

4-18-2012

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Recommended Citation

Mackey, Alexandra (2012) "Largest Copyright Infringement in History: Five US Universities Sued for Copyright Infringement," *Intellectual Property Brief*: Vol. 3: Iss. 2, Article 5.

Available at: <http://digitalcommons.wcl.american.edu/ipbrief/vol3/iss2/5>

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Largest Copyright Infringement in History: Five US Universities Sued for Copyright Infringement

Keywords

blog, copyright

Largest Copyright Infringement in History: Five US Universities Sued for Copyright Infringement

by Alexandra Mackey

The following blog post was published on www.ipbrief.net on October 3, 2011.

On September 12, the Authors Guild, the Australian Society of Authors, the Union Des Ecrivaines et des Ecrivains Quebecois, and eight individual authors filed a lawsuit against five United States universities. The defendants include the University of Michigan, the University of California, the University of Wisconsin, Indiana University, Cornell University, and HathiTrust. HathiTrust is a partnership formed by the named universities and other research institutions and libraries. Founded in 2008, HathiTrust's mission is to "to contribute to the common good by collecting, organizing, preserving, communicating, and sharing the record of human knowledge." In order to achieve this mission, HathiTrust has built a digital archive of library materials and contains millions of copyrighted and public domain books scanned by the universities, Microsoft, and Google.

The writers and publishers claim their books have been copied into digital form by HathiTrust, Google, and others without authorization. The lawsuit charges the universities with “engaging in one of the largest copyright infringements in history.”

The lawsuit centers around HathiTrust's dissemination of digitalized "orphan works", or works whose copyrights holder could not be located. In June, HathiTrust and the University of Michigan announced a plan to provide these orphan works in full-text digital form.

The universities have defended their actions publicly by claiming that their conduct is allowed under Section 107 of the United States Copyright Act. Section 107, otherwise known as the fair use doctrine, enumerates various purposes for which the use of the

copyrighted material is not infringement. Among these fair uses are “teaching (including multiple copies for classroom use), scholarship, or research.” However, the University of Michigan is not hiding behind the fair use doctrine just yet and has been quick to respond to the claim. Four days after the lawsuit was filed the University of Michigan released a statement that it will suspend the digitalization of 163 books until it reexamines its procedures to ensure that copyright holders are being notified that their works are going digital.



The lawsuit against the universities is closely related to a six-year lawsuit between the Authors Guild, the Association of American Publishers, other writers and publishers, and Google. In 2005, the Authors Guild and the Association of American Publishers sued Google for scanning millions of books into its Google Books site. Back in March of 2011, U.S. District Judge Denny Chin rejected Google's settlement offer of \$125 million. Currently, the lawyers for the writers and publishers are still in negotiations with Google but have agreed to move toward

trial. Judge Chin recommended that Google adopt a strategy where writers and publishers grant permission to have their books turned into digital form rather than a system where the books are scanned unless the author or publisher objects. Personally, an opt-in system seems to keep the rights with the copyright holder as opposed to an opt-out strategy.

There is no doubt that book digitalization has great benefits, such as immediate access to research materials and preservation of out-of-print works. Both HathiTrust and Google once had aspirations of owning the largest digital library, but it looks like they may have to answer to writers and publishers before achieving that dream.

