



September 15, 2011

HathiTrust Statement on *Authors Guild, Inc. et al. v. HathiTrust et al.*

Yesterday the Authors' Guild and a number of other entities filed suit against HathiTrust and a number of its university partners. The issues in the suit are the orphan works project as well as the digitization effort that we have been engaged in for almost two decades.

Digitization is a reflection of library prudence, rather than the reckless activity as characterized by the Authors' Guild complaint and accompanying statement. From its inception, the primary motive driving our digitization effort has been, and remains, preservation. Preserving the scholarly and cultural record is at the core of the Library's mission. Digitization offers a means of preserving the intellectual content of books whose lives as objects are subject to the vagaries of storage conditions and their own composition; for example, the vast majority of the volumes in our collection are printed on acid paper. Many of these volumes are protected by copyright, but if we wait until they enter the public domain they will be too brittle to circulate or digitize, and of no use to anyone.

The Orphan Works Project is an example of library prudence in other ways. Digitized collections offer other obvious benefits. They can be more readily shared with our community, who increasingly expect their research materials to be available in digital form, and they can also provide a trove of data, both humanistic and scientific, that will help scholars and researchers discover and create new knowledge. And in many cases, they can also be made available to anyone in the world with a connection to the Internet.

The way in which the HathiTrust partners share this particular collection is guided by a deep and abiding respect for intellectual property and US copyright law, particularly Sections 107 and 108, which help define how libraries may lawfully share their collections. While the law does not specifically address orphan works, we are certain that our scholarly purpose, along with our careful methodology in determining whether these works have a market or an extant copyright holder who can be contacted, make this sharing legal. Sharing, by the way, which is limited to online reading by our faculty and students in the United States, and one-page-at-a-time downloads; not, as the Guild complaint states, worldwide availability and full PDF downloads.

It is worth noting that the Authors' Guild complaint propagates a common but incorrect assumption that all US works published between 1923-1963 are in copyright. Our Copyright Review Management System has reviewed nearly 200,000 of these works, and found more than 50% of them to be in the public domain. The same will be true of many works published outside of the United States. How many among the 7 million volumes that they wish to sequester might also be in fact works that no one—including the plaintiffs—has the right to restrict from the public?

Until the complaint, we had been engaged in what we thought was civil discourse with the Authors' Guild (and other parties) about the Orphan Works Project. We had hoped that they would bring their resources to bear to aid us in locating copyright holders—which remains the primary goal of the project—in order to reduce the number of potential orphan works. We are disappointed by the Guild's actions and words, but remain confident that our own actions are not only legal, but also ethical and indeed even noble.