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**“Access to Illustrated Works Through Digital Libraries
and Electronic Books Data Bases,”
presentation for
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Introduction

First, I want to thank the conference organizers for inviting me. It’s been a very interesting and lively conference. I live and work in the United States, so when I talk about access to illustrated works in digital form online, I am speaking from a US perspective. What’s available online, even online for free, is not the same around the world. I will talk later about why this is so.

We are at a time of great transition, for libraries, for book publishers, for authors and illustrators. We have begun making books available in digital form, but there is still a long way to go.

What access do users now have to illustrations in digital books through digital libraries, internet data bases and search engines? It depends, to some degree, on who the user is. Let’s consider e-books generally. There are many e-books available under license, where the user can pay for access to, or a download of, the book. There are e-books made available by libraries and educational institutions to their user groups where the library licenses the e-books and pays on behalf of its end users, so that to the end users the books may appear to be free, but they are not. There are many public domain e-books available through the websites of organizations that have digitized these books and made them available.² There are even websites with illustrated children’s books that are in the public domain.³ Finally, there are books put up by their authors on “user-generated content” or other open access sites. In other words, sometimes authors themselves decide to make their works freely available, though perhaps with some restrictions on use, such

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² See, e.g., Project Gutenberg, http://www.gutenberg.org/wiki/Main_Page.

³ See Children’s Books Online: The Rosetta Project, <http://www.childrensbooksonline.org/>.

as under a Creative Commons license that allows noncommercial use with attribution⁴ (There are also books put up without authorization, but I am focusing on legal copies.) Still, there are not nearly as many books available electronically as people would like; they may think that because the technology exists to make e-books available, they *should* be available. But most books haven't yet been digitized and made publicly available.

The percentage of illustrated books available in electronic form is even smaller than for books generally. For example, in many cases trade books, textbooks and articles are transmitted in ASCII code, with illustrations deleted. Sometimes when you do get the illustrations, they are not of good quality, either because of the scanning technology or the playback equipment being used. Read on your computer, the illustrations may be of good quality. But if you are reading an e-book on your computer that was a pdf copy of a book made in haste, you will not be able to appreciate the illustrations.

Things are changing fast, however, and the landscape is likely to look quite different in a few years.

Let me begin by talking about illustrated books that were created in analogue form, not as e-books.

Obstacles to Digitization Generally

Why aren't more books available in e-book form? There are some formidable obstacles to digitizing existing analogue works. First, digitization can be costly and time-consuming, and it is even more costly and time-consuming to do it well. Getting good quality reproductions is especially important for illustrated works. Second, there are significant rights issues. Digitization involves creating a copy under the copyright law; posting the digitized book on a website for access and use by others is "making available," under international copyright treaties. In order to do these things, the person or organization doing the digitizing and making available must have rights from the author or other right holder, or be authorized by an exception under copyright.

Digitization/Making Available by Libraries

⁴ See Creative Commons, License Your Work, <http://creativecommons.org/choose/>.

So why don't libraries make more digital books available?

There are exceptions in the US Copyright Act that permit libraries to digitize copyrighted works under certain circumstances. One exception allows a library to make replacement copies of a published work that is lost, damaged, or in an obsolete format. It may make those copies in digital form, if it wishes.⁵ I believe that Colombian law has a similar exception to allow replacement.

Under US law, if a library does make digital replacement copies, it may not make the digital copies available outside the library premises. We don't have any exception in our law that allows libraries to digitize their entire collections of copyrighted works and make them available to users without authorization from the right holders. This is not too surprising; it would be hard to reconcile such an exception with the three-step test in international copyright treaties, a topic I'll address more later.

Even if libraries were permitted to digitize their entire collections, few of them have the money to do so. For this reason, to date many libraries have largely focused their digitizing efforts on works in the public domain that are very important and unique, that they would like to make available to more people. Sometimes they work independently, funded by grants from individuals, nonprofit foundations or the government. For example, the British Library has put online some beautiful early books and manuscripts from its collections.⁶ And groups of libraries and cultural institutions sometimes work together, as in the UNESCO World Library project.⁷ These materials are available free online.

Digitization/Making Available by Publishers

What about book publishers? Why haven't more books been licensed for digital distribution until now? Again, the issues are rights, and the financial economics. Let me address the economics first. Most publishers want to make money. There is a cost involved in creating and marketing e-books, and until recently – perhaps even now – it hasn't been at all clear that those costs could be recovered, that e-books would sell. The introduction of portable user friendly e-book readers has been a recent phenomenon.

⁵ 17 U.S.C. § 108 (c).

⁶ British Library, Online Gallery, Virtual Books, <http://www.bl.uk/onlinegallery/virtualbooks/index.html>.

⁷ World Digital Library, <http://www.wdl.org/es/>.

The lack of devices in the hands of consumers made publishers reluctant to release books in e-book form; the lack of e-books made it difficult to market e-book readers.

Technology is still developing but it is improving rapidly. We have three e-book readers in our house. Two are different versions of Amazon's Kindle, and there is a significant quality difference between the first and second version. None of the three has a color display, but color may be available as early as next year. The better the quality of the reader, the more incentive there is for publishers to distribute, and readers to buy, illustrated e-books.

Of course illustrated books can be read on computers; but the question is to what extent people will buy books to use on computers, as distinguished from other playback mechanisms like e-book readers or Pods or Phones or similar devices. Concerns and uncertainty about the platforms continue to influence publishers' decisions about how to participate in the e-book market. For example, in an article in the NY Times this past Sunday, it was suggested that we are moving to a digital future, where textbooks may be a thing of the past.⁸ On the other hand, I read in an article in an educational journal just two months ago that many students in a particular school who got electronic textbooks in a recent experiment wanted to get hard copies again because they found the e-textbooks hard to use.⁹

But there's little doubt that eventually e-books will be far more pervasive than they are now. And the development of technological protection measures and "cloud computing" models where the user can download only a portion of a work at a time has made some book publishers more willing to license in a variety of formats, from computers to e-books to iPhones and iPods.

But apart from purely economic considerations, the fact is that many publishers don't own e-book rights for a substantial part of their back list, that is, books first published up through the early 1990s. Contracts commonly provided for publication of a work "in book form"; in the United States, that phrase has been interpreted not to include e-books.

⁸ Tamar Lewin, "Moving Into a Digital Future Where Textbooks Are History," N.Y. Times Aug. 9, 2009 at A1.

⁹ Jeffrey Young, "6 Lessons One Campus Learned About E-Textbooks," Chronicle of Higher Education, June 4, 2009.

This means for many older works, the permission of the right holder must be obtained to digitize the book and make it available online. Whoever is going to do it – publisher or library – has to track down the author. And even if the publisher negotiates with the author and obtains the necessary rights, the illustrator may or may not be a co-author; sometimes the illustrations were merely used under a license and the license may not be broad enough to cover e-books. So they may have to identify, locate, and negotiate with the illustrator to publish an e-book.

Tracking down the right holders can be a very difficult task. Sometimes the rights have passed through a will, sometimes by operation of law. People move and they change their names. Sometimes it appears that there are no heirs or transferees. Works whose right holders cannot be identified or located are known as “orphan works.” I’ll address the orphan works problem again later.

The Importance of Making More Works Available

As a result of these financial issues and rights issue, the progress on digitizing and making digitized books available hasn’t been as fast as it could be from a purely technological perspective. But at the same time, it is increasingly obvious that it is desirable, and necessary, to digitize books so that they can be available for students and scholars and readers in general, and given a new life.

Most books in libraries are accessible only if one goes to the library. Some are available only on the library premises; others may be borrowed to take home. But librarians and educators are telling us that students don’t go to libraries anymore.

Of course, some students can’t easily get to a library. For others, it is possible, but they are so immersed in the online world they just don’t. Often large universities make many resources, especially news and scholarly journals, available online to students, so they can do a significant amount of work without going to the library. Before my daughter entered Harvard, I urged her to go to the library there because of its wonderful resources. During Parents’ Weekend in October of her freshman year, I went on a library tour. The librarians suggested that we encourage our students to visit the library if they hadn’t already done so. After the tour, I asked my daughter if she had gone into the library yet. She admitted she hadn’t, but promised to do so soon. A few weeks

later she called and said, “You were right, the library is wonderful. There’s a café on the first floor and I take my computer and do my work there.”

For many students, Google is the first place they go to do research. Students are often opportunistic researchers. By that I mean that they will use the resources easily available, and bypass the ones that are not. This creates enormous frustration for librarians, who see valuable books in their collections go unused and unappreciated by students. A recent article in the Chronicle of Higher Education discussed a research project given to students studying the classics at my own university. 70% of the students cited a work that was published in 1900, even though it wasn’t on the reading list for the course, and many books on the same subject had been published since 1900. The reason, it turned out, is that the full text of this book was available online through Google Books, but more recent books were not.¹⁰

So how can more e-books be made available?

So what can be done? How do we get more works digitized and available to scholars and other users?

Legislation. An exception to permit use of “orphan works” is under consideration in the United States. “Orphan works” are works whose owners cannot be identified or located. Copyright lasts a long time, so it can sometimes be very difficult to locate right holders; sometimes they don’t even know they own rights. Potential users, including libraries, are often reluctant to use such works, unwilling to incur potential liability if the copyright owner comes forward after the use commences. The US Copyright Office, concerned that the inability to locate right holders to obtain permission for use of these works is discouraging beneficial uses, has recommended amending the Copyright Act to limit the remedies available against users of orphan works who perform a diligent search but are unable to find the copyright owner.¹¹ It proposed limiting the amount of money that a right holder could get in an infringement lawsuit to reasonable

¹⁰ Tim Barton, “Saving Texts From Oblivion: Oxford U. Press on the Google Book Settlement,” Chronicle of Higher Education, June 29, 2009.

¹¹ U.S. Register of Copyrights, Report on Orphan Works (Jan. 2006), available at <http://www.copyright.gov/orphan/>.

compensation, and eliminating monetary recovery completely where use of the orphan work was noncommercial and the user ceases the use upon notice. Approaches to the problem of orphan works are also being explored in other places, including in the European Union. It is important, of course, to ensure that any orphan works legislation is fair to right holders. Photographers and illustrators in particular have raised concerns about the US proposals, since their works are often published in the United States without attribution, for various reasons. But many authors favor orphan works legislation, especially those whose work builds upon earlier works.

Orphan works legislation, if passed, would expand the opportunities for libraries and educational institutions to digitize copyrighted works and make them available to users remotely. It would not solve all of the problems concerning digitization, however, because in order to use a work, a library would first have to make a diligent search, which can be time-consuming. And of course if they do locate the right holder, he or she may refuse to authorize the use. Nevertheless, orphan works legislation, appropriately drafted, could be a valuable tool for digital libraries.

Collaboration/Agreement of Right Holders. Another means of making progress in digitizing books is through voluntary agreements. This may take the form of collaboration between libraries and right holders. For example there is a project in the United States involving digitization of scholarly journals called JSTOR.¹² JSTOR preserves and makes available past issues of scholarly journals under agreements with publishers and libraries. Publishers give JSTOR a perpetual nonexclusive license to the material that goes into JSTOR's archives. They are not paid licensing fees, but they have the benefit of JSTOR's digitization and preservation services. JSTOR attempts to balance libraries' interest in access to scholarly journals, right holders' interests in deriving revenue from the journals, and the broader societal interest in long term preservation. To allow publishers to get a return on their investment, journals are not made immediately available through JSTOR. It uses a "moving wall" approach, generally a period of three to five years from publication, during which JSTOR may

¹² See About JSTOR, <http://www.jstor.org/page/info/about/index.jsp>.

digitize the journal but not make it available. Each year, another year of older journals is made available. Libraries pay fees for user access to JSTOR archives.

Another way that works of authorship, including illustrated works, become available online is through a unilateral decision by the right holder to make it available under a Creative Commons license or to place it on an open access website. Authors do this if they want recognition, but are not necessarily trying to make a living from distribution of their works. However, making works available on an open access website can sometimes lead to a publishing contract.

Google Books Agreement Summary

With that background, I want to turn now to the Google Books project, which started in an adversarial manner but has led to an agreement between Google and the authors and publishers.

Background. In 2005 Google started scanning copyrighted books from US libraries into its Google Books Search database. It began with the six million books in the University of Michigan Library. Several other libraries also joined the project. This copying was done without the agreement of the right holders. Google scanned the books, returned a digital copy to the library that had provided them, and copied the digitized books into its database. In response to search requests by users, it would provide the full text for a public domain work; a few snippets (a snippet means a small amount of text, a couple lines on either side of a search term) if the work was copyright-protected.

In fall of 2005 authors and publishers filed separate lawsuits, claiming that Google's activities infringed their copyrights. The authors' suit was a class action suit. A class action is a procedural mechanism in the United States whereby a lawsuit is brought on behalf of many people with a similar interest. Google, in its response, claimed that its uses qualified as fair use under the US Copyright Act,¹³ and therefore it wasn't infringing.

The issue of whether or not Google's activities qualify as fair use under the law was never decided by the court, because the authors, publishers and Google reached an agreement to settle the lawsuit in October 2008, after two years of intense negotiations..

¹³ See 17 U.S. C. § 107.

Because the authors' suit is a class action, the settlement must be approved by the court. *The settlement class consists of all persons with a copyright interest under US law in a book made available to the public and registered in the US Copyright Office as of January 5, 2009. If it is a book of foreign origin, it need not have been registered.* The class includes foreign authors and publishers if their books meet this description.

Members of the class have the opportunity to opt out, that is to say, they don't have to be part of the settlement, and they must be given notice so they can decide. Notices have been published around the world in more than 30 languages. Class members, if they choose to do so, must opt out by September 4, 2009. That is also the date for filing comments on or objections to the settlement.

The court has set October 7, 2009 as the date for a hearing to consider whether the settlement is fair and reasonable.

Following is a brief overview of the settlement agreement, with an important caution. The settlement is very complicated, and this brief summary leaves out many details.¹⁴

Outline of the settlement agreement. The settlement addresses public domain as well as "in copyright" books, but this short summary focuses on the provisions that relate to books still in copyright.

The agreement provides that, subject to a right holder's decision to opt out, Google can continue to digitize books and include them in its books search database, and allow full text searching.

Books are defined as printed sheets of paper bound together, in hard copy. Periodicals and personal papers are excluded.

Google can use the digitized books to earn revenue through:

- ? advertising online when the book is displayed,
- ? individual sales of access to the full text of the book, and
- ? institutional licenses that allow full text display.

¹⁴ See Google Book Settlement, <http://www.googlebooksettlement.com/>. The complete settlement document is available on this site, but the FAQs and the Notice to right holders, also available, provide helpful summaries.

Money received by Google from these uses is divided up with 37% going to Google and 63% going to the right holders.

The agreement authorizes Google only to make the books available online to users in the United States. The licenses provided to Google are non-exclusive. What Google can do with any particular book depends on whether or not the book is commercially available. (Commercially available generally corresponds with “in print”; not commercially corresponds with “out of print.”)

For works that **are** commercially available, Google may make only “non-display uses,” i.e., uses that do not contain expression from the books. So Google can’t even show snippets. For works that **are not** commercially available, Google can make both “display uses” and “non display uses.” Display uses include display of short “snippets,” display of “previews” of the books which can include up to 20% of the contents, and “Access Uses,” i.e., access to the book pursuant to the institutional licenses and the Public Access Service described below. *However, it should be emphasized that these are default rules, which can be varied by the right holder as to a particular work.*

Inserts

The settlement applies not just to books, but also to portions of books such as forewords, essays, poems, quotations, letters, children’s book illustrations, graphs, charts and other material contained in books that are independently copyrightable and that have a different author from the work as a whole. The definition of Inserts specifically excludes photographs and illustrations except in children’s books.

Payments by Google

The agreement also provides for payments by Google to right holders whose books have been scanned of at least \$60 per book. Google will also pay \$34.5 million toward the establishment of a Book Rights Registry and for other administrative costs.

The Book Rights Registry

The Book Rights Registry will be a nonprofit corporation managed jointly by authors and publishers. The Registry is authorized to act on behalf of right holders in

connection with many aspects of the agreement. It will receive payments from Google on behalf of right holders and divide them according to an Allocation Plan. It will supervise the process of resolving disputes among right holders, and work with Google in setting default prices. The Registry can license right holders' U.S. copyrights to third parties.

How can users get access to the database, and how will Google and the right holders make money?

First: All users will get free access to the Book Search database, and in response to search queries can see the full text for a public domain work. For a copyright protected but not commercially available book, users will see up to 20% of the text under the "standard preview," though there are variations on this for different categories of works. For search queries that turn up copyright protected, commercially available works, users will see bibliographic data (but not snippets as they currently do). Online access uses will generate advertising revenue.

Second: Users can purchase full text online access to a book. The right holder can set the price, but the default prices are to be worked out between the Registry and Google based on an algorithm designed to find the optimal price to maximize revenue. A user will have perpetual online access, but not the ability to download the book electronically. The user will have limited ability to print and copy and paste (though with repeated commands could print the whole thing). She may or may not see an Insert, depending on whether the right holder of the Insert allows display uses.

Third: A user might also get access through an institutional subscription that will allow users at the subscribing institution to view full text of the books that are in copyright but not commercially available.

Fourth, a user might get access under a special Public Access Service provided free to public libraries and not-for-profit higher education institutions throughout the United States. A public library can get this service on one terminal per building; for colleges and universities, the number of terminals that can get free access varies with the number of students. The Public Access Service allows a user to view the full text of books in the Institutional Subscription database, and to print for a fee.

Bear in mind as you consider all these possible uses that the default assumptions are that display uses will be made of non commercially available works but not of commercially available works. In either case, right holders can decide otherwise.

What does Google get out of the agreement?

Google gets the Book Rights Registry, which allows Google to avoid the complicated business of managing all of these rights, though of course it makes a substantial payment to set up the Registry. Google gets a way to use orphan works without concern about liability. It also gets the benefit of certain assumptions that make its business easier.

It gets a perpetual license for its book search database.

It gets revenues from the uses described above and potentially from new revenue models.

It gets a release for past liability and a cap on liability in the future.

It gets to use the works for “non-display uses.” Non-display uses include uses that don’t contain expression from the books, such as display of bibliographic information, full text indexing without display of expression (like number or location of search matches), and internal research and development. It is unclear what uses are envisioned.

Libraries

What are libraries’ rights and obligations? Libraries are divided into four categories. Due to time constraints, I’m just going to talk about **fully participating libraries**.

Fully participating libraries must sign an agreement with the Registry.

They are eligible to be fully participating libraries only if they provide a certain number of books.

Then, Google can provide the library with digital copies of all of the books in that library's collection. This is called the library digital collection, or "LDC."

There are limitations on use of the LDC:

Libraries may make copies of the LDC as necessary to maintain and preserve its books.

They may use it to make replacement copies of books in their collections as permitted under section 108.

They may provide special access to a user with print disabilities, subject to certain conditions.

They may allow certain limited research uses by their faculty and staff.

They MAY NOT sell access to books, or use the LDC for interlibrary loan, e-reserves or the like.

There are detailed security obligations with respect to the LDC.

These libraries get a release for their activities in working with Google to digitize their holdings and for their uses consistent with the agreement.

What are a right holder's choices? In general (and subject to the author-publisher agreement), a right holder may:

? **Opt out entirely. (Must do so by Sept. 4)** Google will make its own decision about what to do with the book and how much of it will be displayed (as it has been doing for the last few years); it will get no release; if the right holder is not happy he or she can sue Google.

? Remain in the class – that is, don’t opt out – but remove one or more works. The right holder can remove its books from all Google and library databases if a timely request is made. The right holder must request removal by April 5, 2011. (The right holder can request removal later but the request won’t be honored if the book has already been digitized.) In this way Google gets a release and the right holder gets the book out of its database.

? Do not to opt out or remove but keep the book in the database and decide whether or not to exclude certain display uses (like preview uses). This is really a concern only for out of print works, since the default for in print books is that there is no display of text. However, there is something called the “coupling requirement,” which provides that a right holder who sells access to his book to individual consumers through this program must also make it available in the institutional license database.

How the settlement deals with illustrated works

So what is the status of illustrated works under the Google Books settlement?

Works included in books that are independently copyrightable are called “Inserts.” If the copyright owner of the Insert is different from the copyright owner of the book, then the owner of the Insert can exercise rights differently.

Inserts include children’s book illustrations. They don’t include illustrations for adult books. What does this mean? If it’s an adult book and the Inserts (which may be illustrations) have the same author as the text, they will be included. They will also be included if the Inserts were created as works made for hire.

What if the illustrations are used under license in an adult book? It appears that Google intends to obscure the illustrations, unless the right holder of the books goes back to the illustrator and gets permission for use on the Google Books database. So in essence, for many of these older books that aren’t children’s books, they will be available

without illustrations, even though the illustrations may be an integral aspect to reading, understanding and appreciating the books.

Why did the settlement develop this way? Children's books are included because usually the illustrator is a co-author and has similar contract terms. The parties thought that they should be treated on an equal basis. For older children's books, where the illustrator may not be a co-author, the illustrations are treated as Inserts because the parties thought the experience of reading these books would be adversely affected without the illustrations.

As for illustrations in adult books: the illustrators and photographers weren't at the negotiating table. The authors' and publishers' representatives felt that they could not represent them. There are a lot of different variations in licenses that would have to be accounted for and the authors and publishers thought that it would take too long to bring them into the lawsuit and resolve all of the issues.

Criticisms of Google Books settlement

There have been a number of criticisms of the Google settlement. One of the principal criticisms is that it will give Google and the Book Rights Registry an unfair advantage with respect to the use of "orphan works," i.e., works whose right holders cannot be identified or located. "Orphan works legislation," if passed, would likely require a prospective user to make a good faith search for the right holder. Google, in contrast, would have the benefit of certain presumptions that would make it unnecessary to search in connection with books included in the settlement. Google would pay the Registry for use of those works, but could proceed without fear of liability.

A second criticism is that the settlement will give Google an unfair competitive advantage because of restrictions in how the Registry can license. There are also concerns that Google and the Registry might set the prices too high. And there are complaints that authors, especially foreign authors, haven't been given enough notice and time to decide what to do.

The US Department of Justice is currently investigating the proposed settlement. It is possible that the Department of Justice will seek to block the settlement or force the parties to alter some of its terms.

US Centered?

You might think, why is the agreement so US-centered? Why will the full text of works be available only to users in the United States? Why has Google limited even distribution of public domain works it has digitized to the United States? There are a number of reasons. One is that authorizing uses outside the United States was beyond the scope of the class action mechanism under which the suit was brought. A second, related point is that the term of protection is different in different countries, and what is in the public domain in the United States might still be protected by copyright in another country. Even exceptions can be different from country to country. Many countries are looking at the Google agreement, to see if something similar might be achieved in their countries, particularly with the cooperation of collective licensing organizations.

As to whether the agreement will be approved in the United States: I can't predict what the court will do, and whether the settlement will be approved. Just because concerns have been raised doesn't mean it won't be approved, though perhaps it will be modified before it is approved. There is much good in it. The ability to get works digitized and made more broadly available is a wonderful opportunity for many authors. The Public Access Service for libraries would be very valuable, as would the opportunity for participating libraries to provide access to the disabled. And right holders will have the opportunity to take advantage of a new market for their works. One of the reasons that they want this agreement is to avoid what happened in the music industry. The recording companies were slow to make music available online, so consumers felt entitled to take music for free, using file sharing software.

On the other hand, it is a very sweeping settlement, and there are many concerns. Should so much dependence be placed on a single for-profit corporation? We don't know what the future holds for Google. There are also privacy concerns about its use of the data it gathers from users' viewing history. Also, while many books are being digitized under the program, the reproductions are not necessarily preservation quality. There has been considerable criticism about the quality of the images. It's important not to confuse digitization with long term preservation. The latter requires a substantial, ongoing dedication of time and resources.

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Finally, I just want to say a few words about access to “born digital” books, that is, books created and released as e-books. There are many wonderful aspects of these e-books, and those that are created with illustrations can take advantage of the electronic medium in a way that books created in hard copy form may not be able to. But one concern about access is the fact that many e-books are released under licenses that limit further distribution of the book. If you purchase a book in hard copy, you can usually lend it, sell it or give it away, but that may not be the case for e-books.

Conclusion

Greater availability of digital works will likely be achieved through a range of different initiatives. It is unlikely to be achieved through broad new exceptions or limitations on copyright to benefit libraries. The three-step test in international treaties permits exceptions in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.¹⁵ Broad exceptions that would allow libraries to digitize books and make them available without the right holders’ consent could conflict with the normal exploitation of the work and prejudice the author’s legitimate interests.

It’s important to have free, widely accessible information. But it’s also important to have a class of vibrant, creative professional authors and illustrators and a flourishing publishing industry. So collaboration and cooperation between and among libraries and right holders may ultimately be essential to making copyrighted works in digital form more widely available.

¹⁵ E.g., Berne Convention for the Protection of Literary and Artistic Works, art. 9(2), http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html.