

# Publisher's lawsuit seeks to take down Internet Archive's digital lending library

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The Internet Archive is an online digital library based in San Francisco, California, and founded in 1996 with the stated mission of providing “Universal Access to All Knowledge.” The archive enables the public to view large collections of digitized music, books and film for free.

As of May 2022, the Internet Archive had accumulated over 35 million books and texts, 7.9 million movies, videos and TV shows, 842,000 software programs, 14 million audio files, 4 million images, 2.4 million TV clips and 237,000 concerts. Access to the massive repository is available to researchers, historians, scholars, people with disabilities like low vision and dyslexia and the general public.

Among the platform's most popular assets is the Wayback Machine. This is a digital archive of the World Wide Web that allows users to go “back in time” and see how websites looked up to 25 years ago. The Wayback Machine has recorded 682 billion web pages because, as explained by the publisher, “Like newspapers, the content published on the web was ephemeral—but unlike newspapers, no one was saving it.”

While the Internet Archive provides a window into the potential for online information and digital media to be made available to everyone in a manner similar to that of a public library, the repository has come under a vicious attack by powerful corporate and financial interests.

In June 2020, four major publishers—John Wiley & Sons and three of the big five US publishers, Hachette Book Group, HarperCollins and Penguin Random House—filed a lawsuit against the Internet Archive, claiming the non-profit organization, “is engaged in willful mass copyright infringement.”

The lawsuit stems from the corporate publishers response to an innovative temporary initiative launched by the Internet Archive during the first months of the coronavirus pandemic called the National Emergency Library. Given the impact of the public health emergency, the Internet Archive decided to ease its book lending restrictions and allow multiple people to check out the same digital copy of a book at once.

Up to that point, the Internet Archive had established a practice of purchasing copies of printed books, digitizing them and lending them to borrowers one at a time. When it kicked-off the emergency lending program, the Internet Archive made it clear that this policy would be in effect until the end of the pandemic. Furthermore, the archive's publishers said that this program was in response to library doors being closed to the public during the pandemic. Under conditions where the Internet Archive was the only means of access to titles for many people, the policy was justified and a creative response to COVID-19.

However, even if the claim by the \$25 billion publishing industry were true that the emergency lending program was damaging—and it is not—it is clear that the aim of their lawsuit is nothing less than the complete shutdown of the Internet Archive.

In their suit, the publishers have identified 127 titles they claim were shared digitally in violation of copyright laws and they are seeking to recoup \$19 million, according to one estimate, which is equivalent to one year of the Internet Archive's operating budget.

On July 8, the Electronic Frontier Foundation (EFF) submitted a 45-page brief in support of the Internet Archive's motion that the federal court in New York City throw out the publisher's lawsuit on the grounds that it is an attempt to criminalize library lending. The EFF memorandum supporting a motion for summary

judgment argues that the Internet Archive’s Controlled Digital Lending (CDL) program constitutes fair use as covered by copyright law and preserves traditional library lending in the digital world.

In an accompanying press release, the EFF explained, “The Internet Archive’s digital lending hasn’t cost the publishers one penny in revenues; in fact, concrete evidence shows that the Archive’s digital lending does not and will not harm the market for books.”

The EFF presents evidence that the big publisher’s did not lose money from the Internet Archive program due to the fact that, when the titles in question were removed from the online library, “their print sales slightly worsened relative to other books.”

Computer engineer and free and open internet activist Brewster Kahle, 61, is the founder of the Internet Archive. Speaking in an online forum about the lawsuit, Kahle argued that Internet Archive is as important to the preservation and circulation of digital media as any other library is to physical media and that the nature of libraries themselves are under attack in the lawsuit.

“The Internet Archive is a non-profit library,” Kahle said. “We do what libraries have always done. What libraries do is we buy, we preserve, and we lend books to one reader at a time. ... This lawsuit is not just an attack on the Internet Archive. It’s an attack on all libraries. The publishers want to criminalize libraries owning, preserving, and lending books in digital form.”

EFF Legal Director Corynne McSherry said, “The Internet Archive and the hundreds of libraries and archives that support it are not pirates or thieves. They are librarians, striving to serve their patrons online just as they have done for centuries in the brick-and-mortar world.”

Benjamin Saracco, a research and digital services faculty librarian at an academic medical and hospital library in New Jersey, told the EFF, “The library’s practice of controlled digital lending was a lifeline at the start of the pandemic and has become an essential service and a public good since.”

The lawsuit by the four giant publishers—the product of the increasing consolidation of the industry and with combined revenue of \$13.4 billion in 2021—highlights several important features of present-day capitalist society.

It is not an accident that the corporations have seized

upon the Internet Archive’s emergency lending program which was launched during the pandemic. Not one section of the ruling establishment was prepared to lift a finger to provide the public with resources necessary to respond adequately to COVID-19 and defeat the virus.

While the publishing companies were generating record sales in 2020 and 2021, they saw the pandemic as a means to increasing profits and an opportunity to go on the offensive against the non-profit online resource that is free to the public, and viewed it as an enemy that should be eliminated.

Finally, the publisher’s lawsuit is part of the broader assault on basic democratic rights, attacking the principle of library lending, a concept pioneered by the American revolutionary, inventor and statesman Benjamin Franklin in Philadelphia in 1731. Franklin viewed the establishment of the public library as an all-embracing cultural institution that provided for the common benefit of a non-elite membership. The early library not only lent out books but a microscope and a telescope.

Of the Library Company of Philadelphia, which eventually served as the first Library of Congress, Franklin wrote, “these Libraries have improved the general Conversation of Americans, made the common Tradesmen and Farmers as intelligent as most Gentlemen from other Countries, and perhaps have contributed in some Degree to the Stand so generally made throughout the Colonies in Defence of their Priviledges.”

As with everything else related to the revolutionary democratic traditions of America, the present-day capitalist elite sees library lending as a threat to its maniacal appetite for profits and personal wealth accumulation.



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