

University libraries offer online “lending” of scanned in-copyright books

Sethanan Saengsawang / EyeEm / Getty

reader comments

10 with 9 posters participating, including story author

Share this story

The coronavirus crisis has forced the closure of libraries around the world, depriving the public of access to millions of printed books. Books old enough to be in the public domain may be available for free download online. Many recent books are available to borrow in e-book form. But there are many other books—especially those published in the mid-to-late 20th century—that are hard to access without going to a physical library.

A consortium of university libraries called HathiTrust recently announced a solution to this problem, called the Emergency Temporary Access Service. It allows participating HathiTrust member libraries to offer their patrons digital scans of books that they can “check out” and read online.

HathiTrust has a history of pushing the boundaries of copyright. It was the defendant in a landmark 2014 ruling that established the legality of library book scanning. At the time, HathiTrust was only allowing people with print disabilities to access the full text of scanned books. Now

HathiTrust is expanding access to more people—though still with significant limits.

The program is only available to patrons of member libraries like the Cornell library. Libraries can only “lend” as many copies of the book as it has physical copies on its shelves. Loans last for an hour and are automatically renewed if a patron is still viewing a book at the hour’s end. If you want to read a book that’s currently in use by another patron, you have to wait until they’re finished.

These limits distinguish HathiTrust’s service from another recently announced “emergency library.” Two weeks ago, the Internet Archive announced it was offering the general public the opportunity to check out 1.4 million scanned books. During the pandemic, the Internet Archive isn’t limiting the number of people who can “borrow” a book simultaneously.

Cornell University legal scholar James Grimmelmann tells Ars that the limits on the HathiTrust program will put the group in a stronger position if it is ever challenged in court. The same fair use doctrine that allows HathiTrust to scan books in the first place might also justify what the organization is doing now—though that’s far from certain.

A key factor in fair use analysis is the effect of a new use on the market for the original work. HathiTrust can argue that its lending program will have minimal impact on the market for new books because it is merely giving existing patrons access to the same books they could access before the pandemic struck.

“The HathiTrust member libraries all had paper copies. Those copies could circulate freely within the university community in person. The pandemic has closed the physical campuses,” Grimmelmann wrote in an email to Ars. “The ETAS mimics physical circulation in many important ways: distribution is limited to the university community, only one patron has

access at a time, there is no easy way to make and keep copies of whole books, and the program ends when the pandemic ends and physical access is restored.”

The result, Grimmerman argues, is a “close nexus” between the access patrons enjoyed before the pandemic and the access they enjoy now. That might cause the courts to look favorably on HathiTrust’s approach.

Authors and publishers reacted with fury to the Internet Archive’s unlimited online lending program. And prior to the pandemic, leading authors’ groups weren’t happy about “controlled digital lending” programs that tried to duplicate the effects of physical lending in the online realm. But while the legality of HathiTrust’s emergency lending program is an open question, copyright holders may be reluctant to challenge it in court now. Not only would filing a lawsuit in the middle of a pandemic risk a public backlash, but there’s also a risk that they could lose, legitimizing controlled digital lending in the process.

<https://arstechnica.com/?p=1666117>