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# MASS DIGITIZATION AND THE CONSUMER BOOK MARKET OF THE FUTURE

*Cal R. Tondelli\**

## I. INTRODUCTION

On June 1, 2020 four major book publishers—Hachette Book Group, Inc., HarperCollins Publishers LLC, John Wiley & Sons, Inc., and Penguin Random House LLC (“Publishers”)—filed a complaint in the US District Court for the Southern District of New York against the Internet Archive (“IA”) for copyright infringement.<sup>1</sup> The basis of the Publishers’ infringement claim against IA was the digital library projects perpetuated by the defendant: Open Library (“OL”) and the National Emergency Library (“NEL”).<sup>2</sup>

In 2007, the IA—a 501(c)(3) nonprofit with a mission of Universal Access to All Knowledge—<sup>3</sup>started OL, an online book database.<sup>4</sup> Simply put, OL’s goal is to provide a webpage for every book ever published.<sup>5</sup> To accomplish this, OL engages in mass digitization of physical publications. As of June 1, 2020, OL had scanned and archived the entirety of over 1,300,000 books, many of them under copyright.<sup>6</sup> Once a book is scanned, OL rents-out a free digitized version via its website.<sup>7</sup> What seems like copyright

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<sup>1</sup> Complaint, *Hachette Book Grp., Inc., v. Internet Archive*, No. 1:20-cv-04160 (S.D.N.Y. June 1, 2020) [hereinafter *Hachette v. IA*].

<sup>2</sup> *Id.*

<sup>3</sup> *About the Internet Archive*, INTERNET ARCHIVE, <https://archive.org/about/> (last visited Mar. 31, 2021).

<sup>4</sup> *About Open Library*, OPEN LIBR. (Feb. 22, 2021), <https://openlibrary.org/help/faq/about#what>.

<sup>5</sup> *Id.*

<sup>6</sup> *Hachette v. IA*, *supra* note 1, at 2.

<sup>7</sup> *Borrowing Books Through Open Library*, OPEN LIBR. (July 14, 2020), <https://openlibrary.org/help/faq/borrow>.

infringement, OL justifies under a legally alternative process known as Controlled Digital Lending (“CDL”).<sup>8</sup>

Under CDL a library may loan one digitally-scanned copy of a book for each physical copy it owns; the physical copies themselves cannot be loaned.<sup>9</sup> IA claims CDL properly emulates traditional physical lending such that it is protected under the same copyright law umbrellas, mainly the fair use doctrine.<sup>10</sup> In the upcoming *Hachette v. Internet Archive* trial, CDL will be scrutinized for the first time.<sup>11</sup>

Although OL had practiced CDL for 13 years by the time the Publishers filed their complaint, the NEL was the last straw. On March 24, 2020, IA announced the creation of the NEL with the purpose of combating limited access to reading and research materials caused by the global coronavirus lockdown.<sup>12</sup> In a betrayal of CDL guidelines, NEL allowed an unlimited number of users access to the digital books in their library, but maintained a two-week rental period.<sup>13</sup> Demurring, the Publishers contended the NEL was merely an opportunistic power grab of the pandemic market through removal of already-deficient CDL limitations.<sup>14</sup>

This Note will examine the copyright protections that underlie book lending, apply them to CDL, and prognosticate what the retail book market will resemble post-*Hachette*. Part I of this Note will address the copyright law at issue in *Hachette* by walking through the legal protections that copyright holders and libraries each enjoy. Part II will analyze the legal positions of the *Hachette* parties after examining recent mass digitization copyright cases. Next, Part III will predict the effect *Hachette*’s decision will have on consumer rights. Finally, Part IV will forecast the long-term direction of the retail book market based on sociological trends and technological advances.

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<sup>8</sup> Lila Bailey et al., *Position Statement on Controlled Digital Lending*, CONTROLLED DIGITAL LENDING BY LIBR. (Sep. 2018), <https://controldigital-lending.org/statement>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *Hachette v. IA*, *supra* note 1, at 5.

<sup>12</sup> Chris Freeland, *Announcing a National Emergency Library to Provide Digitized Books to Students and the Public*, INTERNET ARCHIVE BLOGS (Mar. 24, 2020), <http://blog.archive.org/2020/03/24/announcing-a-national-emergency-library-to-provide-digitized-books-to-students-and-the-public/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Hachette v. IA*, *supra* note 1.

## II. COPYRIGHT IN PUBLISHING AND LENDING

### A. *History of Copyright Law in Publishing*

Centuries have passed since copyright was invented—the first copyright law was adopted in England in 1710. Known as the Statute of Anne, its purpose was to encourage learning by fighting censorship and creating a free market for books.<sup>15</sup> Thus, the history of granting authors exclusive rights to their works predates the United States. A popular concept at the time, federal copyright protection was enshrined in Article I of the Constitution.<sup>16</sup> In 1790, the first Congress enacted the first Copyright Act, which was meant to incent creation and legal dissemination of books, maps, and charts.<sup>17</sup>

More recently, the Copyright Act of 1976 was enacted, as the first major revision to copyright law since 1909.<sup>18</sup> The 1976 Act and its subsequent amendments ultimately broadened the scope of copyright protection to all works once they are fixed in a tangible form and extended the term of protection to the life of the author plus 70 years.<sup>19</sup>

Once the internet permeated households throughout the United States, there was a need for copyright protections against online copyright infringement. On October 28, 1998, the Digital Millennium Copyright Act (“DMCA”) was enacted.<sup>20</sup> The DMCA made it illegal to circumvent technological measures used to prevent unauthorized copying of copyrighted works.<sup>21</sup>

There are many reasons copyright exists in publishing, but perhaps the main reason is to incent authors and publishers to

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<sup>15</sup> Argyri Panezi, *A Public Service Role For Digital Libraries: The Unequal Battle Against (Online) Misinformation Through Copyright Law Reform And The Emergency Electronic Access To Library Material*, 31 CORNELL J.L. & PUB. POL’Y. at 29 (forthcoming Fall 2021).

<sup>16</sup> U.S. CONST. art. I, § 8, cl.8.

<sup>17</sup> *Hachette v. IA*, *supra* note 1, at 3.

<sup>18</sup> *Highlight: Congress Passes the Current Copyright Act*, U.S. COPYRIGHT OFF. (Apr. 4, 2021), [https://www.copyright.gov/timeline/timeline\\_1950-2000.html](https://www.copyright.gov/timeline/timeline_1950-2000.html).

<sup>19</sup> *Id.*

<sup>20</sup> Library of Congress, *The Digital Millennium Copyright Act of 1998: U.S. Copyright Office Summary*, COPYRIGHT OFF., LIB. OF CONG. (1998), <https://www.copyright.gov/legislation/dmca.pdf> [hereinafter *Library of Congress*].

<sup>21</sup> *Supra* note 18.

produce books. By giving them a monopoly on their product, copyright allows authors and publishers to recoup costs and make profits on their works. In essence, copyright is public financing for intellectual production.<sup>22</sup>

### B. *Classic Copyright Exceptions for Libraries*

Authors and publishers have existed harmoniously with libraries in their current form since 1833.<sup>23</sup> Libraries fulfill the aim of copyright to foster education and advance knowledge by loaning books to the public, and libraries must purchase the books they loan from publishers.<sup>24</sup> These two factors protect libraries behind copyright law shields known as the fair use and first sale doctrines, respectively.<sup>25</sup> Additionally, libraries are permitted to reproduce copyrighted books for preservation, replacement, or to accommodate people with disabilities.<sup>26</sup>

Without fair use, copyright could not exist. Fair use is a necessary valve that allows the dissemination of copyrighted content to fulfill copyright's constitutional purpose to promote learning and advance knowledge. The fair use doctrine provides for limited use of copyrighted materials without permission of the copyright holder, so long as it is for scholarly purposes such as teaching, research, or criticism.<sup>27</sup> But, fair use is not a blanket exception, each use is analyzed under a four-part test codified in the US Copyright Code. To qualify something as fair use, the court analyzes: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the work, and the effect of the use upon potential market for or value of the copyrighted work.<sup>28</sup> Without fair use, copyright's own protections would prevent it from achieving its *raison d'être*.

Although fair use directly addresses copyright's constitutional purpose, the first sale doctrine, codified in section 109(a) of the US Copyright Code, is what largely protects physical book

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<sup>22</sup> Panezi, *supra* note 15, at 26.

<sup>23</sup> 1833, AM. LIBR. ASS'N. (Feb. 11, 2013), <http://www.ala.org/aboutala/1833>.

<sup>24</sup> *Marketing to Libraries: Basics*, AM. LIBR. ASS'N. (Dec. 19, 2018), <https://libguides.ala.org/marketing-to-libraries/basics>.

<sup>25</sup> *Copyright for Libraries: General Information*, AM. LIBR. ASS'N. (Mar. 21, 2019), <https://libguides.ala.org/copyright>.

<sup>26</sup> *Id.*

<sup>27</sup> 17 U.S.C. § 107 (2011) [hereinafter *Fair Use*].

<sup>28</sup> *Id.*

lending function of libraries.<sup>29</sup> To wit, the first sale doctrine permits purchased copies of a copyrighted work to be sold, lent, or shared without permission from the copyright holder.<sup>30</sup> However, circulating digitally-scanned copies of physical copyrighted works is not protected under first sale, the rights are strictly tied to original copies.<sup>31</sup> Thus, the right of first sale is not considered an affirmative defense to mass digitization.

In addition to fair use and first sale, under Section 108 of the US Copyright Code, libraries acting within the scope of their employment may reproduce up to three copies of a book so long as there is no commercial purpose and they are not available outside of the premises.<sup>32</sup> However, this provision was intended to address print-based analog technology; the drafters did not predict modern prevalence of digital-based scanning.<sup>33</sup> Recognizing this anachronism, in 2017, the US Copyright Office proposed an update to Section 108 to specifically allow libraries to reproduce digital copies, within limits.<sup>34</sup> By proposing this update, the Copyright Office seemed to tacitly admit that Section 108, as it is currently written, does not protect digital copies.

### C. Copyright in the Digital Age

As a global network, the internet is a hotbed of piracy. Once technology advanced such that every household had a computer, it became clear that copyright protections needed to advance in lockstep. One development was Digital Rights Management (“DRM”) technology, which gives copyright holders the ability to protect their digital proprietary content through access controls.<sup>35</sup> Today publishers and their partners utilize multiple DRM controls to prevent piracy of their e-books (*e.g.*, tethered content, which

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<sup>29</sup> 17 U.S.C. § 109(a) (2011).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 17 U.S.C. § 108 (2005).

<sup>33</sup> Panezi, *supra* note 15, at 15.

<sup>34</sup> Section 108 of Title 17, A DISCUSSION DOCUMENT OF THE REGISTER OF COPYRIGHTS (2017), <https://www.copyright.gov/policy/section108/discussion-document.pdf>.

<sup>35</sup> Frederick W. Dingley & Alex Berrio Matamoros, *What is Digital Rights Management?*, 122 LIBR. STAFF PUBL'NS. 2 (2016) <https://scholarship.law.wm.edu/libpubs/122>.

requires a key attached to a specific device to unscramble the content of an e-book).<sup>36</sup>

At first, digital-media pirates had techniques to circumvent DRM technology with no recourse available to copyright holders. Then, in 1998, the Digital Millennium Copyright Act (“DMCA”) was signed into law.<sup>37</sup> Primarily, the DMCA criminalizes the circumvention of DRM measures and empowers copyright holders to takedown online infringements of their material.<sup>38</sup> The DMCA also prohibits trafficking in devices designed to circumvent access controls or controls meant to prevent unauthorized copying.<sup>39</sup> Notably, the Senate Judiciary Committee Report on the matter mentions that the DMCA was meant as reasonable assurance to copyright owners that they had protection against massive piracy over the internet.<sup>40</sup>

### III. *HACHETTE V. INTERNET ARCHIVE* AND THE TRIALS OF MASS DIGITIZATION

#### A. *The Authors Guild Cases*

When Internet Archive began Open Library in 2007, it was hardly the first digital library project on the market—that distinction belongs to Project Gutenberg, which began in 1971 by copying the texts of books onto a computer database.<sup>41</sup> In 2002 Google started Project Ocean, the precursor to Google Books, the world leader in mass digitization.<sup>42</sup> Google eventually partnered with a consortium of libraries that provided books from their collection for Google to digitize; many of the donations were copyrighted

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<sup>36</sup> *Id.* at 7.

<sup>37</sup> Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; See S. REP. NO. 105-190 (1998) (the Senate Report notes that the DMCA prohibits trafficking devices expressly intended to facilitate control circumvention, rather than legitimate multipurpose devices).

<sup>40</sup> *Id.* at 8.

<sup>41</sup> Michael Hart: *The History and Philosophy of Project Gutenberg*, PROJECT GUTENBERG (Aug. 1992), [https://www.gutenberg.org/about/background/history\\_and\\_philosophy.html](https://www.gutenberg.org/about/background/history_and_philosophy.html).

<sup>42</sup> James Somers, *Torching the Modern-Day Library of Alexandria*, THE ATLANTIC (Apr. 20, 2017), <https://www.theatlantic.com/technology/archive/2017/04/the-tragedy-of-google-books/523320/>.

materials.<sup>43</sup> As of 2019, 15 years after its 2004 debut, Google Books had scanned over 40 million titles.<sup>44</sup>

In 2005, the Author's Guild, along with individual author co-plaintiffs, sued Google for copyright infringement based on Google Book's mass digitization tactics.<sup>45</sup> In 2015, the Second Circuit of the US Court of Appeals decided *Authors Guild v. Google, Inc.* in favor of Google.<sup>46</sup> The court struck down the plaintiff's arguments that Google Books infringed on their copyrights by i) digitizing their works, ii) establishing a publicly available search function, and iii) displaying snippets of copyrighted works.<sup>47</sup> Instead, the court held that Google Books met fair use. According to the court, Google Books' purpose—to enable researchers to find books containing a term of interest—was highly transformative, meaning it expanded the utility of the books.<sup>48</sup> Also, the court decided that because Google's public-facing search snippets were limited to a few lines of text they were not market substitutes.<sup>49</sup> And although Google had a commercial nature and profit motivation, the court ruled this did not justify denying fair use.<sup>50</sup>

In *Google*, the Second Circuit was informed by its own 2014 opinion in *Authors Guild v. HathiTrust*.<sup>51</sup> In this companion, HathiTrust, an entity comprised of libraries which get their books digitized by Google, successfully defeated the Authors Guild's copyright infringement allegations against it.<sup>52</sup> Many similarities exist between the two *Authors Guild* cases because HathiTrust operates in much the same way as Google Books in providing free access to certain digital books.<sup>53</sup> But, *Google* differed from *HathiTrust* in two significant respects: first, HathiTrust did not display any text from the copyrighted work, whereas Google Books displayed snippets; and second, HathiTrust was a nonprofit educational entity,

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<sup>43</sup> Panezi, *supra* note 15, at 13.

<sup>44</sup> Haimin Lee, *15 years of Google Books*, GOOGLE'S THE KEYWORD (Oct. 17, 2019), <https://www.blog.google/products/search/15-years-google-books/>.

<sup>45</sup> *Authors Guild v. Google, Inc.*, 804 F.3d 202 (2nd Cir. 2015) [hereinafter *Guild*].

<sup>46</sup> *Id.* at 229.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 217.

<sup>52</sup> *Id.* (HathiTrust was formed so the member libraries could pool their digitized books).

<sup>53</sup> *Id.*



while Google was a private corporation.<sup>54</sup> Both of Google's distinctions from HathiTrust weighed against it in the fair use analysis, and yet the court still granted Google fair use protection.

There are many similarities between OL and Google Books. To name a few, both Google Books and OL engage in mass digitization of books legally acquired, primarily from libraries.<sup>55</sup> They each provide socially beneficial purposes in their dual roles as digital lenders/digital archivists of print books, many of which would otherwise have been lost to the world.<sup>56</sup> Also, both OL and Google Books belong to a larger corporation with a commercial nature—despite being a nonprofit IA generates income by offering commercial services such as digitization.<sup>57</sup> Furthermore, OL, like Google, features a public-facing search feature which leads to text from copyrighted works.<sup>58</sup>

Despite similarities, Google Books and OL have noteworthy differences. Conspicuously, the court in *Google* stated that if Google were “converting their books into a digitized form and making that digitized version accessible to the public, [a plaintiff’s] claim would be strong.”<sup>59</sup> It seems that IA, through OL, does exactly what the *Google* court portended. In contrast to OL, Google Books’ purpose was to be a full-text searchable database for research—not a library—which the court ruled was transformative use.<sup>60</sup> The purpose of Google’s snippets, and the search-function that led users to them, was to provide users just enough context to evaluate whether the book is of interest enough to purchase.<sup>61</sup> In contrast, OL’s search function takes users directly to the related catalog listings and allows an entire work to be viewed, free of charge, once a digital copy is available per CDL.<sup>62</sup> Thus, OL has a weaker argument for transformative use than Google Books, and, by extension, a less convincing case for fair use.

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<sup>54</sup> *Id.*

<sup>55</sup> Edited by Giovanni Damiola, *About Us*, OPEN LIBRARY (Dec. 4, 2015), <https://openlibrary.org/about>; Somers, *supra* note 42.

<sup>56</sup> *Answer*, Hachette Book Grp., Inc. v. Internet Archive, No. 1:20-CV-04160-JGK, at 1 (S.D.N.Y. Jul. 28, 2020) [hereinafter *Answer*]; Somers, *supra* note 42.

<sup>57</sup> *Hachette v. IA*, *supra* note 1, at 20; *Answer*, *supra* note 56.1, at 10; *Guild*, *supra* note 45 at 217.

<sup>58</sup> *Hachette v. IA*, *supra* note 1, at 24; *Guild*, *supra* note 45.

<sup>59</sup> *Guild*, *supra* note 45, at 225.

<sup>60</sup> *Hachette v. IA*, *supra* note 1, at 21; *Guild*, *supra* note 45, at 215.

<sup>61</sup> *Guild*, *supra* note 45, at 218.

<sup>62</sup> OPEN LIBRARY, <https://openlibrary.org/> (last visited Apr. 10, 2021).

Weaker still was IA's justification for the NEL. On March 24, 2020, IA announced it was suspending waitlists and the "owned-to-loaned" ratio until June 30, 2020 in response to the global pandemic.<sup>63</sup> Hence, the NEL was born with the purpose to serve the nation's displaced learners.<sup>64</sup> However, the Publishers' June 1, 2020 complaint caused IA to scramble and take down the NEL on June 16, 2020, two weeks earlier than planned.<sup>65</sup> Unsurprisingly, by shedding the shackles of CDL, the NEL left IA even more vulnerable to copyright infringement liability. While the need for a digital library was unquestionably greater during a global pandemic, does that justify the NEL giving away copyrighted material with almost no restriction? If *HathiTrust* and *Google* have shown us anything, it is that recent courts are casting favorable light on mass digitization. But with CDL and the even more egregious NEL, when will the courts say enough is enough?

### B. Internet Archive's Claims of Fair Use

In practice, properly implemented CDL programs, like OL, adhere to six tenets: i) ensure the work is lawfully acquired; ii) the work must be owned, not licensed; iii) maintain an "owned to loaned" ratio; iv) lend each copy only to a single user at a time; v) limit the time period for each lend, and vi) use DRM to prevent copying and redistribution.<sup>66</sup> In IA's theory, these tenets protect their practice of lending copyrighted books without permission under the fair use doctrine. However, fair use analyses are highly fact-specific, and CDL practices have never been put to the test.

As previously stated, courts utilize a four-factor test in analyzing fair use.<sup>67</sup> The first factor is the purpose and character of use; this factor is the biggest point in IA's favor. Since they claim to be libraries, OL and NEL's purpose is naturally aligned with socially beneficial outcomes that favor fair use. Additionally, CDL provides non-discriminatory access to their catalog in

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<sup>63</sup> Freeland, *supra* note 12.

<sup>64</sup> *Id.*

<sup>65</sup> Brewster Kahle, *Temporary National Emergency Library to close 2 weeks early, returning to traditional controlled digital lending*, INTERNET ARCHIVE BLOGS (June 10, 2020), <http://blog.archive.org/2020/06/10/temporary-national-emergency-library-to-close-2-weeks-early-returning-to-traditional-controlled-digital-lending/>.

<sup>66</sup> Bailey, *supra* note 8.

<sup>67</sup> *Fair Use*, *supra* note 27.

advancement of IA's mission of Universal Access to All Knowledge.<sup>68</sup> Furthermore, IA claims CDL, though not protected under law by it, fulfills the exhaustion principals of the first sale doctrine by enabling libraries to distribute copies they own, which weighs in favor of fair use.<sup>69</sup>

The second factor of the fair-use test is the nature of the copyrighted work. In defense of CDL, IA argues that the nature of books is favored under fair use because the first instance of the author's work has already occurred once their book is published.<sup>70</sup> The third factor is the amount and substantiality of the portion used.<sup>71</sup> This factor weighs heavily against CDL practices because it allows people to rent out entire books, not just portions. Though, in its defense on this point IA argues that CDL grants only temporary access, for two-weeks, and users can only rent a book when a digital copy is available—like brick-and-mortar library lending.<sup>72</sup>

Finally, the fourth factor is the market effect of the secondary use of the copyrighted work. Again, IA points to the six tenets of CDL to liken it to old-fashioned library lending, which has little effect on the retail book market.<sup>73</sup> Except, the NEL did not adhere to CDL, so it would not be proper to compare NEL's market effect to libraries. But IA argues that because the books on OL and NEL were legally acquired, the rights holders will have been compensated at the time they were acquired—so the market is in balance.<sup>74</sup>

### *C. The Publishers' Arguments Against CDL and NEL Fair Use*

In contrast to these arguments, the Publishers contended that the rules of CDL were “concocted from whole cloth and continue to get worse” with no provision under copyright law offering defense for it.<sup>75</sup> Although IA claimed furthering education is the nature and purpose of CDL, the Publishers noted that the Open Library homepage listed thrillers and romance novels more prominently than textbooks.<sup>76</sup> Further, the Publishers remarked that IA

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<sup>68</sup> Bailey, *supra* note 8.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Hachette v. IA*, *supra* note 1, at 4.

<sup>76</sup> *Id.* at 30-1.

added nothing to the creation of the copyrighted works, and thus it exploited, rather than incited, authors and publishers to incur cost and create publishings, putting IA at odds with copyright canon.<sup>77</sup>

Most importantly, the Publishers argued that IA's digital copies do not add new purpose or character to their books, thus they are not transformative.<sup>78</sup> Seemingly, scanned reproductions are mere substitutes for the original works, rather than being new or different. Not to mention the fact that Publishers already offer e-books for most of the books under contest. So, CDL's best arguments for being transformative are access expansion or format-shifting from physical to digital, both of which are weaker arguments than the successful transformative use arguments in *HathiTrust* and *Google*.

When it comes to the nature of the copyrighted material and the amount copied, CDL has a few different aspects that disfavor a finding of fair use. First, much of the copyrighted materials offered by Open Library are works of fiction, and many of the non-fiction books are read for personal entertainment.<sup>79</sup> When a work is creative it tends to be out-of-line with the advancement of knowledge purpose of fair use.<sup>80</sup> Additionally, the fact that CDL makes the entire book available means that it is including more than is necessary for educational purposes.<sup>81</sup>

In 2020, U.S. book publishing sales grossed over \$14 billion,<sup>82</sup> and the Publishers likely accounted for over half of those sales. Despite their massive revenues last year, the Publishers claim they stood to make even more, if not for IA's meddling.<sup>83</sup> To their point, books, like all media, are consumption products; their value stems from the information extracted from their texts and images. Reproductions of copyrighted books act as substitute products which deprive copyright holders the benefit of selling to consumers who have chosen the reproduction. In fact, the entire e-book business model is built around prevention of unlimited

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 42.

<sup>79</sup> *Id.* at 31.

<sup>80</sup> CHECKLIST FOR CONDUCTING A FAIR USE ANALYSIS BEFORE USING COPYRIGHTED MATERIALS, CORNELL U. LIBR.

<sup>81</sup> *See id.*

<sup>82</sup> Press Release, ASSOC. OF AM. PUBLISHERS, AAP December 2020 StatShot Report: Publishing Industry Down 8.5% For Month; Up 0.1% For Calendar 2020 (2021) at 3.

<sup>83</sup> *Hachette v. IA*, *supra* note 1.

copying or distribution of the files—hence DRM and the DMCA.<sup>84</sup> Because publishers primarily offer e-book licenses to libraries, CDL completely shifts the e-book market by offering libraries substitute products to own for free; in this way CDL is a threat to the entire market of digital book licensing.<sup>85</sup>

Moreover, the US Copyright Office and the United States Patent and Trademark Office have raised three market concerns over CDL's differences to physical lending. One, digital distribution eliminates transactional friction present in physical loans; two, digital copies do not degrade like physical books; and three, digital distribution raises security and piracy risks.<sup>86</sup> All three concerns are valid market-harms for copyright holders when entities can lend a digital copy of a physical book.

Based on the above, the Publishers have a valid copyright infringement case against CDL, and all arguments against fair use for CDL listed above also apply to the NEL, except the NEL does not even resemble a classic library model. To justify the NEL, IA relies heavily on the limited access to books caused by the COVID-19 pandemic.<sup>87</sup> Except publishers had already begun to heighten access to their works shortly after the pandemic began, the NEL possibly frustrated those efforts.<sup>88</sup> In fact, IA moved forward with the NEL without consulting authors, illustrators, or publishers; it

<sup>84</sup> *Id.* at 16.

<sup>85</sup> Chris Meadows, *Increased ebook lending popularity leaves publishers worried, librarians still dissatisfied*, TELEREAD (Oct. 3, 2020), <https://tele-read.org/2020/10/03/increased-ebook-lending-popularity-leaves-publishers-worried-librarians-still-dissatisfied/>; See Robert C. Maier, *Big Five Publishers and Library Lending*, AM. LIB. MAG. (Apr. 22, 2015), <http://americanlibrariesmagazine.org/wp-content/uploads/2015/04/BigFiveEbookTerms042215.pdf> (chart of e-book license terms and availability for libraries).

<sup>86</sup> U.S. COPYRIGHT OFF., DMCA SECTION 104 REPORT 105 (2001), <https://perma.cc/59TU2NKJ>; see also U.S. PAT. & TRADEMARK OFF., WHITE PAPER ON REMIXES, FIRST SALE, AND STATUTORY DAMAGES 48, 50 (2016), <https://perma.cc/RJ7Z-5REZ>.

<sup>87</sup> Panezi, *supra* note 15.

<sup>88</sup> Press Release, ASSOC. OF AM. PUBLISHERS, AAP Provides COVID-19 Resource Page to Outline Publisher Efforts to Help Communities During Pandemic (Mar. 23, 2021) <https://publishers.org/news/aap-provides-covid-19-resource-page-to-outline-publisher-efforts-to-help-communities-during-pandemic/>; see Samiksha Goel, DHNS, *Ebooks fly off digital shelves as publishers adapt to COVID-19 times*, DECCAN HERALD (May 14, 2020), <https://www.deccanherald.com/business/business-news/ebooks-fly-off-digital-shelves-as-publishers-adapt-to-covid-19-times-837744.html> (Juggernaut Books made their catalog free for readers).

only consulted libraries and teachers.<sup>89</sup> It is plausible that the NEL is *prima facie* copyright infringement, though the court may still find the emergency situation justified fair use protection.

#### IV. POST-*HACHETTE* EFFECTS ON CONSUMER RIGHTS

##### A. *Internet Archive Wins*

Despite the Publishers' arguments against IA's actions, the decisions in *Google* and *HathiTrust* suggest CDL and NEL may be protected under copyright law.<sup>90</sup> If the court rules in favor of CDL, retail book consumers will not experience immediate, drastic effects; CDL is already prevalent and it is only marginally more impactful on the market than a true-to-form library.<sup>91</sup> Rather, a judgment for CDL will simply turn up the heat on an already simmering pot of water.

At first blush, it seems a legal ruling in favor of CDL is an automatic expansion of consumer rights. After all, a free book is always more consumer friendly than one that costs money—consumer surpluses benefit consumers.<sup>92</sup> But it is unlikely that publishers would back off from this fight against “fair use creep.”<sup>93</sup> Likely, publishers will reinvigorate some of the historical e-book accessibility restrictions they have placed on libraries, such as price hikes and embargos.<sup>94</sup> Additionally, publishers may show partiality to formats with DRM and DMCA protections, like e-book and

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<sup>89</sup> See Brewster Kahle, *The National Emergency Library – Who Needs It? Who Reads It? Lessons from the First Two Weeks*, INTERNET ARCHIVE BLOGS (Apr. 7, 2020), <http://blog.archive.org/2020/04/07/the-national-emergency-library-who-needs-it-who-reads-it-lessons-from-the-first-two-weeks/>.

<sup>90</sup> See Panezi, *supra* note 15.

<sup>91</sup> Bailey, *supra* note 8.

<sup>92</sup> Kenneth E. Boulding, *The Concept of Economic Surplus*, 35 AM. ECON. REV. 5, 851 (1945). <http://www.jstor.org/stable/1812599>.

<sup>93</sup> See Parker Higgins, “Fair Use Creep,” and Other Copyright Bogeymen, *Appear in Congress*, ELEC. FRONTIER FOUND. (July 25, 2013), <https://www.eff.org/deeplinks/2013/07/fair-use-creep-and-other-copyright-bogeymen-appear-congress>.

<sup>94</sup> See Andrew Albanese, *ALA Midwinter 2020: Macmillan CEO John Sargent, Librarians Spar Over E-book Embargo*, PUBLISHERS WEEKLY (Jan. 26, 2020), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/82261-ala-midwinter-2020-macmillan-ceo-john-sargent-librarians-spar-over-e-book-embargo.html>.

downloadable audio, despite fears of e-books cannibalizing the physical book market.<sup>95</sup> Unfortunately for book consumers, these measures would spell out a dramatic restriction of consumer rights.<sup>96</sup>

When a customer buys an e-book, they are not buying it, they are licensing it.<sup>97</sup> A licensor is not guaranteed the right to lend, resell, or give away the content like a purchaser of a physical book is under the first sale doctrine.<sup>98</sup> For example, the rights to your e-book could be transferred to a different publisher, who could then pull it from your e-reader, which, due to DRM, is the only place the e-book data existed.<sup>99</sup> This is legal because you do not own the e-book, you are only renting it,<sup>100</sup> and any attempt to work around the DRM controls is punishable under the DMCA.<sup>101</sup>

Already, we see a shift towards e-books in the actions of publishers, a shift which a ruling in favor of CDL would foment. Currently, Amazon has a catalog of over 1 million Kindle e-book exclusive titles that are not available in print form.<sup>102</sup> In a very territorial maneuver, Amazon restricts these Kindle exclusives from being available to libraries, which greatly restricts consumer right to access in comparison to physical books (in May 2021 Amazon announced they would soon begin licensing their e-books to libraries).<sup>103</sup> Other major publishers have placed obstacles between

<sup>95</sup> Chris Meadows, *Traditional publishing CEOs are happy to sell fewer ebooks*, TELEREAD (Oct. 18, 2017), <https://teleread.org/2017/10/18/traditional-publishing-ceos-are-happy-to-sell-fewer-ebooks/>.

<sup>96</sup> Chris Meadows, *How will the Open Library lawsuit balance consumer and producer rights?*, TELEREAD (Sep. 12, 2020), <https://teleread.org/2020/09/12/how-will-the-open-library-lawsuit-balance-consumer-and-producer-rights/>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Library of Congress*, *supra* note 20.

<sup>102</sup> AMAZON KINDLE EBOOK EXCLUSIVES, <https://www.amazon.com/Kindle-Exclusives-eBooks/b?ie=UTF8&node=1268190011> (last visited Apr. 14, 2021).

<sup>103</sup> Rebecca Klar, *Amazon under pressure to lift ban on e-book library sales*, THE HILL (Dec. 2, 2020), <https://thehill.com/business-a-lobbying/528280-amazon-under-pressure-to-lift-ban-on-e-book-library-sales#:~:text=But%20unlike%20their%20traditional%20publishing,%20find%20any-where%20else.%E2%80%9D;Andrew%20Albanese,%20DPLA%20Ink%20Deal%20to%20Lend%20E-books%20in%20Libraries>, PUBLISHERS WEEKLY (May 18, 2021), <https://www.publishersweekly.com/pw/by-topic/industry->

libraries and their e-book catalogs as well, but not to the degree that Amazon has.<sup>104</sup>

When it comes to a conflict between Amazon and libraries, the big publishers will always side with Amazon. To illustrate Amazon's immense power in publishing, it was recently hit with an antitrust lawsuit for strong-arming the "Big Five" publishers (which includes some plaintiffs in *Hachette*) into "most favored nation" agreements.<sup>105</sup> These Amazon agreements required the Big Five to match any promotions being offered to other retailers, which fostered a monopoly for Amazon that harmed consumers.<sup>106</sup> Also, because of its influence over the book market, Amazon's actions herald the further restriction of consumer rights, and a ruling in favor of CDL will likely sink publishers deeper into Amazon's pocket.

### B. The Publishers Win

For relief, the Publishers want the court to rule that CDL constitutes willful copyright infringement, issue an injunction against IA, and award damages.<sup>107</sup> If the Publishers get their requested relief, again, there will be little immediate impact felt by book consumers. However, the decision would be a massive blow to Internet Archive and public libraries, which have begun adopting their own CDL programs.<sup>108</sup> By drawing a line in the sand over CDL, the court would be proclaiming that, under the current law, publishers rule the library market for digital books. But is that what is best for the consumer? Potentially, yes.

Without the lurking threat of CDL, publishers will not have to force a shift to e-books that the free market did not call for out of fear of piracy. As mentioned previously, e-books have a net-

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news/libraries/article/86399-amazon-publishing-dpla-ink-deal-to-lend-digital-content-in-libraries.html.

<sup>104</sup> Klar *supra* note 104.1.

<sup>105</sup> Michael Leonard & Spencer Soper, *Amazon Faces Consumer Antitrust Suit Over eBook Pricing (1)*, BLOOMBERG L. (Jan 14, 2021).

<sup>106</sup> *Id.*

<sup>107</sup> *Hachette v. IA*, *supra* note 1, at 51-2.

<sup>108</sup> Caralee Adams et al., *Transforming Our Libraries: 12 Stories About Controlled Digital Lending*, CONTROLLED DIGITAL LENDING BY LIBR. (last visited Apr. 15, 2021), <https://controldigitallending.org/sites/default/files/transforming-our-libraries.pdf>.



negative impact on consumer rights as compared to physical books.<sup>109</sup> Furthermore, physical books are still very much in demand; 2020 was the bestselling year for print book in the last decade.<sup>110</sup> Unlike movies and music, whose physical formats have lost their market foothold, physical books still own a majority share of the consumer book market.<sup>111</sup> Without CDL, consumers will likely not be force-fed more e-books than they want or need.

Though if the Publishers win, that does not mean they, or Amazon, will become friendly with libraries. The digital consumer rights issues that would be exacerbated by a win for IA would simply carry on at their current pace; publishers will still take advantage of the restrictive consumer rights of e-books to limit access to their publications. However, if CDL is struck down, then lawmakers will likely be forced to fight for consumers against publishers' e-book stranglehold. State lawmakers have already begun to introduce legislation that would require e-book publishers to offer licenses to libraries.<sup>112</sup> This legislation would force Amazon to make its Kindle exclusives available to libraries; perhaps this political pressure is what forced Amazon to recently announce they will soon offer e-book licenses to libraries.<sup>113</sup> At the federal level, Congress could update the text of the US Copyright Code to extend the first sale doctrine and Section 108's library protections to digital books.<sup>114</sup> Also on the table is proposed antitrust reform that would break up tech companies like Amazon, which would

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<sup>109</sup> Meadows, *supra* note 97; Klar, *supra* note 104.1; Leonard, *supra* note 106.

<sup>110</sup> *After a Slow Start, U.S. Print Book Sales Rose 8.2 Percent in 2020, The NPD Group Says*, THE NPD GROUP, INC. (Jan. 7, 2021) <https://www.npd.com/wps/portal/npd/us/news/press-releases/2021/after-a-slow-start—u-s—print-book-sales-rose-8-2-percent-in-2020—the-npd-group-says/>.

<sup>111</sup> *Media and Entertainment Spotlight: The Media and Entertainment Industry in the United States*, SELECTUSA (Accessed Apr. 15, 2021); Assoc. of Am. Publishers, *Monthly StatShot December 2020* (2021) [hereinafter *Assoc. of Am. Publishers*]; BERTELSMANN, *Annual Report 2020* (2020) [hereinafter *Bertelsmann*].

<sup>112</sup> Andrew Albanese, *Maryland Legislature Passes Bill Supporting Library Access to Digital Content*, PUBLISHERS WEEKLY (Mar. 11, 2021), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/85785-maryland-legislature-passes-law-supporting-library-access-to-digital-content.html>.

<sup>113</sup> *Id.*; See Albanese, *supra* note 104.2.

<sup>114</sup> Panezi, *supra* note 15, at 15.

weaken their grip on the book market.<sup>115</sup> Should IA lose, they, and other library advocate groups, would likely use all of their political capital to lobby for these legislative remedies. Legislative changes like these would be the most impactful means to expand e-book consumer rights on a macro-scale and allow CDL to continue.<sup>116</sup>

## V. HOW DIGITAL NATIVISM AND THE PANDEMIC SHAPE THE BOOK MARKET

### A. *The Rent Generation*

Regardless of how the *Hachette* court rules, e-books will conceivably rise in popularity as time goes on.<sup>117</sup> Any future increase in demand for e-books can likely be attributed to two sociological factors: digital nativism and the effects of the coronavirus pandemic.<sup>118</sup> To a generation raised on digitally streaming their media, e-books' constraints on consumer rights likely seem normal.<sup>119</sup> Likewise, the global pandemic has led consumers to lean heavier on digital media, a trend which may continue even after the pandemic is behind us.<sup>120</sup> As e-books populate more of the publishing conversation, private companies will inevitably try to popularize proprietary e-book subscription models.

When it comes to the digital media market, there is no question that subscription streaming services are behemoths. When it comes to TV, movies, and music, subscription streaming services

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<sup>115</sup> See News Release, OFFICE OF AMY KLOBUCHAR, Senator Klobuchar Introduces Sweeping Bill to Promote Competition and Improve Antitrust Enforcement (Feb. 4, 2021), <https://www.klobuchar.senate.gov/public/index.cfm/2021/2/senator-klobuchar-introduces-sweeping-bill-to-promote-competition-and-improve-antitrust-enforcement>.

<sup>116</sup> See Panezi, *supra* note 15.

<sup>117</sup> See Meadows, *supra* note 86.1; See Goel, *supra* note 89.2.

<sup>118</sup> Jean M. Twenge et al., *Trends in U.S. Adolescents' Media Use, 1976-2016: The Rise of Digital Media, the Decline of TV, and the (Near) Demise of Print*, 8 PSYCH. OF POPULAR MEDIA 329 (2019); See also Larry Luxner, 'This is the best time in publishing ever,' says Markus Dohle, ATLANTIC COUNCIL (Mar. 10, 2021), <https://www.atlanticcouncil.org/blogs/new-atlanticist/this-is-the-best-time-in-publishing-ever-says-markus-dohle/>.

<sup>119</sup> Chris Meadows, *Of ebook legal restrictions: We need more FUD*, TELEREAD (Oct. 7, 2016), <https://teleread.org/2016/10/07/of-ebook-legal-restrictions-we-need-more-fud/>.

<sup>120</sup> See Meadows, *supra* note 86.1; See Goel, *supra* note 89.2.

like Hulu, Netflix, and Spotify have cornered the market.<sup>121</sup> There are multiple companies attempting to shoehorn a subscription service into the e-book market, but none have yet to catch on.<sup>122</sup> In 2013, Oyster and Scribd launched the first e-book subscription services.<sup>123</sup> Since then, Scribd has reached about 1 million subscribers—compared to 113 million Spotify and 158 million Netflix subscribers—and Oyster shut down in 2015.<sup>124</sup> Of course, the major player in e-book subscription models is none other than Amazon with its Kindle Unlimited service, though a recent estimate put their subscribership at about 3 million.<sup>125</sup>

Perhaps the main hinderance to e-book streaming services is the trepidation of major publishers, who often refrain from placing their e-books on subscription platforms out of fear for the legal backlash from authors and lack of a market.<sup>126</sup> Although, textbook publisher Cengage's subscription service could be a bellwether for consumer publishers to follow.<sup>127</sup> The Cengage Unlimited subscription service attracted lawsuits from authors claiming copyright infringement, but Cengage has navigated them unscathed—a good sign for consumer publishers toying with e-book subscription service licenses.<sup>128</sup> However, textbook publishers have already started moving towards a “digital-first” model due to the many academic advantages e-textbooks have over physical textbooks—advantages that do not exist in the retail book market.<sup>129</sup>

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<sup>121</sup> Sarah Perez, *Streaming services accounted for nearly 80% of all music revenue in 2019*, TECHCRUNCH (Feb. 26, 2020), <https://techcrunch.com/2020/02/26/streaming-services-accounted-for-nearly-80-of-all-music-revenue-in-2019/>; Sarah Whitten, *The death of the DVD: Why sales dropped more than 86% in 13 years*, CNBC (Nov. 8, 2019), <https://www.cnn.com/2019/11/08/the-death-of-the-dvd-why-sales-dropped-more-than-86percent-in-13-years.html>.

<sup>122</sup> Bill Rosenblatt, *Why Ebook Subscription Services Will Finally Succeed In The Coming Decade*, FORBES (Jan. 3, 2020), <https://www.forbes.com/sites/billrosenblatt/2020/01/03/why-ebook-subscription-services-will-finally-succeed-in-the-coming-decade/?sh=6bcc5d995dba>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Bill Rosenblatt, *Pearson's Digital-First Strategy Will Change How Students Get Textbooks*, FORBES (Jul. 20, 2019), <https://www.forbes.com/sites/billrosenblatt/2019/07/20/pearsons-digital-first-strategy-will-change-how-students-get-textbooks/?sh=3fa14ca65f30>.

But if consumer publishers do not choose to engage with e-book subscription services at some point, they may be forced to by authors who are now self-publishing their e-books. Through Kindle Direct Publishing, authors can publish an e-book in less than five minutes and have it on sale in a day.<sup>130</sup> Wisely, Amazon is providing authors with a highly cost-effective path to being published, and in exchange Amazon gets exclusive marketplace rights to the works.<sup>131</sup> Because it has become simple and cheap to self-publish an e-book, market demand for competing self-publishing services should begin to rise. At some point, multiple self-publishing platforms may emerge and use subscription-models for access to their exclusive catalog, akin to how competing video-media subscription services currently operate. Once e-book subscription services are popularized, publishers will have no choice but to join the fray.

Recently, Amazon launched a new self-publishing format aimed at mobile device readers called Kindle Vella.<sup>132</sup> This new format publishes serialized short fiction, and readers on the Kindle app can pay to unlock episodes of the stories they wish to follow; there will also be an option to “like” a story so users can see the most liked stories.<sup>133</sup> It would be no surprise if Amazon were to use an algorithm to personalize user experiences on Kindle Vella, a technique already used by social-media applications like TikTok.<sup>134</sup> In fact, a group of TikTok users, some with hundreds-of-thousands of followers, regularly drive book sales by creating videos recommending certain books under the hashtag “#BookTok”.<sup>135</sup> It is not hard to imagine the benefit to e-book sales if a consumer could buy an e-book directly from a popular social-media platform, rather than running to another source to purchase.

Though there is still an unaddressed difference between e-books and other digital media, and that is the device they can be consumed with. Any smart device has the capability of playing any

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<sup>130</sup> KINDLE DIRECT PUB., [https://kdp.amazon.com/en\\_US/](https://kdp.amazon.com/en_US/).

<sup>131</sup> *Id.*

<sup>132</sup> Calvin Reid, *Amazon Debuts Self-Published Kindle Vella Story Format*, PUB.WEEKLY (Apr. 13, 2021), <https://www.publishersweekly.com/pw/by-topic/digital/content-and-e-books/article/86072-amazon-debuts-self-published-kindle-vella-story-format-for-ios-devices.html>.

<sup>133</sup> *Id.*

<sup>134</sup> Elizabeth A. Harris, *How Crying on TikTok Sells Books*, N.Y. TIMES (Mar. 20, 2021), <http://www.nytimes.com/2021/03/20/books/booktok-tiktok-video.html>.

<sup>135</sup> *Id.*

video or music streaming service's media,. However, with books there are multiple e-readers, and they do not have interoperability.<sup>136</sup> Another step in increasing the popularity of e-book subscription services is to introduce interoperability between e-readers so that if a consumer changes their e-reader, they will not lose access to their preferred service. Recently, anti-trust legislation has been recommended to Congress that would mandate interoperability and data portability between services.<sup>137</sup> If or when all these factors come to fruition, the generation that has perfected home entertainment will likely embrace e-book subscription services.

### *B. E-commerce and the Utility of Physical Books*

Despite screens dominating our attention, or perhaps because of it, physical books still hold a special place in the heart of consumers. With physical books staying strong atop the book market while other physical medias have decayed, it seems books resemble a complementary model of media use. A complementary model is when a digital form of media has no effect on, or possibly increases interest in, the physical form, in contrast to the displacement model where digital replaces interest in physical.<sup>138</sup> Accordingly, 2020 trade book sales show hardcover and children's board books had 12.9% and 18.2% growth, respectively, in net sales; e-books were in between at 15.6% growth, relatively in line with physical.<sup>139</sup>

Unsurprisingly, e-commerce skyrocketed during the coronavirus, increasing by 32.4% from 2019 to 2020, driven by the lockdown keeping people at home and away from stores.<sup>140</sup> This market-vote of confidence in physical book drop-shipping led publishers to invest in innovative initiatives aimed at connecting retailers, readers, and authors, such as virtual author events.<sup>141</sup>

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<sup>136</sup> Chris Meadows, *House subcommittee proposes antitrust updates: Ebook interoperability boost?*, TELEREAD (Oct. 7, 2020), <https://tele-read.org/2020/10/07/house-antitrust-subcommittee-report-proposes-drastic-updates-to-antitrust-law/>.

<sup>137</sup> *Id.*

<sup>138</sup> Twenge, *supra* note 119.1, at 334.

<sup>139</sup> *Assoc. of Am. Publishers*, *supra* note 112.2, at 5.

<sup>140</sup> Annie Palmer, *Groceries and sporting goods were big gainers in the Covid e-commerce boom of 2020*, CNBC (Feb. 19, 2021), <https://www.cnbc.com/2021/02/19/e-commerce-surged-during-covid-groceries-sporting-goods-top-gainers-.html>.

<sup>141</sup> *Bertelsmann*, *supra* note 112.3, at 9.

One such innovative platform is talkshoplive, an e-commerce site which combines live streaming and home shopping.<sup>142</sup> On talkshoplive, authors livestream with a buy-button built into the video, and autographed copies of their book are drop-shipped to consumers.<sup>143</sup> Through this “social-selling network,” celebrity-authors such as Dolly Parton, Alicia Keys, and Oprah Winfrey have replicated the experience of an in-person author signing.<sup>144</sup> During the livestream, users can even chat with the author via a message box, and the author can see the message and respond in real time.<sup>145</sup> As society becomes more isolated and tech-reliant, innovative e-commerce platforms such as this are going to be the new gold-rush in the steadfast physical book industry.

## VI. CONCLUSION

As technology advances, so do the challenges facing copyright laws in publishing. Our current laws do not adequately address mass digitization and lending, so courts have had to retrofit them—and have thus done so at the expense of the copyright holders. In *Hachette v. Internet Archive*, mass digitization has perhaps reached its nadir with Controlled Digital Lending and the National Emergency Library. Whichever way *Hachette* is decided, publishers and copyright holders are already working to restrict access to their books to preserve the retail market. Now lawmakers are challenged with balancing the rights of the copyright holders with the rights of consumers. These copyright cases, the dawn of digital nativism, and the coronavirus pandemic are combining to shape how we will consume books in the future.

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<sup>142</sup> TALKSHOPLIVE, <https://talkshop.live/>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*