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Book Note

COPYRIGHT AND MASS DIGITIZATION: A CROSS-JURISDICTIONAL PERSPECTIVE, by Maurizio Borghi and Stavroula Karapapa¹

ANNA MARIA KONEWKA

THOUSANDS OF YEARS AGO, scholars at the Great Library of Alexandria tried to amass all the texts of the ancient world. Today, another such collection is being built, this time using bytes instead of papyrus scrolls. Scores of works—scientific, cultural, literary, or otherwise—are being digitally converted and stored in repositories through a process referred to as mass digitization.² In *Copyright and Mass Digitization*, Maurizio Borghi and Stavroula Karapapa explore this phenomenon's unsettled and difficult relationship with copyright law, probing its legality in the United States and various European countries. Much of the discussion focuses on the titan in the digitization domain, Google, but the authors also touch on other initiatives, such as the Internet Archive,³ HathiTrust,⁴ and Europeana.⁵

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1. (Oxford: Oxford University Press, 2013) 177 pages.
 2. *Ibid* at 1.
 3. The Internet Archive was founded in 1996 and seeks to offer free, permanent access for scholars, researchers, and the public to historical collections in digital format, including video, audio, texts, and almost 400 billion archived webpages. "About the Internet Archive," online: <<http://www.archive.org/about/>>.
 4. HathiTrust is a partnership of more than ninety major libraries and research institutions worldwide offering millions of digitized titles through its Digital Library. "Welcome to the Shared Digital Future," online: <<http://www.hathitrust.org/about>>.
 5. Europeana is a publicly funded project that offers online access to images, text, audio, and video from galleries, archives, museums, and libraries across Europe. "Europeana: think culture," online: <<http://www.europeana.eu/portal/aboutus.html>>.

The book's first chapter sets out how mass digitization "seems to turn copyright on its head,"⁶ particularly by converting works into data such that they are no longer used as their creators originally intended. Other unique traits of mass digitization include its tendency towards opt-out bulk licensing systems as well as its shifting of culture into centralized, controlled repositories. The latter trait potentially raises issues of cultural pluralism and user freedom.⁷

Chapter two examines technological transformative use, which refers to a copied work being given a new purpose or meaning through technological, rather than creative, input.⁸ The authors describe how a liberal interpretation of the US fair use doctrine can provide a safe harbour for such a practice; the EU approach is less forgiving, but the jurisprudence suggests increasing flexibility. Chapter three is an exploration of automated text processing and data mining, a type of technological transformative use.

The fourth chapter addresses the particular problems that mass digitization faces with respect to out-of-print works and orphan works, which are works whose copyright owner cannot be identified or found.⁹ Chapter five engages with one of the problems of mass digitization introduced in the first chapter: digital monopolies. The chapter features a discussion of the *sui generis* database right created by the *European Database Directive*,¹⁰ and contractual public-private partnerships, such as Google's digitization agreements with public libraries. These two developments give owners of digital archives legal entitlements that lock access to and use of digital works,¹¹ and the authors briefly explore the potential for competition law to unlock this access and use.

In chapter six, Borghi and Karapapa discuss the impact of mass digitization on the creator's moral right to structural and contextual integrity. In the book's final chapter, the authors present a framework for regulating mass digitization, drawing on comparisons to other collections of public interest information, such as the Human Genome Project.

Some of the principles that underlie the mass digitization phenomenon—the preservation of, and universal access to, the world's cultural heritage—are also principles that drive Borghi and Karapapa's suggested framework and much of the discussion in their book. They note that "monopolies could lead to new, perhaps

6. *Supra* note 1 at 2.

7. *Ibid* at 18.

8. *Ibid* at 20.

9. *Ibid* at 70.

10. EC, *Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases*, [1996] OJ, L 77/20.

11. *Supra* note 1 at 110.

sui generis, entitlements, and may have a chilling effect on access to knowledge and information, and on subsequent innovation.”¹² The authors assert that the doors to the growing digital library of public goods should remain open to all.¹³

12. *Ibid* at 92.

13. *Ibid* at 159.

