i> rights in general and copyright in particular.
Bracha, 2006	p. 7, ¶ 14	This model is based on the combination of three fundamental insights of American <i>property</i> theory: a) Wesley Hohfeld’s classification of legal relations; b) Calabresi and Melamed’s famous three-partite taxonomy of <i>property</i> , liability and non-alienability rules; and c) the more recent analysis of Bell and Pachamovsky of the dynamic character of legal rules, or of “transformation rules”.
Bracha, 2006	p. 7, ¶ 15	First it demonstrates that a supposed “nature” of <i>property</i> or copyright supplies no answers to questions as the one under discussion here.
Bracha, 2006	p. 7, ¶ 15	The answer to the normative question of whether and under what circumstances an opt-out option <i>should</i> give rise to such a defense does not follow from any uniform nature of <i>property</i> rights, because such a nature does not exist.
Bracha, 2006	p. 9, ¶ 21	The argument that the nature of <i>property</i> entails an opt-in structure has an instinctive appeal.



Author	Location	Contextual Description
Bracha, 2006	p. 9, ¶ 22	No one would say that, even if it turns out that an enraged porch owner claims that she never consented to the use of her <i>property</i> and demands a legal remedy.
Bracha, 2006	p. 9, ¶ 22	They are technical instruments we use in order to give formal effect to the basic normative conviction that in some cases otherwise protected <i>property</i> interests are not deemed violated, unless the owner gives specific prior notice of his objection.
Bracha, 2006	p. 10, ¶ 23	The main point of this section is simple: <i>property</i> and copyright have no nature.
Bracha, 2006	p. 10, ¶ 23	Read literally, the nature-of- <i>property</i> argument maintains that <i>property</i> rights have an essential form and content.
Bracha, 2006	p. 10, ¶ 23	<i>Property</i> rights in general and copyright in particular do not correspond to this notion of a uniform essential form.
Bracha, 2006	p. 10, ¶ 23	<i>Property</i> rights are bundles of specific entitlements whose exact composition and configuration change from one context to another.
Bracha, 2006	p. 10, ¶ 23	Finally, <i>property</i> rights sometimes have a dynamic element: rules that define conditions under which the configuration of a <i>property</i> right would change.
Bracha, 2006	p. 10, ¶ 24	Given this structure, the form and content of <i>property</i> rights becomes a normative choice.
Bracha, 2006	p. 10, ¶ 25	A more charitable way of reading the nature of <i>property</i> objection is as a shorthand version of the claim that there are substantive normative reasons to ignore opt-out options.
Bracha, 2006	p. 11, ¶ 26	Our modern consciousness of <i>property</i> is bifurcated.
Bracha, 2006	p. 11, ¶ 26	In professional legal thinking, however, this Blackstonian conception of <i>property</i> as “sole and despotic dominion” over things has lost favor long ago.
Bracha, 2006	p. 11, ¶ 26	One of the first things that an American law student hears in a first year <i>property</i> class is that <i>property</i> is a “bundle of entitlements.
Bracha, 2006	p. 11, footnote 19	The copyright variant is a slightly modified version of the notion of <i>property</i> as absolute control over an object, because the relevant “object” is a postulated intangible entity, namely, the intellectual work.
Bracha, 2006	p. 11, footnote 19	He did it exactly in order to encompass copyright within his abstract model of <i>property</i> as absolute control of things.

Author	Location	Contextual Description
Bracha, 2006	p. 11, footnote 21	The alternative concept of <i>property</i> as a bundle of rights was not necessarily a product of legal realism.
Bracha, 2006	p. 11, footnote 21	It initially originated in the abstraction of <i>property</i> thinking in late nineteenth century legal thought and in the modern socio-economic conditions of modern capitalist societies.
Bracha, 2006	p. 12, ¶ 27	Despite the predominance of the bundle of entitlements conception in professional <i>property</i> discourse, however, the popular idea of <i>property</i> as absolute control did not completely lose its hold even within such circles.
Bracha, 2006	p. 12, ¶ 27	As the nature-of- <i>property</i> claim in the Google context demonstrates, this popular idea, or at least some of the propositions that are rooted in it, have a way of creeping back to haunt professional and semi-professional legal debates.
Bracha, 2006	p. 12, ¶ 27	It may be useful, then, to briefly recount the main features of the Hohfeldian conception of <i>property</i> .
Bracha, 2006	p. 12, ¶ 28	The modern notion of <i>property</i> as a bundle of entitlements is usually traced back to Wesley N. Hohfeld's analysis of fundamental legal conceptions.
Bracha, 2006	p. 13, ¶ 30	The Hohfeldian framework, cryptic though it may seem, had a resounding and lasting effect on legal thinking in general and on <i>property</i> thought in particular.
Bracha, 2006	p. 13, ¶ 30	The most important effect of Hohfeld's insight, as it was developed by his legal realist successors, was the decline of the traditional concept of <i>property</i> rights as absolute control over things.
Bracha, 2006	p. 13, ¶ 30	Analyzed in Hohfeldian terms, <i>property</i> rights are no longer seen as a person's control over an object, but rather as a relation between people in the context of any possible resource or interest.
Bracha, 2006	p. 13, ¶ 30	Moreover, seen from this perspective, <i>property</i> rights are no longer understood as total or absolute control, but rather as collections of various rights and privileges and their correlative duties and no-rights.
Bracha, 2006	p. 13, ¶ 30	In other words, <i>property</i> rights are seen as the modern bundles of entitlements.
Bracha, 2006	p. 13, ¶ 31	<i>Property</i> rights are not just bundles of entitlements; they are eclectic bundles, whose exact content changes with context and with time.
Bracha, 2006	p. 13, ¶ 31	The aggregate of entitlements that constitutes a <i>property</i> right in a house is quite different from that of a <i>property</i> right in a table, and both are quite different from a <i>property</i> right in a trademark.

Author	Location	Contextual Description
Bracha, 2006	p. 13, ¶ 31	Thus, great variation among <i>property</i> bundles is produced both by the initial framing of the <i>property</i> right by the law and by the dynamics of private ordering over time.
Bracha, 2006	p. 13, ¶ 32	The process in which this view of <i>property</i> emerged is sometimes termed the “disintegration of <i>property</i> .”
Bracha, 2006	p. 13, ¶ 32	Its implication was that <i>property</i> could no longer be seen as having a necessary and fixed character or a unifying model that could apply to all cases. It also meant that the abstract concept of <i>property</i> lost much of its power to decide specific cases.
Bracha, 2006	p. 13, ¶ 32	Merely saying that I have <i>property</i> in X no longer decided the question of whether the specific bundle constituting my “ <i>property</i> ” contains any particular right or privilege.
Bracha, 2006	p. 14, ¶ 33	This new conception of <i>property</i> was augmented by several other typical features of realist thought that remained deeply engrained in American legal culture.
Bracha, 2006	p. 14, ¶ 33	A commitment to legal positivism combined with the bundle of entitlements conception revealed a broad space of state choice, well beyond the binary determination of whether or not to recognize and enforce <i>property</i> rights.
Bracha, 2006	p. 14, ¶ 33	The configuration of each <i>property</i> right came to be seen as a long series of choices by the state about how and when to lend its coercive power to the service of certain individuals or refrain from doing so.
Bracha, 2006	p. 14, ¶ 33	Finally a tendency toward particularism—the belief that the dynamic and complex character of society requires relatively narrow and context-attuned legal categories—entailed a contextualist approach to <i>property</i> rights.
Bracha, 2006	p. 14, ¶ 33	This does not necessarily mean endless fragmentation of <i>property</i> rights into completely ad-hoc laundry lists of entitlements.
Bracha, 2006	p. 14, ¶ 33	A commitment to particularism does entail, however, a willingness to accept and even a preference for great variance among specific bundles of <i>property</i> rights according to social context and relevant policies.
Bracha, 2006	p. 14, footnote 34	There is “a limited number of conventional configurations of <i>property</i> entitlements that represent the institutional options, constituted and recognized by <i>property</i> law”
Bracha, 2006	p. 14, ¶ 34	Although there is no consensus over all the components and implications described above, the bundle of entitlements framework is generally accepted within modern professional legal thought about <i>property</i> .

Author	Location	Contextual Description
Bracha, 2006	p. 16, ¶ 40	In short, copyright law is the perfect example of a <i>property</i> right whose character as a Hohfeldian bundle of rights and privileges is obvious.
Bracha, 2006	p. 16, ¶ 41	It follows that identifying and justifying the specific series of rights and privileges in a particular <i>property</i> bundle is only the first stage.
Bracha, 2006	p. 17, ¶ 43	The first enforcement rule identified in this scheme is a <i>property</i> rule.
Bracha, 2006	p. 17, ¶ 43	A <i>property</i> rule enforces a right by giving the owner a veto power over its transfer or suspension.
Bracha, 2006	p. 17, ¶ 44	Various rights that form <i>property</i> bundles may be protected by different enforcement rules of the three brands described above.
Bracha, 2006	p. 17, footnote 47	Calabresi and Melamed identified a <i>property</i> rule with a right enforced by an injunction and a liability rule with a right enforced only by compensatory damages
Bracha, 2006	p. 18, ¶ 46	<i>Property</i> rules are the most common enforcement mechanisms of copyrights.
Bracha, 2006	p. 19, ¶ 49	There is a third level of complexity to the structure of <i>property</i> rights.
Bracha, 2006	p. 19, ¶ 50	Bell and Pachomovsky focused on the potential of dynamic norms to define transitions (in either direction) between <i>property</i> and liability rules, and accordingly they aptly termed such norms “pliability rules.”
Bracha, 2006	p. 20, ¶ 51	The same dynamic mechanism may apply on the enforcement rule level. Legal norm B may mandate that under set of conditions Y a particular right which is protected by a rule of inalienability will transform to be protected by a <i>property</i> rule.
Bracha, 2006	p. 20, ¶ 51	Takings doctrine defines conditions under which <i>property</i> rule protection is supplanted by a liability rule.
Bracha, 2006	p. 20, ¶ 51	Thus, legal norm C may mandate that under set of conditions Z a <i>property</i> right enjoyed by Marshall will “change hands” and will come to be enjoyed by Taney
Bracha, 2006	p. 20, footnote 62	As Bell & Pachomovsky explain, a taking usually involves a three-stage transformation rule: A <i>property</i> rule, which is supplanted by a liability rule, which, in turn, is supplanted by a <i>property</i> rule that protects the new owner.
Bracha, 2006	p. 21, ¶ 53	When the statutory period lapses all the rights conferred on the owner by copyright, whether they are protected by a liability or a <i>property</i> rule, transform into mere privileges.

Author	Location	Contextual Description
Bracha, 2006	p. 21, footnote 65	Bell & Pachomovsky call this rule a “zero order pliability rule,” because it involves a <i>property</i> rule supplanted by a liability rule that requires compensation at the sum of zero
Bracha, 2006	p. 21, footnote 65	As I explain below, it is much more natural and accurate to understand such a rule as a transformation from a right protected by a <i>property</i> rule to a mere nor-right/privilege .
Bracha, 2006	p. 21, footnote 66	The 115(a) cover license converts a <i>property</i> rule protection to the reproduction and distribution entitlements in musical works into a liability rule.
Bracha, 2006	p. 21, footnote 66	The 512(c) safe-haven converts a privilege into a <i>property</i> rule.
Bracha, 2006	p. 21, footnote 66	Thus, the notice is the triggering event that transforms the mere privileges of the owner to rights protected by a <i>property</i> rule.
Bracha, 2006	p. 22, ¶ 56	The gist of the argument up to now was that <i>property</i> rights and copyright are not based on an inherent “nature” or abstract controlling logic from which answers to concrete questions, like the opt-out question, can be inferred.
Bracha, 2006	p. 22, ¶ 57	What could these substantive reasons that justify universal rejection of opt-out in regard to <i>property</i> rights in general and copyright in particular be?
Bracha, 2006	p. 22, ¶ 57	This is a specific brand of a utilitarian argument that can be termed the allocative-efficiency-through- <i>property</i> -rights argument.
Bracha, 2006	p. 23, ¶ 58	Its, usually latent, starting point is that the sole important purpose that should be taken into account when crafting <i>property</i> rights is economic efficiency, and more specifically, efficient allocation, defined as the allocation of resources to those who are willing and able to pay the most for them.
Bracha, 2006	p. 23, ¶ 58	Given this criterion, the next claim is that <i>property</i> rights are the best mechanism for maximizing the value of each resource.
Bracha, 2006	p. 23, ¶ 58	The reason is that <i>property</i> rights that concentrate control in the hands of the owner make this owner internalize both the positive value and the cost of any use of the resource.
Bracha, 2006	p. 23, ¶ 59	The first recommendation is to extend strong <i>property</i> rights protection to specific individuals in regard to all or almost all imaginable resources.
Bracha, 2006	p. 23, ¶ 59	Such <i>property</i> rights, moreover, should cover every conceivable aspect and use of the resource.
Bracha, 2006	p. 23, ¶ 59	Second, the rules governing <i>property</i> rights should be as clear-cut and simple as possible and all components of a <i>property</i> right should be concentrated in the hands of one owner.

Author	Location	Contextual Description
Bracha, 2006	p. 23, ¶ 59	Third, all <i>property</i> rights should be easily assignable and the relevant rules should facilitate voluntary transactions and market bargaining mechanisms.
Bracha, 2006	p. 24, ¶ 60	To translate these recommendations to the terms I used above: resources should be protected by broad, uniform and consolidated <i>property</i> bundles that are composed of rights as opposed to privileges; these rights should be protected by <i>property</i> as opposed to liability or inalienability rules; complex arrangements such as contextualized transformation rules should be avoided.
Bracha, 2006	p. 24, ¶ 60	To the extent that one is prepared to dogmatically accept the assumptions and conclusions of this position as always or almost always valid, it is easy to read the “nature of <i>property</i> ” claim as a normative argument.
Bracha, 2006	p. 24, ¶ 62	First, it is far from self-evident that the prescribed configuration of <i>property</i> rights will always and in all contexts bring about the claimed result.
Bracha, 2006	p. 24, ¶ 62	Second, it is debatable whether efficient allocation is the only or even the most important value that always preempts all other values and considerations when crafting <i>property</i> rights.
Bracha, 2006	p. 24, ¶ 62	Even if a particular configuration of a <i>property</i> right is likely to have a positive effect on allocative efficiency, and even if this is deemed a worthy purpose, one still has to balance this gain against other values and purposes that may be better served by other configurations.
Bracha, 2006	p. 24, ¶ 62	Thus the efficient allocation through strong <i>property</i> rights argument does not possess the universal and self-evident character that is sometimes imputed to it.
Bracha, 2006	p. 25, ¶ 64	This is exactly the opposite structure from the one we would expect in an area of law that imputes a preemptive status to the claim of allocative efficiency through strong <i>property</i> rights and its universal recommendations.
Bracha, 2006	p. 25, ¶ 64	In short, this version of the “nature of <i>property</i> ” objection, while being a normative argument, is not based on any principle that is already accepted in copyright law.
Bracha, 2006	p. 25, ¶ 65	To sum up, <i>property</i> rights in general and copyright doctrines in particular vary greatly along all three dimensions discussed above: a) they contain different mixes of rights and privileges; b) they assign various enforcement rules to protect the rights they recognize; c) they occasionally contain transformation rules of various kinds that define conditions under which particular entitlements would change their character in respect to either dimension (a) or (b).
Bracha, 2006	p. 26, ¶ 70	An open-range regime rejects the common law traditional rule under which the owner of cattle trespassing on another’s land is strictly liable for any <i>property</i> damage caused.

Author	Location	Contextual Description
Bracha, 2006	p. 29, ¶ 78	In both cases the triggering event creates a right protected by a <i>property</i> rule (to the land or computer owner) accompanied by a correlative duty.
Bracha, 2006	p. 29, ¶ 78	They use this term because they describe the transformation as one from a right protected by a liability rule to a right protected by a <i>property</i> rule.
Bracha, 2006	p. 29, footnote 81	A Property rule is a transformation rule whose triggering event causes a right protected by a liability rule to be supplanted by a right protected by a <i>property</i> rule.
Bracha, 2006	p. 30, footnote 82	A No-property rule is a transformation rule whose triggering event causes a no-right to be supplanted by a right protected by a <i>property</i> rule
Bracha, 2006	p. 38, ¶ 103	As many scholars in the field point out, intellectual <i>property</i> law has had a substantial effect on the trajectory of digital-libraries to date, and is likely to have as much effect in the future.
Bracha, 2006	p. 38, footnote 110	intellectual <i>property</i> rules and licensing schemes are the most important factor in shaping digital libraries
Bracha, 2006	p. 38, footnote 110	intellectual <i>property</i> rights form one of the major constraints on digitization of materials and building digital libraries
Bracha, 2006	p. 47, footnote 137	As the text implies, one of the bitter ironies produced by the Creative Commons is the fact that the organization that was founded on an ideology of openness may be used by some in order to justify a maximalist approach to intellectual <i>property</i> protection.
Bracha, 2006	p. 58, ¶ 163	While <i>property</i> law, as a generalizing proxy, usually prefers opt-in as a less costly alternative, in our context the opposite proxy of opt-out is, at the very least, just as plausible.
Bracha, 2006	p. 59, ¶ 166	I will focus here on an eclectic yet loosely connected group of normative accounts of intellectual <i>property</i> I will call “cultural democracy.”
Bracha, 2006	p. 59, ¶ 166	In this section I synthesize the most important typical features shared by these normative accounts of intellectual <i>property</i> .
Bracha, 2006	p. 59, footnote 151	The two other most common theories of intellectual <i>property</i> , which will be bracketed here, are: labor-desert theory, and the personality justification.
Bracha, 2006	p. 64, footnote 170	Cultural democracy theories of intellectual <i>property</i> are not unique in facing such grave difficulties.
Bracha, 2006	p. 64, footnote 170	All major justifications of intellectual <i>property</i> suffer from serious defects and shortcomings.
Bracha, 2006	p. 68, footnote 182	The contest rules asked participants to create short films demonstrating some of the tensions between art and intellectual <i>property</i> law.

Author	Location	Contextual Description
Bracha, 2006	p. 87, ¶ 242	The nature of <i>property</i> or of copyright is not an impediment for such a legal structure.
Coleman, 2006	p. 4, ¶ 39	Let me assure you, we have a deep respect for intellectual <i>property</i> – it is our number one product.
Coleman, 2006	p. 5, ¶ 45	As Thomas Jefferson well knew with his family fire, there are few more irreparable <i>property</i> losses than vanished books.
“Cooperative Agreement,” 2006	p. 5, § 4.5	As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive <i>property</i> of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services.
“Cooperative Agreement,” 2006	p. 9, § 9.2	WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL <i>PROPERTY</i> .
Coyle, 2006	None	None
Crane, 2006	None	None
Dames, 2006a	None	None
Dye, 2006	p. 37, ¶ 23	NCL president Linda Golodner sent letters to Senators Lamar Smith and Orrin Hatch of the congressional Subcommittee on Courts, the Internet, and Intellectual <i>Property</i> , urging the Senators to hold "timely public hearings on this issue of great public, legal, and cultural significance."
Dye, 2006	p. 37, ¶ 28	Fred von Lohmann, senior staff attorney at the Electronic Frontier Foundation, defends Google's position, and feels that courts will agree. "Imagine, for example," he says, "if mapmakers had to ask permission from <i>property</i> owners before they could include <i>property</i> on a map.
Ebbinghouse, 2005	¶ 9	Some of the institutions are university distance learning programs that apply material outside the physical confines of universities. Some universities want wide dissemination of their faculty intellectual <i>property</i> , including peer-reviewed articles, at sites such as the eScholarship site at California Digital Library or DSpace at MIT [www.dspace.org], while others draw users to their own repositories using the DSpace software available on an open source basis.
Gbegnon, 2006	¶ 11	In 2006, French publishing group La Martiniere initiated its own suit against Google, alleging that Google, by scanning copyrighted books into its database, breached the publishers' intellectual <i>property</i> rights.



Author	Location	Contextual Description
Givler, 2005	None	None
Grogg & Ashmore, 2007	None	None
Hanratty, 2005	None	None
Herring, 2005	None	None
Jensen, 2005	¶ 2	Soon after the announcement, the university-press association sent a strongly worded letter to the Google leadership about the intellectual- <i>property</i> incursions the Library Project seemed to represent.
Jensen, 2005	¶ 3	What many publishers believe is at stake is the possibility that they will lose control of their intellectual <i>property</i> .
Jensen, 2005	¶ 5	Still, Google's technology did seem to assuage the biggest worry for publishers: losing control of intellectual <i>property</i> in the digital arena.
Jensen, 2005	¶ 7	Moreover, it's clear to me that the control of intellectual <i>property</i> by publishers is not threatened by Google Print or Library.
Jensen, 2005	¶ 15	I can speak only for myself, not my press, but in general I think that it's in the best self-interest of scholarly publishers to relax a bit about how we respond to intellectual- <i>property</i> issues raised by digitization plans like Google's.
Jensen, 2005	¶ 16	Administrators fear entering agreements that might involve them in intellectual- <i>property</i> wars fought on their soil.
Jeweler, 2005	None	None
Kelly, 2006a	¶ 32	Before the industrial age, libraries were primarily the <i>property</i> of the wealthy elite.
Kelly, 2006a	¶ 33	As more intellectual <i>property</i> became owned by corporations rather than by individuals, those corporations successfully lobbied Congress to keep extending the once-brief protection enabled by copyright in order to prevent works from returning to the public domain.
Kelly, 2006a	¶ 53	The search-engine companies, including Google, operate in the new regime. Search is a wholly new concept, not foreseen in version 1.0 of our intellectual- <i>property</i> law.

Author	Location	Contextual Description
Kelly, 2006a	¶ 55	To a large degree, they make their living by giving away copies of their intellectual <i>property</i> in one fashion or another.
Kelly, 2006a	¶ 56	The Chinese scanning factories, which operate under their own, looser intellectual <i>property</i> assumptions, will keep churning out digital books.
Kupferschmid, 2005	None	None
Lavoie, Connaway, & Dempsey, 2005	¶ 31	Mass digitization programs like GPLP inevitably encounter intellectual <i>property</i> rights issues.
Lavoie, Connaway, & Dempsey, 2005	¶ 35	This suggests that there may be considerable differences across print book collections of large research libraries in terms of the number of out-of-copyright materials held, and by extension, the potential impact of intellectual <i>property</i> rights on mass digitization programs.
Lavoie, Connaway, & Dempsey, 2005	¶ 37	Referring back to Figure 5 above, and assuming all materials pre-dating 1963 are out-of-copyright, a different picture of the impact of intellectual <i>property</i> rights on the proposed digitization emerges.
“McGraw-Hill Companies,” 2005	None	None
Pike, 2005	None	None
Rubin, 2007	¶ 6	But as I noted earlier, we are also authors and publishers of copyrighted works, and as such we strongly believe that expanding access to online content must be done in a way that respects intellectual <i>property</i> rights.
Rubin, 2007	¶ 25	So the question is: should business models that are built on the backs of others’ intellectual <i>property</i> choose a path that respects IP, or a path that devalues it?
Rubin, 2007	¶ 25	But even if a company chooses not to create its own intellectual <i>property</i> – Google, after all, has not a single registration in the Copyright Office’s database – it cannot “opt out” of the law’s obligation to respect the rights of others.
“The Author’s Guild,” 2005	None	None

Author	Location	Contextual Description
Toobin, 2007	None	None
U.S. National Commission on Libraries and Information Science, 2006	p. 7, ¶ 23	The problem is not that we have insufficient <i>property</i> protection; the problem is that we are deploying new protections at an accelerating pace—more and more protections around smaller and smaller things.
Vaidhyanathan, 2005	¶ 24	Google's is still the most ambitious plan, however, and its much bolder venture into the world of print offers us at least three reasons to worry: privacy, privatization, and <i>property</i> .
Vaidhyanathan, 2005	¶ 32	So Google is heavily invested in a strong — perhaps too strong — regime of <i>property</i> rights.
Vaidhyanathan, 2005	¶ 33	Yet the company has also set itself up as the champion of the public interest in matters of intellectual <i>property</i> and Internet freedom.
Vaidhyanathan, 2005	¶ 35	The most serious problem Google Library creates concerns one aspect of intellectual <i>property</i> — copyright.
Young, 2005	None	None
Zeller, 2006	¶ 6	“The issues in the Google case are unprecedented,” says Peter S. Menell, a law professor at the University of California at Berkeley and an authority on intellectual <i>property</i> law.
Zeller, 2006	¶ 32	This is the case’s main technological conundrum: Open-sourced online access involves cannibalizing earlier canons of intellectual <i>property</i> , whether the work in question is “Ulysses” or photos of Brad Pitt and Angelina Jolie’s baby.

Table 6

Coding results for *transformative use*

Author	Location	Contextual Description
Band, 2006a	p. 5, ¶ 19	Moreover, the court concluded that Arriba's use was " <i>transformative</i> " -- that use did not merely supersede the object of the originals, but instead added a further purpose or different character.
Band, 2006a	p. 5, ¶ 22	Like the Arriba search engine, Google's use is <i>transformative</i> in that Google is creating a tool that makes "the full text of all the world's books searchable by everyone."
Band, 2006a	p. 7, ¶ 33	It will claim that its use is far more <i>transformative</i> than MP3.com's -- it is creating a search index, while MP3.com simply retransmitted copies in another medium.
Band, 2006a	p. 8, ¶ 35	Regardless of <i>Kelly</i> and <i>MP3.com</i> , the issue the Second Circuit will probably be most interested in exploring is whether Google's use is <i>transformative</i> .
Band, 2006a	p. 8, ¶ 35	Weighing these arguments, the Ninth Circuit decided that Arriba's use was <i>transformative</i>
Band, 2006a	p. 8, ¶ 38	Although courts typically focus on the four fair use factors and technical questions such as whether a use is <i>transformative</i> , the Supreme Court has stressed that fair use is an "equitable rule of reason which permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster." <i>Stewart v. Abend</i> , 495 U.S. 207, 237 (1990).
Bracha, 2006	None	None
Coleman, 2006	None	None
"Cooperative Agreement," 2006	None	None
Coyle, 2006	None	None

Author	Location	Contextual Description
Crane, 2006	p. 5, ¶ 20	GALE, the most recent DARPA information technology initiative, has reduced the tangle of text mining, analysis, and searching technologies down to three core functions: converting analog source to text, translating one language to another, and <i>transforming</i> raw text into data.
Dames, 2006a	None	None
Dye, 2006	None	None
Ebbinghouse, 2005	None	None
Gbegnon, 2006	None	None
Givler, 2005	None	None
Grogg & Ashmore, 2007	None	None
Hanratty, 2005	¶ 18	The commercial aspect of the character of the use is offset by whether or not the use is <i>transformative</i> .
Hanratty, 2005	¶ 18	A <i>transformative</i> use that adds to or changes the copyrighted work to give it “new expression, meaning or message” generally furthers the purpose of copyright protection, to “promote science and the arts;” while a use that merely supersedes the original is not <i>transformative</i> .
Hanratty, 2005	¶ 18	As a result, the more <i>transformative</i> the work is, the more the balance will be shifted towards fair use.
Hanratty, 2005	¶ 18	<i>Transformative</i> use requires more than a mere shift of format or different purpose.
Hanratty, 2005	¶ 18	Rather, a <i>transformation</i> must create something new.
Hanratty, 2005	¶ 18	For example, a parody is <i>transformative</i> , but retransmitting a radio show over a phone line so advertisers can ensure their commercials are broadcast is not.
Hanratty, 2005	¶ 20	Merely copying a book into a digital format would not be deemed <i>transformative</i> because all that Google is changing is the medium (print to digital).

Author	Location	Contextual Description
Hanratty, 2005	¶ 20	However, the fact that the text of the book is then searchable could be considered <i>transformative</i> because Google is adding something that is unavailable in the print version.
Hanratty, 2005	¶ 21	New expression is what is required for a use to be <i>transformative</i> .
Hanratty, 2005	¶ 21	Thus, while the Google library may be new and useful, it is not necessarily <i>transformative</i> .
Hanratty, 2005	¶ 24	This factor is especially relevant when analyzed in context with the other factors, for it can indicate likelihood of market harm under the fourth factor or lack of <i>transformative</i> character under the first factor.
Hanratty, 2005	¶ 25	Copying the entirety of works is also what allows the project to potentially be deemed <i>transformative</i> , from a text one reads to a text one searches.
Herring, 2005	None	None
Jensen, 2005	None	None
Jeweler, 2005	p. 4, ¶ 10	With respect to the first factor, the purpose and character of use, the searching and indexing goal appears to be a highly <i>transformative</i> use of the copied text.
Jeweler, 2005	p. 4, ¶ 14	In <i>Kelly</i> , the court found that Arriba Soft's search engine, which, in response to a user's inquiry, compiled a database of images by copying pictures from websites (without authorization) and displayed them as thumbnail images, was a sufficiently <i>transformative</i> use of copyrighted material to be a fair use.
Kelly, 2006a	¶ 21	Search engines are <i>transforming</i> our culture because they harness the power of relationships, which is all links really are.
Kelly, 2006a	¶ 21	The static world of book knowledge is about to be <i>transformed</i> by the same elevation of relationships, as each page in a book discovers other pages and other books.
Kelly, 2006a	¶ 53	In the words of a recent ruling by the United States District Court for Nevada, search has a " <i>transformative</i> purpose," adding new social value to what it searches.
Kupferschmid, 2005	p. 50, ¶ 23	Google may also attempt to convince the courts that its copying is " <i>transformative</i> ," another consideration under the first fair use factor.

Author	Location	Contextual Description
Kupferschmid, 2005	p. 50, ¶ 23	The courts consider a <i>transformative</i> use to be a use that is for a different purpose or of a different character than the use of the copyrighted work, and the use does not supersede the need for the copyrighted work.
Kupferschmid, 2005	p. 50, ¶ 23	Courts have uniformly held that merely transferring a work from one medium or format to another is not enough to qualify as a <i>transformative</i> use.
Kupferschmid, 2005	p. 50, ¶ 24	In <i>Kelly</i> , the use was found to be <i>transformative</i> because the thumbnail images made by Arriba Soft were for "improving access to images on the [I]nternet" and not for the artistic purposes of the original.
Kupferschmid, 2005	p. 50, ¶ 24	By creating access and not simply improving it, Google has merely transferred the books from one medium (print) to another (online) and far exceeded what was considered a <i>transformative</i> use even in <i>Kelly</i> .
Lavoie, Connaway, & Dempsey, 2005	None	None
"McGraw-Hill Companies," 2005	None	None
Pike, 2005	p. 18, ¶ 6	What is the purpose and character of the use—is it for <i>transformative</i> or nonprofit purposes?
Pike, 2005	p. 19, ¶ 7	Google is likely to argue that even its scanning of the material is <i>transformative</i> , which would make it fair use.
Rubin, 2007	None	None
"The Author's Guild," 2005	None	None
Toobin, 2007	p. 33, ¶ 17	Google asserts that its use of the copyrighted books is " <i>transformative</i> ," that its database turns a book into essentially a new product.
Toobin, 2007	p. 33, ¶ 17	"A key part of the line between what's fair use and what's not is <i>transformation</i> ," Drummond said.
Toobin, 2007	p. 33, ¶ 17	"Traditional copyright analysis says that a <i>transformation</i> leads to the creation of a new and independent work, like a parody or a work of criticism," Jane Ginsburg, a professor at Columbia Law School, said.

Author	Location	Contextual Description
U.S. National Commission on Libraries and Information Science, 2006	p. 8, ¶ 29	Fair use depending on the purpose and character of the use—whether the use is commercial; whether the use is for criticism, comment, news reporting, teaching, scholarship, or research; and whether the use is <i>transformative</i> vs. consumptive.
U.S. National Commission on Libraries and Information Science, 2006	p. 9, ¶ 30	The purpose of the use was commercial, but Arriba did not try to sell the works; the use was <i>transformative</i> .
Vaidhyathan, 2005	¶ 42	The circuit court ruled that the thumbnails were " <i>transformative</i> " (that they changed material into something new), that the index did not harm Kelly's market, and that the benefits of the service outweighed any fundamental right to exclude the copyrighted photographs.
Young, 2005	None	None
Zeller, 2006	¶ 8	To meet the fair use standard, the party using the material has to show it has made a <i>transformative</i> use of the work — i.e., putting the work to a use that is not commercially competitive with the work's originally intended purpose.
Zeller, 2006	¶ 9	Google contends that the application of search technology to a vast body of copyrighted works is itself <i>transformative</i> .
Zeller, 2006	¶ 18	Arriba Soft said the image search was a <i>transformative</i> use, and the court largely agreed.
Zeller, 2006	¶ 33	Google clearly is betting that the New York court will build on the Arriba Soft case and conclude that a comprehensive database of published works — a 21st-century version of a globally accessible card catalogue — is sufficiently <i>transformative</i> to qualify as a fair use application.



## REFERENCES

17 U.S.C. § 107.

17 U.S.C. § 108.

American Library Association. (2007). The voice of America's libraries. Retrieved May 6, 2007, from <http://www.ala.org/>.

Band, J. (2006a). The Google Library project: The copyright debate (*Office for Information Technology Policy OITP Technology Policy Brief*) [Electronic Version]. Retrieved April 24, 2007 from <http://www.ala.org/ala/washoff/contactwo/oitp/googlepaprfnl.pdf>.

Band, J. (2006b). Jonathan Band, PLLC. Retrieved May 6, 2007, from <http://www.policybandwidth.com/>.

Bell, S. J. (2005). Electronic libraries can't be academic [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.

Bengtson, J. B. (2006). The birth of the universal library [Electronic Version]. *Library Journal*, 131, 2-6. Retrieved March 18, 2007 from <http://www.libraryjournal.com/article/CA6322017.html>.

Bracha, O. (2006). Standing copyright law on its head? The Googlization of everything and the many faces of property [Electronic Version]. Retrieved March 22, 2007 from <http://www4.cc.utexas.edu/law/conferences/ip/BrachaPaper.pdf>.

Bubnoff, A. v. (2005). Science in the web age: The real death of print [Electronic Version]. *Nature*, 438, 550-552. Retrieved April 19, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19005243&loginpage=Login.asp&site=ehost-live>.

Byrd, J., Charbonneau, G., Charbonneau, M., Courtney, A., Johnson, E., Leonard, K., et al.

(2006). A white paper on the future of cataloging at Indiana University [Electronic Version]. Retrieved March 27, 2007 from

[http://www.iub.edu/~libtserv/pub/Future\\_of\\_Cataloging\\_White\\_Paper.pdf](http://www.iub.edu/~libtserv/pub/Future_of_Cataloging_White_Paper.pdf).

Carlson, S. (2006). U. of California will provide up to 3,000 books a day to Google for scanning, contract states [Electronic Version]. *The Chronicle of Higher Education*. Retrieved

March 31, 2007 from <http://chronicle.com/free/2006/08/2006082501t.htm>.

Carlson, S., & Young, J. R. (2005). Google will digitize and search millions of books from 5 top research libraries [Electronic Version]. *The Chronicle of Higher Education*. Retrieved

April 7, 2007.

CNN (2007). Anchors & reporters: Jeffrey Toobin. Retrieved May 8, 2007, from

[http://www.cnn.com/CNN/anchors\\_reporters/toobin.jeffrey.html](http://www.cnn.com/CNN/anchors_reporters/toobin.jeffrey.html).

Coleman, M. S. (2006). Google, the Khmer Rouge and the public good [Electronic Version].

*Address to the Professional/Scholarly Publishing Division of the Association of American Publishers*. Retrieved April 24, 2007 from

<http://www.law.pitt.edu/madison/downloads/coleman.pdf>.

Company overview (2007). Retrieved April 15, 2007, from

<http://www.google.com/corporate/index.html>.

Congressional Research Service (2007). History and mission. Retrieved May 7, 2007, from

<http://www.loc.gov/crsinfo/whatscrs.html#hismiss>.

Cooperative agreement [Electronic (2006). Version]. Retrieved March 28, 2007 from

[http://www.cdlib.org/news/ucgoogle\\_cooperative\\_agreement.pdf](http://www.cdlib.org/news/ucgoogle_cooperative_agreement.pdf).

- Copyright law of the United States of America and related laws contained in Title 17 of the United States Code (2003). Retrieved April 14, 2007, from <http://www.copyright.gov/title17/circ92.pdf>.
- Coyle, K. (2006). Managing technology: Mass digitization of books [Electronic Version]. *The Journal of Academic Librarianship*, 32, 641-645. Retrieved April 19, 2007.
- Crane, G. (2006). What do you do with a million books? [Electronic Version]. *D-Lib Magazine*, 12. Retrieved April 24, 2007 from <http://www.dlib.org/dlib/march06/crane/03crane.html>.
- D-Lib Magazine. (2005). Authors in the September 2005 issue of D-Lib Magazine. Retrieved May 8, 2007, from <http://www.dlib.org/dlib/september05/authors/09authors.html>.
- Dames, K. M. (2006a). Beyond Google [Electronic Version]. *Searcher*, 14, 21-24. Retrieved March 27, 2007 from <http://0-web.ebscohost.com.janus.uoregon.edu/ehost/detail?vid=1&hid=7&sid=1507b163-4a6e-427d-9fe1-36e1edeba844%40sessionmgr8>.
- Dames, K. M., & Hurst-Wahl, J. (2007). Digitizing 101 [Electronic Version]. *Library Journal*. Retrieved March 31, 2007 from <http://www.libraryjournal.com/article/CA6404146.html>.
- Digital rights (2007). Retrieved April 25, 2007, from [http://en.wikipedia.org/wiki/Digital\\_rights](http://en.wikipedia.org/wiki/Digital_rights).
- Dye, J. (2006). Scanning the stacks [Electronic Version]. *EContent*, 29, 32-37. Retrieved April 18, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19498043&loginpage=Login.asp&site=ehost-live>.
- Ebbinghouse, C. (2005). Open access: The battle for universal, free knowledge [Electronic Version]. *Searcher*, 13, 8-17. Retrieved April 20, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16349078&loginpage=Login.asp&site=ehost-live>.

Gbegnon, K. (2006). Digitized scholarship and the "library" concept: allowing the history of the library exemption to inform how we view Google's digitized library [Electronic Version]. *Hastings Communications and Entertainment Law Journal*, 29. Retrieved April 7, 2007.

Givler, P. (2005). The University Press Assn.'s objections [Electronic Version]. Retrieved March 27, 2007 from

[http://www.businessweek.com/bwdaily/dnflash/may2005/nf20050523\\_9039.htm](http://www.businessweek.com/bwdaily/dnflash/may2005/nf20050523_9039.htm).

Google checks out library books. (2004). Retrieved March 28, 2007, 2007, from

[http://www.google.com/press/pressrel/print\\_library.html](http://www.google.com/press/pressrel/print_library.html)

Grogg, J. E., & Ashmore, B. (2007). Google Book Search libraries and their digital copies [Electronic Version]. *Searcher*, 15. Retrieved April 7, 2007 from

[http://www.infoday.com/searcher/apr07/Grogg\\_Ashmore.shtml](http://www.infoday.com/searcher/apr07/Grogg_Ashmore.shtml).

Hanratty, E. (2005). Google library: beyond fair use? [Electronic Version]. Retrieved March 22, 2007 from <http://www.law.duke.edu/journals/dltr/articles/2005dltr0010.html>.

Herring, M. Y. (2005). Don't get goggle-eyed over Google's plan to digitize [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.

Intellectual property (2007). Retrieved April 25, 2007, from

[http://en.wikipedia.org/wiki/Intellectual\\_property\\_rights](http://en.wikipedia.org/wiki/Intellectual_property_rights).

Jensen, M. (2005). Presses have little to fear from Google [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.

Jeweler, R. (2005). The Google Book Search project: Is online indexing a fair use under copyright law? [Electronic Version]. Washington, D.C.: The Library of Congress, Congressional Research Service.

Kelly, K. (2006a). Scan this book! [Electronic Version]. *The New York Times Magazine*.

Retrieved March 31, 2007 from

<http://www.nytimes.com/2006/05/14/magazine/14publishing.html?ei=5070&en=b5633346a62f1171&ex=1175486400&adxnnl=1&adxnnlx=1175385904-SA+cv1C8Bh3yG2kiNpNexA>.

Kelly, K. (2006b). Biography and other details. Retrieved May 7, 2007, from

<http://www.kk.org/biography/>.

Kupferschmid, K. (2005). Are authors and publishers getting scroogled? [Electronic Version].

*Information Today*, 22, 1-51. Retrieved April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19091457&loginpage=Login.asp&site=ehost-live>.

Lavoie, B., Connaway, L. S., & Dempsey, L. (2005). Anatomy of aggregate collections: The example of Google Print for libraries [Electronic Version]. *D-Lib Magazine*, 11.

Retrieved April 23, 2007 from

<http://www.dlib.org/dlib/september05/lavoie/09lavoie.html>.

Lee, F. R. (2004). Questions and praise for Google web library [Electronic Version]. *The New York Times*, 9. Retrieved April 20, 2007.

Leedy, P. D., & Ormrod, J. E. (2005). *Practical research: Planning and design* (8 ed.). Upper Saddle River, New Jersey: Pearson Prentice Hall.

- Litwin, R. (2004). On Google's monetization of libraries [Electronic Version]. *Library Juice*, 7. Retrieved April 12, 2007 from [http://libr.org/juice/issues/vol7/LJ\\_7.26.html#3](http://libr.org/juice/issues/vol7/LJ_7.26.html#3).
- Market (2007). Retrieved April 14, 2007, from <http://en.wikipedia.org/wiki/Market>.
- McGraw-Hill Companies, Inc. vs Google, Inc. [Electronic (2005). Version]. Retrieved March 28, 2007 from <http://news.findlaw.com/hdocs/docs/google/mcgggoog101905cmp.pdf>.
- New York University Steinhardt School of Culture, Education, and Human Development. (2007). Faculty Bio: Siva Vaidhyanathan. Retrieved May 8, 2007, from [http://steinhardt.nyu.edu/faculty\\_bios/view/Siva\\_Vaidhyanathan](http://steinhardt.nyu.edu/faculty_bios/view/Siva_Vaidhyanathan).
- Optical character recognition. (2007). Retrieved April 2, 2007, from [http://en.wikipedia.org/wiki/Optical\\_character\\_recognition](http://en.wikipedia.org/wiki/Optical_character_recognition)
- Palmquist, M. (n.d.). Curriculum Vitae. Retrieved May 14, 2007, from <http://lamar.colostate.edu/~mp/cv.htm>.
- Palmquist, M., Busch, C., Maret, P. S. D., Flynn, T., Kellum, R., Le, S., et al. (2005). Content analysis. Retrieved March 27, 2007, from Colorado State University Department of English Web site: <http://writing.colostate.edu/guides/research/content/>.
- Peukert, A. (2005). A bipolar copyright system for the digital network environment [Electronic Version]. *Hastings Communications and Entertainment Law Journal*. 28. Retrieved April 7, 2007.
- Pike, G. H. (2005). Google Print and the fair use doctrine [Electronic Version]. *Information Today*, 22, 17-19. Retrieved April 19, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18875729&loginpage=Login.asp&site=ehost-live>.

*Publication manual of the American Psychological Association* (5th ed.). (2001). Washington, DC: American Psychological Association.

Quint, B. (2005). Tick, tock [Electronic Version]. *Searcher*, 13, 5-6. Retrieved April 20, 2007

from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16014809&loginpage=Login.asp&site=ehost-live>.

Rubin, T. C. (2007). Searching for principles: Online services and intellectual property.

Retrieved March 13, 2007, from <http://www.microsoft.com/presspass/exec/trubin/03-05-07AmericanPublishers.msp>

Sandler, M. (2005). Disruptive beneficence: The Google print program and the future of libraries

[Electronic Version]. *Internet Reference Services Quarterly*, 10, 5-22. Retrieved April 24, 2007 from <http://www.haworthpress.com/web/IRSQ>.

Software & Information Industry Association (2007). Senior staff bios. Retrieved May 7, 2007,

from <http://www.siiia.net/press/staff/staffbios.asp>.

St. Lifer, E. (2005). Guiding the Googlers [Electronic Version]. *School Library Journal*, 11-11.

Retrieved April 20, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=15630281&loginpage=Login.asp&site=ehost-live>.

Tennant, R. (2006). Mass digitization [Electronic Version]. *Library Journal*. Retrieved March

31, 2007 from <http://www.libraryjournal.com/article/CA6379559.html>.

The Author's Guild vs. Google, Inc. [Electronic (2005). Version]. Retrieved March 28, 2007

from

[http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors\\_Guild\\_v\\_Google\\_Complaint.pdf](http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors_Guild_v_Google_Complaint.pdf).

The United States Constitution (1787). Retrieved April 28, 2007, from

<http://www.house.gov/house/Constitution/Constitution.html>.

Toobin, J. (2007, February 5). Google's moon shot [Electronic Version]. *The New Yorker*, 82, 30-35. Retrieved March 18, 2007, from

[http://www.newyorker.com/reporting/2007/02/05/070205fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2007/02/05/070205fa_fact_toobin).

University of Michigan. (2007). Office of the President. Retrieved May 6, 2007, from

<http://www.umich.edu/pres/>.

University of Texas at Austin. (2007). School of Law: Faculty & administration. Retrieved May 6, 2007, from <http://www.utexas.edu/law/faculty/profile.php?id=OB242>.

U.S. Copyright Office (2006). Circular 1 - Copyright Office basics. Retrieved April 27, 2007 from <http://www.copyright.gov/circs/circ1.html#wci>

U.S. National Commission on Libraries and Information Science. (n.d.). About NCLIS. Retrieved May 8, 2007, from <http://www.nclis.gov/about.htm>.

U.S. National Commission on Libraries and Information Science. (2006). Mass digitization: Implications for information policy [Electronic Version]. Retrieved March 31, 2007, from <http://www.nclis.gov/digitization/MassDigitizationSymposium-Report.pdf>

Vaidhyathan, S. (2005). A risky gamble with Google [Electronic Version]. *Chronicle of Higher Education*, 52, B7-B10. Retrieved April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19034124&loginpage=Login.asp&site=ehost-live>.



Young, J. R. (2006). Scribes of the digital era [Electronic Version]. *The Chronicle of Higher Education*, 52, 34. Retrieved April 7, 2007.

Zeller, S. (2006). Limits of 'fair use' tested by Google library project [Electronic Version]. *CQ Weekly*, 64(25), 1669-1670.



## BIBLIOGRAPHY

\$2M Sloan Foundation grant will help LC digitize "brittle books" [Electronic (2007). Version].

*Library Journal*. Retrieved March 31, 2007 from

<http://www.libraryjournal.com/article/CA6413184.html>.

Albanese, A. (2005). AAP sues Google over scan plan [Electronic Version]. *Library Journal*,

*130*(20), 18-18.

Albanese, A. (2005). Publisher: no thanks, Google [Electronic Version]. *Library Journal*,

*130*(18), 18-18.

Albanese, A. (2006). Google rivals hit by subpoenas [Electronic Version]. *Library Journal*,

*131*(20), 18-18.

Albanese, A. (2006). Google scans, contract released [Electronic Version]. *Library Journal*.

Retrieved March 31, 2007 from <http://www.libraryjournal.com/article/CA6373321.html>.

Albanese, A. (2007). LJ talks to Niko Pfund [Electronic Version]. *Library Journal*. Retrieved

March 31, 2007 from <http://www.libraryjournal.com/article/CA6413419.html>.

Albanese, A., & Oder, N. (2007). UT, Princeton join Google scan plan [Electronic Version].

*Library Journal*. Retrieved March 31, 2007 from

<http://www.libraryjournal.com/article/CA6417762.html>.

Albanese, A. R. (2006). The social life of books [Electronic Version]. *Library Journal*. Retrieved

March 31, 2007 from <http://www.libraryjournal.com/article/CA6332156.html>.

Anthony, R. S. (2005). Word for word, bit by bit: No matter the promise, opinions are split on

Google's plans to scan library books [Electronic Version]. *Black Issues Book Review*, 7,

18-18. Retrieved April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16882999&loginpage=Login.asp&site=ehost-live>.

Bavarian State library joins Google Book Search [Electronic Version]. (2007, March 9, 2007).

Retrieved March 28, 2007, 2007, from

<http://www.libraryjournal.com/article/CA6422888.html>

Beevor, A. (2005). Greeks with gifts [Electronic Version]. *Bookseller*(5183), 26-26.

Berry III, J. N. (2005). Big bucks for fair use [Electronic Version]. *Library Journal*, 8-8.

Retrieved April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18575963&loginpage=Login.asp&site=ehost-live>.

Bone, A. (2006). Indies interrogate the online prophets [Electronic Version]. *Bookseller*(5222), 11-11.

Breakstone, E. (2005). Librarians can look forward to an exhilarating future [Electronic Version]. *The Chronicle of Higher Education*. Retrieved April 7, 2007.

Bryant, S. (2006). Google Book Search now allows book downloads. Retrieved March 31, 2007, from

[http://googlewatch.eweek.com/content/archive/google\\_book\\_search\\_now\\_allows\\_book\\_downloads.html](http://googlewatch.eweek.com/content/archive/google_book_search_now_allows_book_downloads.html)

Bryant, S. (2006). Publishers fight back against Google with new book search service. *Google Watch*. Retrieved March 31, 2007, from

[http://googlewatch.eweek.com/content/archive/publishers\\_fight\\_back\\_against\\_google\\_with\\_new\\_book\\_search\\_service.html](http://googlewatch.eweek.com/content/archive/publishers_fight_back_against_google_with_new_book_search_service.html)

- Bryant, S. (2006). Publishers: Google scan plan actually helps book sales. Retrieved March 31, 2007, from [http://googlewatch.eweek.com/content/archive/publishers\\_google\\_scan\\_plan\\_actually\\_helps\\_book\\_sales.html](http://googlewatch.eweek.com/content/archive/publishers_google_scan_plan_actually_helps_book_sales.html)
- Carlson, S. (2006). U. of California is in talks to join Google's library-scanning project [Electronic Version]. *Chronicle of Higher Education*, 52, 32-32. Retrieved April 18, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=21949345&loginpage=Login.asp&site=ehost-live>.
- Carlson, S. (2007). The library as search engine [Electronic Version]. *The Chronicle of Higher Education*, 53, 24. Retrieved April 7, 2007.
- Chillingworth, M. (2004). Google books its place in search history. *Information World Review* [Electronic Version], (208), 57-57.
- Cross, L. (2007). Race to digitize books heats up [Electronic Version]. *Graphic Arts Monthly*, 79, 11-11. Retrieved April 17, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=24062708&loginpage=Login.asp&site=ehost-live>.
- Dames, K. M. (2006b). Library organizations should support Google Book Search [Electronic Version]. *Online*, 30(2), 19-19.
- Derbyshire, D. (2007). Publishers digitise for internet browsers. Retrieved April 7, 2007, from <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/03/21/nebay121.xml>
- Digitizing archiving on the cheap [Electronic (2006). Version]. *Library Journal*. Retrieved March 31, 2007 from <http://www.libraryjournal.com/article/CA6319445.html>.

Dillard, D. (2006). Librarians, jelly beans, and Google Book Search [Electronic Version].  
*Online*, 30(2), 20-21.

Field vs. Google [Electronic (2006). Version]. Retrieved April 24, 2007 from  
[http://www.eff.org/IP/blake\\_v\\_google/google\\_nevada\\_order.pdf](http://www.eff.org/IP/blake_v_google/google_nevada_order.pdf).

First music, then books [Electronic Version]. (2005, April 27). *Evening Standard*.

Foster, A. L. (2005). U. of Michigan president defends library's role in controversial Google scanning project [Electronic Version]. Retrieved March 27, 2007 from  
<http://chronicle.com/daily/2006/02/2006020702t.htm>.

Goldsborough, R. (2006). The brave new world of book research [Electronic Version]. *Teacher Librarian*, 33, 49-49. Retrieved April 18, 2007 from  
<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19832373&loginpage=Login.asp&site=ehost-live>.

Google funding \$3 million LC world digital library [Electronic (2005). Version]. *Library Journal*. Retrieved March 31, 2007 from  
<http://www.libraryjournal.com/article/CA6287014.html>.

Google has entered the initial batch of scanned books to its searchable online index [Electronic (2005). Version]. *Chronicle of Higher Education*, 52, A34-A34. Retrieved April 19, 2007 from  
<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18946779&loginpage=Login.asp&site=ehost-live>.

Google partners with libraries in massive digitization project [Electronic (2004). Version].  
*American Libraries*. Retrieved April 7, 2007 from

[http://www.ala.org/al\\_onlineTemplate.cfm?Section=december2004ab&Template=/ContentManagement/ContentDisplay.cfm&ContentID=82633](http://www.ala.org/al_onlineTemplate.cfm?Section=december2004ab&Template=/ContentManagement/ContentDisplay.cfm&ContentID=82633).

Hane, P. J. (2005). Digitization plans top the news [Electronic Version]. *Information Today*, 22, 7-14. Retrieved April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18875711&loginpage=Login.asp&site=ehost-live>.

Hane, P. J. (2005). Digital book projects proliferate [Electronic Version]. *Information Today*, 22, 7-14. Retrieved April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19092041&loginpage=Login.asp&site=ehost-live>.

Helm, B. (2005). For Google, another stormy chapter [Electronic Version]. *BusinessWeek Online*. Retrieved March 26, 2007 from

[http://www.businessweek.com//technology/content/sep2005/tc20050922\\_5949\\_tc024.htm](http://www.businessweek.com//technology/content/sep2005/tc20050922_5949_tc024.htm).

Helm, B. (2005). A Google project pains publishers [Electronic Version]. *BusinessWeek Online*. Retrieved March 22, 2007 from

[http://www.businessweek.com/technology/content/may2005/tc20050523\\_9472\\_tc024.htm?chan=search](http://www.businessweek.com/technology/content/may2005/tc20050523_9472_tc024.htm?chan=search).

Helm, B. (2005). Google's escalating book battle [Electronic Version]. Retrieved March 28, 2007 from

[http://www.businessweek.com/technology/content/oct2005/tc20051020\\_802225.htm?chan=search](http://www.businessweek.com/technology/content/oct2005/tc20051020_802225.htm?chan=search).

Helm, B. (2005). Google's great works in progress [Electronic Version]. *BusinessWeek Online*.

Retrieved April 7, 2007 from

[http://www.businessweek.com/technology/content/dec2005/tc20051222\\_636880.htm?chan=search](http://www.businessweek.com/technology/content/dec2005/tc20051222_636880.htm?chan=search).

Herring, M. Y. (2005). Don't get goggle-eyed over Google's plan to digitize [Electronic Version].

*The Chronicle of Higher Education*. Retrieved April 7, 2007.

Hilton, J. (2006). The future for higher education: sunrise or perfect storm? [Electronic Version].

*EDUCAUSE review*, 41, 58-71. Retrieved March 27, 2007 from

<http://www.educause.edu/ir/library/pdf/erm0623.pdf>.

Hof, R. (2007). Is Google too powerful? [Electronic Version]. *BusinessWeek Online*. Retrieved

April 7, 2007 from

[http://www.businessweek.com/magazine/content/07\\_15/b4029001.htm](http://www.businessweek.com/magazine/content/07_15/b4029001.htm).

Hogge, B. (2005). Brewster Kahle [Electronic Version]. *New Statesman*, 134, 26-26. Retrieved

April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18533444&loginpage=Login.asp&site=ehost-live>.

Janes, J. (2005). What does Google know that we don't? [Electronic Version]. *American*

*Libraries*. Retrieved April 7, 2007 from

[http://www.ala.org/al\\_onlineTemplate.cfm?Section=2005columns&Template=/ContentManagement/ContentDisplay.cfm&ContentID=104848](http://www.ala.org/al_onlineTemplate.cfm?Section=2005columns&Template=/ContentManagement/ContentDisplay.cfm&ContentID=104848).

Jensen, M. (2005). Presses have little to fear from Google [Electronic Version]. *The Chronicle of*

*Higher Education*. Retrieved April 7, 2007.



Johnson, B., & Burkeman, O. (2007). Off the shelf [Electronic Version]. *Guardian Unlimited*.

Retrieved April 7, 2007 from

<http://books.guardian.co.uk/news/articles/0,,2030832,00.html>.

Kaser, D. (2005). War and peace [Electronic Version]. *Information Today*, 22, 16-16. Retrieved

April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19092052&loginpage=Login.asp&site=ehost-live>.

Keegan, V. (2007). A new chapter for books on the web [Electronic Version]. *Guardian*

*Unlimited*. Retrieved April 7, 2007 from

<http://books.guardian.co.uk/ebooks/story/0,,2039257,00.html>.

Kiernan, V. (2005). Prolific author tells Google to remove his books from its library-scanning project [Electronic Version]. *The Chronical of Higher Education*, 52(9), A42-A42.

Kopytoff, V. (2005, May 24). Google's library project challenged / Publishers cite loss of revenue, possible copyright violations [Electronic Version]. *San Francisco Chronicle*.

Krippendorff, K. (2004). *Content analysis: An introduction to its methodology*. Thousand Oaks, CA: Sage Publications, Inc.

Lackie, R. J. (2005). Google's Print and Scholar initiatives: The value of and impact on libraries and information services [Electronic Version]. *Internet Reference Services Quarterly*, 10, 55-70. Retrieved April 19, 2007 from <http://www.haworthpress.com/web/IRSQ>.

LC union warns about Google, restates core mission [Electronic (2006). Version]. *Library Journal*. Retrieved March 31, 2007 from

<http://www.libraryjournal.com/index.asp?layout=articlePrint&articleid=CA6357471>

Lohmann, F. v. (2006). Nevada court rules Google cache is fair use [Electronic Version].

Retrieved April 24, 2007 from [http://www.eff.org/news/archives/2006\\_01.php](http://www.eff.org/news/archives/2006_01.php).

March of the spiders: policy challenges for copyright in the digital publishing environment

[Electronic (2005). Version]. Retrieved March 22, 2007 from

<http://zentelligence.blogspot.com/March%20of%20the%20Spiders.pdf>.

Marcum, D. B. (2006). The future of cataloging [Electronic Version]. *Library Resources &*

*Technical Services*, 50, 5-9. Retrieved April 18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=19547591&loginpage=Login.asp&site=ehost-live>.

Markey, K. (2007). The online library catalog: Paradise lost and paradise regained? [Electronic

Version]. *D-Lib Magazine*, 13. Retrieved April 24, 2007 from

<http://www.dlib.org/dlib/january07/markey/01markey.html>.

Michigan hosts conference on digitization issues [Electronic (2006). Version]. *Library Journal*.

Retrieved March 31, 2007 from <http://www.libraryjournal.com/article/CA6320399.html>.

Milliot, J., & Albanese, A. (2004). Google deal with libraries wins praise, raises questions

[Electronic Version]. *Publishers Weekly*, 251, 7-7. Retrieved April 20, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=15420867&loginpage=Login.asp&site=ehost-live>.

Milne, R. (2005). The Google Library Project at Oxford [Electronic Version]. *Internet Reference*

*Services Quarterly*, 10, 23-28. Retrieved April 19, 2007 from

<http://www.haworthpress.com/web/IRSQ>.

Not bound by anything; the future of books [Electronic (2007). Version]. *The Economist*.

Retrieved April 7, 2007.

- O'Reilly, T. (2006). Reading 2.0 [Electronic Version]. Retrieved April 23, 2007, from <http://www.lib.umich.edu/mdp/symposium/presentations/oreilly.pdf>.
- Orsdel, L. C. V., & Born, K. (2006). Journals in the time of Google [Electronic Version]. *Library Journal*. Retrieved March 31, 2007 from <http://www.libraryjournal.com/article/CA6321722.html>.
- Pace, A. K. (2006). Technically speaking: Is this the Renaissance or the Dark Ages? [Electronic Version]. *American Libraries*, 37(1), 77-78.
- Princeton and Texas join Google project [Electronic (2007). Version]. *American Libraries*, 38, 27-27. Retrieved April 17, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=24394555&loginpage=Login.asp&site=ehost-live>.
- Pulp friction [Electronic Version]. (2005). *Economist*, 377(8452), 63-64.
- Quint, B. (2005). Google Print and Open Content Alliance [Electronic Version]. *Information Today*, 22(10), 7-8.
- Rossi, J. (2005). Knowledge at your fingertips? [Electronic Version]. *T+D*, 59, 15-15. Retrieved April 20, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16627576&loginpage=Login.asp&site=ehost-live>.
- Roush, W. (2005). The infinite library [Electronic Version]. Retrieved March 22, 2007 from [http://www.arch.ttu.edu/people/faculty/Neiman\\_B/pedagogical/readingstructure/media/02.04.3\\_inifinite\\_library.pdf](http://www.arch.ttu.edu/people/faculty/Neiman_B/pedagogical/readingstructure/media/02.04.3_inifinite_library.pdf).

Rubin, T. C. (2007). Searching for principles: Online services and intellectual property.

Retrieved March 13, 2007, from <http://www.microsoft.com/presspass/exec/trubin/03-05-07AmericanPublishers.msp>

Schlumpf, K., & Zchernitz, R. (2007). Weaving the past into the present by digitizing local history [Electronic Version]. *Computers in Libraries*, 27. Retrieved April 7, 2007 from [http://www.infoday.com/cilmag/mar07/Schlumpf\\_Zschernitz.shtml](http://www.infoday.com/cilmag/mar07/Schlumpf_Zschernitz.shtml).

Straight answers from Brewster Kahle [Electronic (2005). Version]. *American Libraries*, 36, 22-22. Retrieved April 20, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=15947413&loginpage=Login.asp&site=ehost-live>.

Tennant, R. (2005). Google out of print [Electronic Version]. *Library Journal*, 130, 27-27.

Retrieved April 20, 2007 from <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16128915&loginpage=Login.asp&site=ehost-live>.

The Author's Guild vs. Google, Inc. [Electronic (2005). Version]. Retrieved March 28, 2007

from [http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors\\_Guild\\_v\\_Google\\_Complaint.pdf](http://isites.harvard.edu/fs/docs/icb.topic87591.files/Authors_Guild_v_Google_Complaint.pdf).

The electronic library [Electronic (2004). Version]. *The New York Times*, 28. Retrieved April 20, 2007.

The Library of Congress, Section 108 Study Group. (n.d.). Retrieved April 17, 2007, from <http://www.loc.gov/section108/index.html>.

The state of America's libraries [Electronic (2006). Version]. Retrieved March 31, 2007 from

<http://www.ala.org/ala/pressreleases2006/march2006/FINAL2006StateofAmericasLibrariesReport.pdf>.

The Times Magazine on the future of electronic text [Electronic (2006). Version]. *Library*

*Journal*. Retrieved March 31, 2007 from

<http://www.libraryjournal.com/article/CA6335799.html>.

Top tech trends: Digitization, social networking, and the OPAC [Electronic (2007). Version].

*Library Journal*. Retrieved March 31, 2007 from

<http://www.libraryjournal.com/article/CA6414334.html>.

University of California joins Google library project [Electronic Version]. (2006). *American*

*Libraries*, 37, 16-17.

University of Virginia joins Google Book Search [Electronic (2006). Version]. Retrieved March

27, 2007 from <http://www.libraryjournal.com/article/CA6392103.html>.

University of Wisconsin-Madison joins Google Books Library Project [Electronic Version].

(2006). *Information Today*, 23(10), 46-46.

UT Austin joins Google scan plan [Electronic (2007). Version]. *Library Journal*. Retrieved

March 31, 2007 from <http://www.libraryjournal.com/article/CA6410852.html>.

Wildstrom, S. H. (2005). The web hits the stacks; Search giants Yahoo! and Google are pushing to scan the world's books and other print subscription content [Electronic Version].

*BusinessWeek Online*. Retrieved April 19, 2007.

Young, J. R. (2005). Publishing groups say Google's book-scanning effort may violate

copyrights [Electronic Version]. *Chronicle of Higher Education*, 51, A35-A35. Retrieved

April 20, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=16259259&loginpage=Login.asp&site=ehost-live>.

Young, J. R. (2005). Google has resumed scanning copyrighted books [Electronic Version].

*Chronicle of Higher Education*, 52, A34-A34. Retrieved April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=18946780&loginpage=Login.asp&site=ehost-live>.

Young, J. R. (2006). U. of California will provide millions of books to Google's digitization

project [Electronic Version]. *Chronicle of Higher Education*, 53, 64-64. Retrieved April

18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=22299634&loginpage=Login.asp&site=ehost-live>.

Young, J. R. (2006). U. of Michigan puts digitized books online but bars full text of copyrighted

works [Electronic Version]. *Chronicle of Higher Education*, 53, 40-40. Retrieved April

18, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=22271084&loginpage=Login.asp&site=ehost-live>.

Zeitchik, S., & Milliot, J. (2005). Google draws fire, creates book page [Electronic Version].

*Publishers Weekly*, 252, 4-4. Retrieved April 19, 2007 from

<http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=17175238&loginpage=Login.asp&site=ehost-live>.