

**Unlocking orphaned works: now or never?**

by Corey Williams, associate director for the ALA Office of Government Relations

In a troubling and perplexing move, the Authors Guild, along with eight authors and three special interest groups, filed a lawsuit in the Southern District of New York (yes, the same court dealing with the proposed Google Book Search settlement), against the HathiTrust Digital Library and five U.S. universities on September 12, 2011.

The Authors Guild targeted Orphan Works Project participants—HathiTrust, the Regents of the University of Michigan, the Regents of the University of California, the Board of Regents of the University of Wisconsin System, the Trustees of Indiana University, and Cornell University—because of their arrangements with Google in scanning and digitizing books.

The Authors Guild claims that making, storing, and providing access to digital scans of copyrighted works is illegal, objecting in particular to the Orphan Works Project led by the Copyright Office of the University of Michigan to identify orphan works—those works whose copyright holders cannot be identified or found.


The suit not only asks the federal court to bar the HathiTrust and its partners from going forward with the Orphan Works Project, but goes even further in asking the court to “impound” all copyrighted works in the HathiTrust collection pending any relevant legislation.

The Library Copyright Alliance (LCA)—comprised of ALA, ACRL, and the Association of Research Libraries (ARL)—released a statement in response (full-text available at [www.districtdispatch.org/wp-content/uploads/2011/09/announce\\_lca-agvhathitrust\\_14sept11.pdf](http://www.districtdispatch.org/wp-content/uploads/2011/09/announce_lca-agvhathitrust_14sept11.pdf)).

We are deeply disappointed by the Authors Guild’s decision to file a lawsuit, *Authors*

*Guild, Inc. et al. v. HathiTrust et al.*, against HathiTrust and its research library partners. The case has no merit, and completely disregards the rights of libraries and their users under the law, especially fair use. The HathiTrust and its partners have assembled an unprecedented digital resource that will ensure secure, long-term preservation of nearly 10 million volumes held in member library collections. The majority of these works are not available commercially and will disappear completely if not for library stewardship. We applaud the modest steps HathiTrust and its partners have taken to foster those “orphan” works whose owners have abandoned them to library care. The HathiTrust adds significant value to library collections in support of teaching, research, and learning, while respecting the law. It is deplorable that eight authors and three special interest groups are trying to dismantle this invaluable resource out of a misplaced fear of the digital future. We are confident the court will not look kindly on this shortsighted and ill-conceived lawsuit.

Authors Guild President Scott Turow wrote earlier this year, “I count myself as one of millions of Americans whose life simply would not be the same without the libraries that supported my learning.” It is a shame that the Authors Guild fails to understand what Turow expressed so well, the vital role that libraries play in our cultural ecosystem.

As ACRL Washington Hotline readers may recall, the June 2011 article was devoted to identifying what would be required of a legislative “fix” by Congress to address the orphan works problem. At that time, the members of LCA emphasized that a legislative proposal must ensure significant benefits for libraries over the status quo. And, it is worth stating again, that no orphan works legislation has been introduced in the 112th Congress at this time. However, the plot definitely thickens ... in the courts, at least. 

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