

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

v.

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.

Case No. 1:20-CV-04160-JGK

JURY TRIAL DEMANDED

**DEFENDANT INTERNET ARCHIVE'S ANSWER AND AFFIRMATIVE DEFENSES
TO THE COMPLAINT**

Defendant Internet Archive, by its undersigned counsel, hereby answers the Complaint of Plaintiffs Hachette Book Group, Inc., HarperCollins Publishers LLC, John Wiley & Sons, Inc., and Penguin Random House LLC (collectively, “Plaintiffs”) as follows, based on information reasonably available to the Internet Archive.

PRELIMINARY STATEMENT

The Internet Archive, a 501(c)(3) public charity, is a nonprofit library that has had one guiding mission for almost 25 years: to provide universal access to all knowledge. It is a Library of Alexandria for the twenty-first century that, thanks to digital technologies and the Internet, excels in a way the Library of Alexandria never could. Through the Internet Archive, people who do not live in world capitals can access the same cultural and informational resources as those who do.

The Internet Archive does what libraries have always done: buy, collect, preserve, and share our common culture. In furtherance of that mission, the Internet Archive has received grant funding from the National Endowment for the Humanities, the National Science Foundation, and the federal government’s Institute of Museum and Library Services, among many other sources. Many libraries and archives, including the Library of Congress, Boston Public Library, University of Illinois at Urbana-Champaign, and smaller community libraries like the Allen County Public Library trust the Internet Archive to digitize books and other materials in their collections in order to preserve physical texts and to facilitate public access. The Internet Archive is part of a network of libraries around the world—each of which is using digital technologies to meet the many challenges of serving patrons with diverse needs and differing abilities and to ensure that the growing storehouse of human creativity is not lost because no one has the capacity to preserve it.

Like Plaintiffs, the Internet Archive believes that “[b]ooks are a cornerstone of our culture and system of democratic self-government” and “play a critical role in education.” Accordingly, democratizing access to information, and facilitating access to books in particular, has been a core part of the Internet Archive’s mission for decades. But, for many people,

distance, time, cost, or disability pose daunting and sometimes insurmountable barriers to accessing physical books. Digitizing and offering books online for borrowing unlocks them for communities with limited or no access, creating a lifeline to trusted information. Readers in the Internet age need a comprehensive library that meets them where they are—an online space that welcomes everyone to use its resources, while respecting readers’ privacy and dignity.

To make this vision of a comprehensive Internet library a reality, the Internet Archive offers digitized books in a variety of ways. Books published prior to 1924 can be downloaded without restriction, and people with visual impairments can access more recent books using specially-designed encrypted technologies. The corpus of digitized books is used by data scientists to do computational analysis of texts, yielding a broader picture of human thought. To mirror traditional library lending online for everyone else, the Internet Archive allows patrons to borrow modern books via a process called Controlled Digital Lending (“CDL”).

Under CDL, the Internet Archive and other libraries make and lend out digital scans of physical books in their collections. Replicating longstanding brick-and-mortar practice, only one person can borrow one copy at a time. With the support and participation of hundreds of other libraries, the Internet Archive has been digitizing books lawfully acquired through purchase or donation and, since 2011, lending those digitized books on this own-to-loan basis. The Internet Archive loans books to its patrons using the same industry-standard technical protections that publishers themselves use to make books available electronically. Libraries have collectively paid publishers billions of dollars for the books in their print collections and are investing enormous resources in digitization in order to preserve those texts. CDL helps them take the next step by making sure the public can make full use of the books that libraries have bought.

This activity is fundamentally the same as traditional library lending and poses no new harm to authors or the publishing industry. In fact, the Internet Archive fosters research and learning by making sure people all over the world can access books and by keeping books in circulation when their publishers have lost interest in providing access. Nevertheless, where authors or publishers wish to deny the public access to their works through CDL, the Internet

Archive honors those requests. (All of the works at issue in this case have been removed from the Internet Archive’s websites.)

The Internet Archive has made careful efforts to ensure its uses are lawful. The Internet Archive’s CDL program is sheltered by the fair use doctrine, buttressed by traditional library protections. Specifically, the project serves the public interest in preservation, access and research—all classic fair use purposes. Every book in the collection has already been published and most are out of print. Patrons can borrow and read entire volumes, to be sure, but that is what it means to check a book out from a library. As for its effect on the market for the works in question, the books have already been bought and paid for by the libraries that own them. The public derives tremendous benefit from the program, and rights holders will gain nothing if the public is deprived of this resource.

During the early days of the COVID-19 crisis, in response to urgent pleas from teachers and librarians whose students and patrons had been ordered to stay at home, the Internet Archive decided to temporarily permit lending that could have exceeded the one-to-one owned-to-loaned ratio. With millions of print books locked away, digital lending was the only practical way to get books to those who needed them. The Internet Archive called this program the “National Emergency Library” and planned to discontinue it once the need had passed. Twelve weeks later, other options had emerged to fill the gap, and the Internet Archive was able to return to the traditional CDL approach.

Contrary to the publishers’ accusations, 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. Copyright law does not stand in the way of libraries’ right to lend, and patrons’ right to borrow, the books that libraries own.

NATURE OF THE ACTION¹

1. The Internet Archive admits that the Plaintiffs allege copyright infringement, that Internet Archive is a named Defendant, and that the Complaint alleges facts concerning “Open Library” and/or “National Emergency Library.” The Internet Archive lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph and on that basis denies them.

2. Denied.

3. The Internet Archive admits that more than 1.3 million books are available on archive.org for one patron to borrow at a time. The Internet Archive denies the remaining allegations of this paragraph.

4. Admitted.

5. The Internet Archive admits that, in 1787, the Framers adopted the Copyright Clause of the Constitution, explicitly authorizing Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const., Art. I, § 8, cl. 8. The Internet Archive further admits that, in 1790, the First Congress enacted the first Copyright Act. The Internet Archive lacks sufficient knowledge or information to admit or deny the remaining allegations in this paragraph and on that basis denies them.

6. The Internet Archive admits that books from a variety of genres are available to patrons for borrowing on archive.org. The Internet Archive denies the remaining allegations of this paragraph.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

¹ Internet Archive neither admits nor denies the contents of the various headings and subheadings in the Complaint, which are reproduced herein solely for convenience.

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