

Hachette Book Grp., Inc. v. Internet Archive
115 F. 4th 163 (2d Cir. 2024)

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| Year | 2024 |
| Court | United States Court of Appeals for the Second Circuit |
| Key Facts | Defendant-Appellant Internet Archive (“IA”) creates digital copies of print books owned by IA or one of its partner libraries and posts those copies on its website where users may access them in full, for free, through a service called the “Free Digital Library.” Except for a period in 2020, IA has generally maintained a one-to-one owned-to-loaned ratio for its digital books. IA does not license digital books from publishers, nor does it otherwise compensate authors in connection with the digitization and distribution of their works. Plaintiffs-Appellees—four book publishers—sued IA alleging that its Free Digital Library infringes their copyrights in 127 books. IA asserted a defense of fair use. The district court rejected that defense and entered summary judgment for Plaintiffs. IA appealed. |
| Issue | Whether it is fair use for a nonprofit organization to scan copyrighted print books in their entirety and distribute those digital copies online, in full and for free. |
| Holding | On appeal, the court decided that the first factor, the purpose and character of the use, disfavored fair use because although the use was noncommercial, it was also not transformative. As an initial matter, the court concluded that IA’s use was non-transformative because IA reproduced the works in full and its derivative digital copies served the same purpose as the originals, namely making the authors’ works available to the public to read, “without adding meaningfully new or different features.” The court disagreed with the district court’s commerciality finding, concluding that IA’s use was noncommercial because IA did not charge a fee and any incidental profits from embedded links on IA’s website did not constitute commercial exploitation. The second factor, the nature of the copyrighted work, did not weigh in favor of fair use because the works at issue were all original fiction and nonfiction books that are close to the core of intended copyright protection. The third factor, the amount and substantiality of the portion used, did not favor fair use either because IA made unauthorized digital copies available to the public in their entirety. The court found that the amount and substantiality of the copying did not achieve a transformative purpose, but instead served to substitute for Plaintiffs’ books. The fourth factor, the effect of the use on the potential market for or value of the work, likewise did not favor fair use because IA’s Free Digital Library functioned as a replacement for the originals and therefore was a competing substitute for the Plaintiffs’ licensed editions of the copyrighted works. The court concluded that if IA’s practices were to become unrestricted and widespread, “it would decimate [Plaintiffs’] markets” for the copyrighted works in any format. In addition, the court noted that “[a]ny short-term public benefits of IA’s Free Digital Library are outweighed not only by harm to [Plaintiffs] and authors but also by the long-term detriments society may suffer” from disincentivizing creative activity. With all four factors disfavoring fair use, the court concluded that the district court properly dismissed IA’s fair use defense and entered judgment for the Plaintiffs. |
| Tags | Internet/Digitization; Textual work |
| Outcome | Fair use not found |

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