

# Digital monopolies: how they are caused and how to unlock them

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# ‘Digital monopolies’

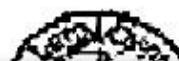
- Not just monopolies on the exploitation of digital objects (*e.g.* digitized works), but monopolies over (certain) uses made possible by digitization
- (*As far as copyright works are concerned:*) the ‘in-copyright / public domain’ divide is of no guidance
- Legal / economic / technological monopolies?
- Similar (but not akin) natural monopolies

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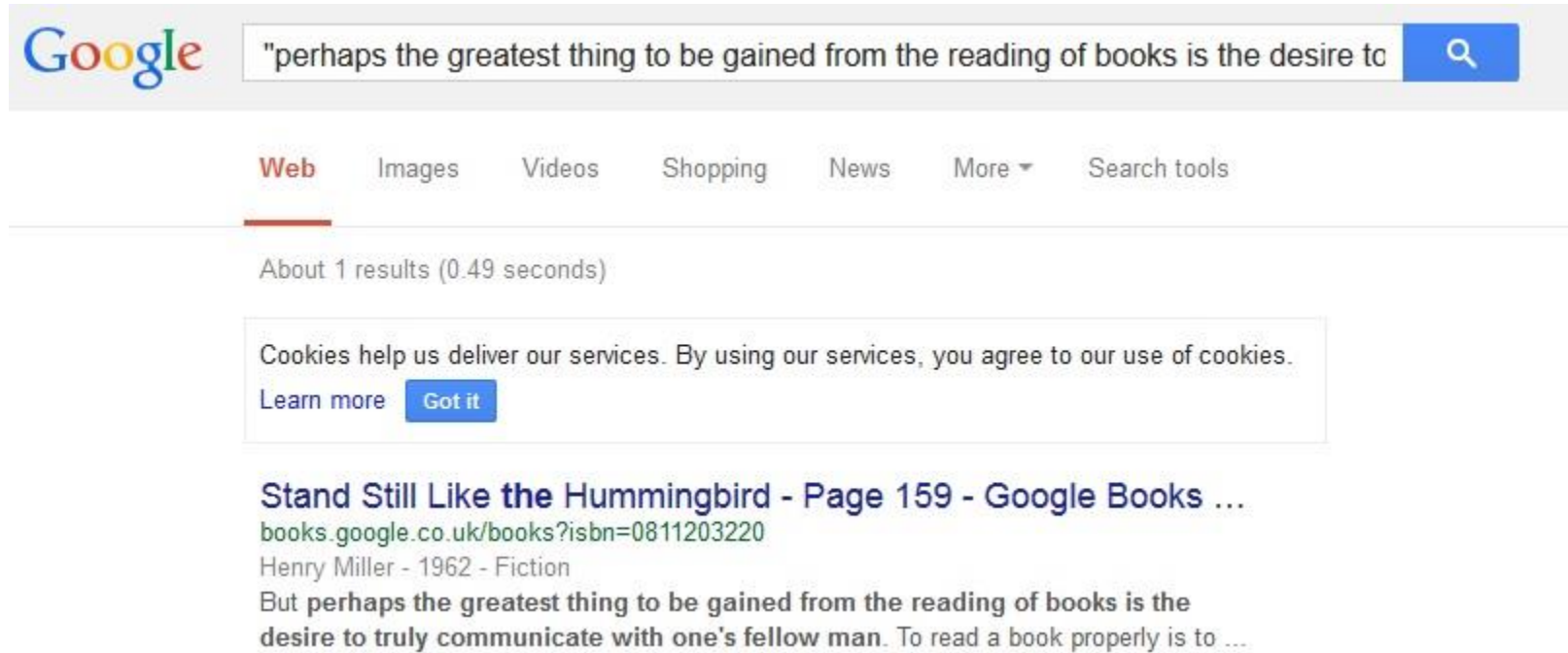
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The image is a screenshot of a Google search interface. At the top left is the Google logo. To its right is a search bar containing the text "perhaps the greatest thing to be gained from the reading of books is the desire to". A blue search button with a magnifying glass icon is to the right of the search bar. Below the search bar is a horizontal menu with tabs: "Web" (highlighted with a red underline), "Images", "Videos", "Shopping", "News", "More" (with a dropdown arrow), and "Search tools". Below the menu, it says "About 1 results (0.49 seconds)". A cookie notice banner is displayed, stating "Cookies help us deliver our services. By using our services, you agree to our use of cookies." with links for "Learn more" and a "Got it" button. The search result is for a Google Books entry titled "Stand Still Like the Hummingbird - Page 159 - Google Books ...". The URL is "books.google.co.uk/books?isbn=0811203220". The author is "Henry Miller - 1962 - Fiction". The snippet of text from the book is "But perhaps the greatest thing to be gained from the reading of books is the desire to truly communicate with one's fellow man. To read a book properly is to ...".

Google

"perhaps the greatest thing to be gained from the reading of books is the desire to



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Henry Miller - 1962 - Fiction  
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Henry Miller  
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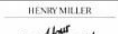



**Review: Stand Still Like the Hummingbird**  
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## Extra-layer of protection (in EU)

- Directive 96/6, Art. 7(1) (*sui generis* database right)
- CJEU *Innoweb* 2013 (C-202/12): 'Meta search engines' infringe database right if they
  - i. offer the same functionalities as
  - ii. transfer data in real time from
  - iii. present results in an order that reflects similar criteria as those of ...the search engine of a protected database

## Extra-layer of protection (in EU)

- Unfair competition protection against 'parasitic copying' (look-alike) – applicable to search results? (Cf Hogan Lovells Final Report on Parasitic Copying for the European Commission, MARKT/2010/20/D)

# Indexing

Search engines organize the world's information etc...

Are books and cultural artifacts part of the world's information in the same way as web pages are?

Books, journals, etc. = *'discrete documents that operate with internal cohesion more than external linkages'*

*Google's search algorithms, while effective (yet imperfect) for something as dynamic and ephemeral as the Web, are wholly inappropriate for stable texts such as books (Siva Vaidhyanathan, *The Googlization of Everything (and Why We Should Worry)*, Berkeley: California University Press, 2011, 171)*

# How many ways to 'organize the world's information'?



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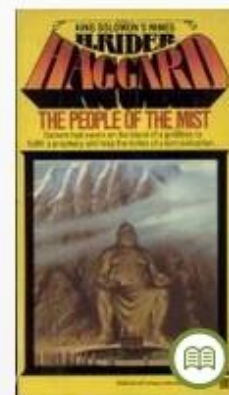
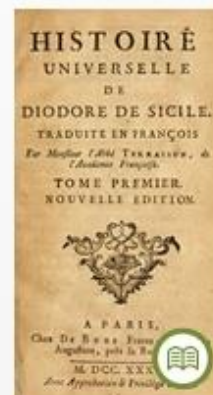
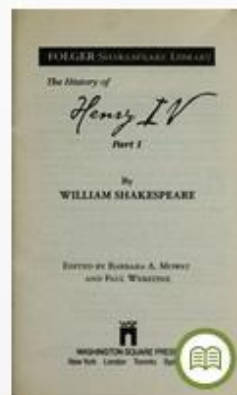
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From the blog 

## Beyond indexing and search...

*'We're not scanning all those books to be read by people. We're scanning them to be read by Artificial Intelligence'* (Anonymous Google engineer, early 21<sup>st</sup> Century BC)

## Beyond indexing and search...

- Search engine optimization

*“the very worst [search] algorithm at 10 million words is better than the very best algorithm at 1 million words”* (Objection of *Yahoo!* to Settlement Agreement, *Authors Guild v Google*, No 1:05-CV- 08136, 8 September 2009, p. 25)

- TDM-based technologies (*e.g.* statistical machine translation, OCR, voice recognition algorithms, ...)
- Blue skies research on large corpuses of texts (‘digital humanities’ or ‘culturomics’)



## End of the 'enough and as good' provision?

*Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left*

*Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. And the case of [automated and systematic access to digital copies], where there is enough of both, is perfectly the same."*

Locke, Second Treatise of Government, Chapter V, paragraph 33 (revisited)

# Unlocking digital monopolies

- Reducing time-limit of preferential uses (from 15 to 7 years – as per Recommendation 2011/711, Rec. 9) – *how effective?*
- Antitrust measures: doctrine of essential facilities (aka ‘refusal to license’ – ECJ Magill, C-241—242/91P) – *how realistic?*
- D.O.Y. measures – *e.g.* Internet Archive hosting  $\approx$  1M public domain books downloaded from Google Books and uploaded on their servers by users
- *Compromise solutions*: treating digital repositories as public goods – enabling public participation in the way information and knowledge are organized and shared