

Internet Archive Files Final Reply Brief in Lawsuit Defending Controlled Digital Lending

Posted on October 8, 2022 by Lila Bailey



On Friday, October 7, the Internet Archive filed a [reply brief](#) against the four publishers that [sued](#) Internet Archive in June 2020: Hachette Book Group, HarperCollins Publishers, John Wiley & Sons, and Penguin Random House. This is the final brief in support of our motion for summary judgment (our previous motions can be found [here](#) and [here](#)) where we have asked the Court to dismiss the lawsuit because our lending program is a fair use.

The lawsuit was filed against Internet Archive in 2020 because of “anger among publishers” about digital lending by libraries. The publishers are urging the court to declare that “controlled digital lending is not a defense to copyright infringement” and is unlawful under United States law. They allege that controlled digital lending deprives them of the opportunity to obtain millions of dollars in additional “revenues from both public and academic libraries” through expensive ebook licensing schemes. Unwilling to confront library lending on its own terms—as an obviously not-for-profit exercise in expanding access to information—they claim that our lending is “commercial” and “does not serve the type of ‘educational purpose’ recognized under the Copyright Act.”

As the reply brief explains, the Internet Archive is indisputably a non-profit organization whose free lending program—like all library lending—serves a non-commercial, educational mission: to expand access to knowledge. And there is no evidence that controlled digital lending harmed their sales or profits at all—as the brief argues, “rather than making use of their unfettered access to more than a decade of empirical data, [the publishers] simply assert that market harm is ‘self-evident.’” Indeed:

“All that CDL does, and all it can ever do, is offer a limited, digital alternative to physically handing a book to a patron. Libraries deciding how to meet their patrons’ needs for digital access to books are not making a choice between paying ebook licensing fees or getting books for free. Libraries pay publishers under either approach—but digital lending lets libraries make their own decisions about which books to circulate physically, and which to circulate digitally instead. That choice means that librarians can continue to maintain permanent collections of books, to preserve those books in their original form for future generations, and to lend them to patrons one at a time, as they have always done.”

Read our full brief [here](#).

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8 thoughts on “Internet Archive Files Final Reply Brief in Lawsuit Defending Controlled Digital Lending”





apkhuts

October 8, 2022 at 4:36 am

Much helpful blog. Thanks and keep sharing the valuable content.



Umair

October 8, 2022 at 12:23 pm

Very informative post, thanks for sharing. details on lawsuit.



Jan

October 8, 2022 at 1:32 pm

Best wishes and thanks.



Adam

October 8, 2022 at 3:58 pm

“they claim that our lending is “commercial” and “does not serve the type of ‘educational purpose’ recognized under the Copyright Act.””

First of all: So, if a library ask for donations but NOT require payment to borrow a book, that is commercial. This is the same argument as this: <https://www.eff.org/deeplinks/2021/09/court-ruling-against-locast-gets-law-wrong-lets-giant-broadcast-networks-control> by falsely claiming that a service charges users. This also means Wikipedia could be banned doing essentially the same act, by labeling it as “not free”. Second of all: A physical library lends any kind of book, even if it isn’t educational.

Even if that is true, then why do we pay taxes to support our libraries? Why is this not banned?

Their business model is incompatible with human society.



REMant

October 8, 2022 at 5:35 pm

Copyright protection is decades too long to begin with. What publishers need to do is reduce their costs, stop publishing piles of trash and soaking students.



Carl Washington

October 8, 2022 at 11:10 pm

Thanks for sharing



Shane Rod

October 9, 2022 at 6:47 am

We all need more awareness about it.



aho

October 9, 2022 at 5:55 pm

Great !

Comments are closed.