

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

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SUMMARY

Second Circuit affirms that university's digitization of library holdings is permissible under copyright law and that its goals of increasing access to print-disabled patrons and ease of full-text searches are a "fair use" of copyrighted materials.

If you have any questions relating to the *Authors Guild v. HathiTrust* litigation, please contact:

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SECOND CIRCUIT AFFIRMS THAT UNIVERSITY PROJECT FOR DIGITIZATION OF LIBRARY HOLDINGS IS PERMITTED UNDER COPYRIGHT LAW

The Second Circuit has affirmed that certain nonprofit digitization of library holdings by universities, including UC, is permissible under copyright law. The Regents is a founding member of the HathiTrust, an organization affiliated with the University of Michigan that is dedicated to aggregating digitized books and other materials from partners (with now over 90 libraries participating) to permit the wider dissemination, access, and preservation of knowledge for scholars and people with text-reading disabilities. In 2011, the HathiTrust, along with UC and four other participating educational institutions, were sued by the Authors Guild in the Southern District of New York for copyright infringement. On October 10, 2012, the district court found in favor of the HathiTrust, concluding that the digitization project is a permissible "fair use" of the authors' copyrights. The Authors Guild appealed.

On June 10, 2014, in *Authors Guild v. HathiTrust et al.*, Case No. 12-4547 (2d Cir., 2014), the Second Circuit affirmed the district court's decision, holding that digitizing books is a fair use activity that furthers the copyright law's constitutional purpose of promoting the progress of science and the useful arts when done to (1) enable full-text search of a library's holdings and (2) provide books in accessible formats to print-disabled library patrons.

While upholding digitization for these two purposes, the Second Circuit requested that the district court reexamine one discrete issue: whether the Authors Guild is the proper party to challenge the HathiTrust's assertion that it also has the right to digitize the books to preserve them.

Confirmation that the HathiTrust digitization project furthers legitimate scholarly and accessibility goals will enable UC and the UC library system to continue their work in this area.

The HathiTrust case is not related to the Google Books digitization case currently pending in the Second Circuit, although the cases raise similar issues.