

**Judge rules in HathiTrust copyright case**

Another judge has weighed in on a copyright case involving libraries. On October 10, 2012, Judge Harold Baer of the U.S. District Court Southern District of New York, in his ruling, sided with the defendants and in favor of fair use in the *Authors Guild, Inc. et al. v. HathiTrust, et al.*

At the heart of the case was the Authors Guild's assertion that the HathiTrust Digital Library's (HDL) scanning and digitizing of works from several universities for inclusion into a digital library that allowed full-text searches, preservation of digitized works, and access for people with print disabilities violated copyright law.

The Library Copyright Alliance (LCA), comprised of ALA, ACRL, and the Association of Research Libraries, released a statement:

...[we] welcome Judge Baer's decision...that the HathiTrust Digital Library's (HDL) use of digitized works is a fair use. Judge Baer's key holding was: "I cannot imagine a definition of fair use that would not encompass the transformative uses made by [HDL] and would require that I terminate this invaluable contribution to the progress of science and cultivation of the arts that at the same time effectuates the ideals espoused by the ADA [Americans with Disabilities Act]."

Baer's ruling not only allows HathiTrust to continue to serve scholars and the print-disabled, but also provides helpful guidance on how future library services can comply with copyright law.

Moreover, the LCA statement highlighted Baer's numerous helpful holdings, most notably including:

- An association does not have standing under the Copyright Act to bring infringement suits on behalf of its members.
- Library-specific exceptions in section 108 do not restrict the availability to libraries of fair use under section 107.
- The creation of a search index is transformative use under the first fair use factor: "The use to which the works in HDL are put is transformative because the copies serve an entirely different purpose than the original works: the purpose is superior search capabilities rather than actual access to copyrighted material."
- The use of digital copies to facilitate access for the print-disabled is also transformative. Because print-disabled persons are not a significant potential market for publishers, providing them with access is not the intended use of the original work.
- The goals of copyright to promote the progress of science are better served by allowing HDL's use than by preventing it.

In addition, Baer cited two *amicus curiae* or friend of the court briefs that LCA filed in the case (available at [www.librarycopyrightalliance.org/submissions/domestic/amicus.shtml](http://www.librarycopyrightalliance.org/submissions/domestic/amicus.shtml)).

This ruling is huge win for libraries and for digitization projects. It highlights that librarians can lawfully leverage digital technology to advance access to information. The ruling is especially important because the print disabled are finally ensured equal access to the rich resources of the HDL.

Meanwhile, all eyes are on U.S. Supreme Court this fall with arguments scheduled to begin October 29, 2012, in the first-sale doctrine case, *Kirtsaeng v. Wiley & Sons, Inc.*, featured in the September 2012 Washington Hotline. ☞

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