

Authors' Guild, et al. v. HathiTrust et al. - Decision Summary
Prepared by Brandon Butler for the Association of Research Libraries

Background: Authors' Guild (AG) and individual authors sued HathiTrust (HT) and individual members, alleging that mass digitization was an infringement of copyright, as was the (suspended) Orphan Works Project. HT responded that fair use applied, among other defenses. The parties filed motions for summary judgment on these questions. The opinion was issued 10/10/2012 by Judge Harold Baer, Southern District of New York.

Holdings:

1. *AG lacks standing* - The court held that the AG does not have standing to sue because the Copyright Act allows only the "legal or beneficial owner of a copyright" to bring a lawsuit for infringement. AG is not suing because of rights it owns, but rather is suing on behalf of rights its members own. Some laws allow this kind of lawsuit, but the Copyright Act does not. (Judge Chin has allowed the AG to sue Google on behalf of its members, but Judge Baer argues that Chin's decision does not reach this issue. It's possible Google did not raise the issue of standing under the Copyright Act; Baer points out that if a defendant doesn't raise the issue, the judge need not decide it.
2. *Section 108 does not preempt Fair Use* - The court held that fair use is a supplement to Section 108, and, contrary to the AG's arguments, libraries are entitled to a full fair use defense and are not required to rely only on §108. The Library Copyright Alliance amicus brief was mentioned in support of this holding.
3. *Authors cannot sue now over a future Orphan Works Project* - The court held that because the project had been suspended, there was no way to judge what harm, if any, a renewed Project might cause. The dispute is not ripe for decision. Authors can sue over orphan works if and when a new program gets under way.
4. *Mass digitization for search, preservation, and accessibility is a fair use* - The court finds that all of HT's uses are decisively fair. They are non-profit, educational uses, and two of HT's purposes (search & accessibility) are "transformative," because the works are used for a different purpose from the original, intended purpose. The court says use of the entire work is fair where appropriate to the purpose, as it is here. Finally, the court pointed to evidence showing that a market likely could not develop for licensing these kinds of uses, and further that, again because they are transformative, these uses cannot be subject to licenses. The court also dismissed as unsubstantiated the security concerns that had been a central part of the AG's public statements about HT. AG had provided no reason to doubt the effectiveness of the complex security system that HT described at trial.
5. *The ADA requires, and the Chafee Amendment allows, digitization for accessibility* - Making library collections equally accessible is required for equal access to education for the print disabled. The market will not satisfy the need. Chafee arguably applies because the ADA makes accessibility a "primary mission" for all libraries. Even if Chafee does not apply, fair use does.