University-Press Group Raises Questions About Google's Library-Scanning Project

By JEFFREY R. YOUNG

Saying that Google's high-profile library project "appears to be built on a fundamental violation of the copyright act," the Association of American University Presses listed concerns and questions about the project on Friday in a six-page letter to Google's top lawyer. The complaint is one of a growing list of formal objections to Google's digital-library plans by publishing groups.

The university-presses group, which represents 125 nonprofit scholarly publishers, posed 16 detailed questions about Google's project, which the company calls Google Print for Libraries. The project, announced in December, involves libraries at Harvard and Stanford Universities, the University of Michigan at Ann Arbor, and the University of Oxford, in England, as well as the New York Public Library (The Chronicle, December 14).

The libraries are letting Google scan some or all of their books, and Google plans to add the full-text records to its popular search index. Scanning is already under way at some of the libraries, though Google officials say that only a handful of texts have been added to the index so far. The entire project could take up to a decade to complete.

Although many of the books being scanned are so old that copyright no longer applies, Google officials say they also plan to scan books still under copyright. For copyrighted works, Google officials say that online search results will offer only short excerpts. But publishers say that even to scan those books could violate copyright.

"Copyright means the right to make copies, period," said Peter Givler, the university-press group's executive director, in an interview. "Copyright law can seem pretty byzantine and technical and elaborate and complicated," said Mr. Givler, who wrote the letter, "but at its simplest, that's what it is. It's the right to make copies."

The idea for Google's mammoth digital library "is enormously seductive," Mr. Givler says in the letter. But he complains that "Google asserts that it can make these copies without seeking permission as a fair use" under copyright. Such a "large-scale infringement," he writes, would have the potential of causing serious financial damage to the press group's members.

"It is tantamount to saying that Google can make copies of every copyrighted work ever published, period," the letter continues. "Courts have never recognized a fair use claim of that magnitude."

"It's just a gigantic claim on its surface," Mr. Givler said in the interview. "There are just a lot of questions that need to be answered."

Adam M. Smith, a senior business-product manager for Google who is working on the Google Print project, said the company is talking with as many publishers as it can.
"I'd be curious to know who said that," said Mr. Smith, when told that a publishing group was planning to send it a letter of complaint, "because we've actually gone out of our way to speak with everyone and have a very open, receptive conversation with them."

"I'm not a lawyer, so I can't speak to the specific legal issues," he said, when pressed on the legal questions raised by the university-press group. "We believe we're creating a product that is beneficial to publishers and to libraries -- that by allowing full-text search of the books that we would spur additional interest in books and in using books and in purchasing books in a way that will benefit all people that are interested in publishing generally."

Google has heard complaints from other publishing groups as well. Among them is the Publishers Association, which represents book producers in Britain.

The association first sent a letter to Google in February, said Hugh P. Jones, the group's copyright counsel. The correspondence posed questions similar to those in the university-press group's letter.

Mr. Jones said that Google's answers thus far have not been reassuring.

"We've had three letters back and forth with them," he said. "As far as I can see, their position seems to be that they've decided that it's commercially safe to copy the entire contents of the library on the basis that most of the material will probably be in the public domain."

He said that publishers had been told that if a publisher asked for its materials to be removed, then Google would do so. But Mr. Jones finds that policy legally questionable.

"It's like robbing somebody's shop and then saying, Oh, I'm sorry, I'll put the chocolate bar back if you say that's yours," said Mr. Jones. "That's not how property law works, especially intellectual property."

Will publishers have to ask to have their books removed from the Google index if they are scanned as part of the library project? Mr. Smith, of Google, would not answer directly, saying only that company officials were working with publishers "to make this product functional for them."

"We encourage publishers to contact us," he added, "and talk to us about how we can make this more functional and how we can make this program really work for them."

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