Dan Cohen's Digital Humanities Blog » Blog Archive » 2006: Crossroads For Copyright

The coming year is shaping up as one in which a number of copyright and intellectual property issues will be highly contested or resolved, likely having a significant impact on academia and researchers who wish to use digital materials in the humanities. In short, at stake in 2006 are the ground rules for how professors, teachers, and students may carry out their work using computer technology and the Internet. Here are three major items to follow closely.

Item #1: What Will Happen to Google's Massive Digitization Project?

The conflict between authors, publishers, and Google will probably reach a showdown in 2006, with either the beginning of court proceedings or some kind of compromise. Google believes it has a good case for continuing to digitize library books, even those still under copyright; some authors and most publishers believe otherwise. So far, not much in the way of compromise. Indeed, if you have been following the situation carefully, it's clear that each side is making clever pre-trial maneuvers to bolster their case. Google cleverly changed the name of its project to Google *Book Search* from Google *Print*, which emphasizes not the (possibly illegal) wholesale digitization of printed works but the fact that the program is (as Google's legal briefs assert) merely a parallel project to their indexing of the web. The implication is that if what they're doing with their web search is OK (for which they also need to make copies, albeit of born-digital pages), then Google Book Search is also OK. As Larry Lessig, Siva Vaidhyanathan, and others have highlighted, if the ruling goes against Google given this parallelism ("it's all in the service of search"), many important web services might soon be illegal as well.

Meanwhile, the publishers have made some shrewd moves of their own. They have announced a plan to work with Amazon to accept

micropayments for a few page views from a book (e.g., a recipe). And HarperCollins recently decided to embark on its own digitization program, ostensibly to provide book searches through its website. If you look at the legal basis of fair use (which Google is professing for its project), you'll understand why these moves are important to the publishers: they can now say that Google's project hurts the market for their works, even if Google shows only a small amount of a copyrighted book. In addition, a judge can no longer rule that Google is merely providing a service of great use to the public that the publishers themselves are unable or unwilling to provide. And I thought the only smart people in this debate were on Google's side.

If you haven't already read it, I recommend looking at my notes on what a very smart lawyer and a digital visionary have to say about the impending lawsuits[1].

Item #2: Chipping Away at the DMCA

In the first few months of 2006, the Copyright Office of the United States will be reviewing the dreadful Digital Millenium Copyright Act—one of the biggest threats to scholars who wish to use digital materials. The DMCA has effectively made many researchers, such as film studies professors, criminals, because they often need to circumvent rights management protection schemes on devices like DVDs to use them in a classroom or for in-depth study (or just to play them on certain kinds of computers). This circumvention is illegal under the law, even if you own the DVD. Currently there are only four minor exemptions to the DMCA, so it is critical that other exemptions for teachers, students, and scholars be granted. If you would like to help out, you can go to the Copyright Office's website in January and sign your name to various efforts to carve out exemptions. One effort you can join, for instance, is spearheaded by Peter Decherney and others at the University of Pennsylvania. They want to clear the way for fully legal uses of audiovisual works in educational settings. Please contact me[2] if you would like to add your name to that important effort.

Item #3: Libraries Reach a Crossroads

In an upcoming post I plan to discuss at length a fascinating article (to be published in 2006) by Rebecca Tushnet, a Georgetown law professor, that highlights the strange place at which libraries have arrived in the digital age. Libraries are the center of colleges and universities (often quite literally), but their role has been increasingly challenged by the Internet and the protectionist copyright laws this new medium has engendered. Libraries have traditionally been in the long-term purchasing and preservation business, but they increasing spend their budgets on yearly subscriptions to digital materials that could disappear if their budgets shrink. They have also been in the business of sharing their contents as widely as possible, to increase knowledge and understanding broadly in society; in this way, they are unique institutions with "special concerns not necessarily captured by the end-consumer-oriented analysis with which much copyright scholarship is concerned," as Prof. Tushnet convincingly argues. New intellectual property laws (such as the DMCA) threaten this special role of libraries (aloof from the market), and if they are going to maintain this role, 2006 will have to be the year they step forward and reassert themselves.

This entry was posted on Thursday, December 29th, 2005 at 9:11 pm and is filed under Books[3], Copyright[4], Google[5], Libraries[6], Search[7]. You can follow any responses to this entry through the RSS 2.0[8] feed. You can leave a response[9], or trackback[10] from your own site.

References

1. ^ my notes on what a very smart lawyer and a digital visionary have to say about the impending lawsuits (www.dancohen.org)
2. ^ contact me (www.dancohen.org)
3. ^ View all posts in Books (www.dancohen.org)
4. ^ View all posts in Copyright (www.dancohen.org)
5. ^ View all posts in Google (www.dancohen.org)

6. ˆ View all posts in Libraries (www.dancohen.org)
7. ˆ View all posts in Search (www.dancohen.org)
8. ˆ RSS 2.0 (www.dancohen.org)
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http://www.dancohen.org/2005/12/29/2006-crossroads-for-copyright/

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http://lab.arc90.com/experiments/readability