

To: The US Copyright Office – comment on Orphan Works and Mass Digitization Roundtable.

My name is John Edwin Miller. I am the Founder of the (very) small 501c3 non-profit 121AuthEnt.org, Inc. structured to comply with Section 121 of US Copyright Act Section 121.

From the Transcript of 'Orphan Works and Mass Digitization Roundtable' Tuesday March 11, 2014:

P 129 Ms. Jan Constantine: I agree that there is value in digitizing and making sure that it is done in a proper way. But if mass digitization occurs outside the context of a respectable organization, but in the context of a pirate or a niche collector of civil war-books and they are going to mass digitize 50 of the books that their followers want to read and they just send them out there with no software protection and no cares in the world about market impact, it is a real problem for creators.

P 139 Mr. Jonathan Band: But Jan, to go to your example of the 50 books, I mean I am sure if someone did that, there is no question that the court would say yes, that has an adverse impact on the market and that is not permissible. I mean, I don't see how that could possibly, you know, what you described could possibly be a fair use.

This is much the same issue as raised prior to the adoption of the WIPO Marrakesh Treaty in June 2013. Treaty supporters said that Publishers and other rights holders already had sufficient protection for outright copyright infringement. However, given that a copy in accessible format could legally be made by an authorized entity and then distributed to an eligible person, infringement would then require proving in arrears that a recipient was *not* such an eligible person.

See "Disney, Viacom and Other MPAA Members Join Book Publishers to Weaken a Treaty for the Blind"

(The delegates were reminded that) the treaty creates a narrow exception for some persons with disabilities, and any uses outside of

that narrow exception are not protected by the exception, and subject to all of the criminal and civil penalties of existing copyright law.

[http://www.huffingtonpost.com/james-love/disney-viacom-and-other-m\\_b\\_3137653.html](http://www.huffingtonpost.com/james-love/disney-viacom-and-other-m_b_3137653.html) (with my comments as travel\_brl)

In the Roundtable example above, given a wide interpretation of fair use, a rights holder could not simply say that the civil war site, in having an entire copy of a book on its server, would constitute infringement. The rights holder would have to show that the full text copy was being used in some manner and for some purpose other than the approved non-infringing fair use such as snippet, word search, or meta-data retrieval, etc. and not just that having the entire copy scanned and loaded onto the server and *any* further distribution would be a violation in itself.