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# Implications for Digital Lending and Copyright in Landmark Fair Use Case

In *Hachette Book Group, Inc. v. Internet Archive*, the United States Court of Appeals for the Second Circuit addressed whether Internet Archive's practice of scanning print books and lending them digitally without publisher permission constitutes fair use under the Copyright Act. The central issues involved the right of reproduction and the fair use defense, with the court ultimately affirming the district court's decision against Internet Archive.

The court first analyzed the right of reproduction, emphasizing that the Copyright Act grants the copyright holder the exclusive right to reproduce a work. While Internet Archive properly acquired copies of the print books to be digitized, Internet Archive scanned entire books and offered digital copies without obtaining permission from the publishers, infringing on this exclusive right. While Internet Archive argued that its actions were justified under the fair use doctrine, the court rejected this claim, focusing on the four statutory fair use factors: purpose and character of the use, nature of the copyrighted works, amount and substantiality of the portion used, and the effect on the potential market for the copyright works. 17 U.S.C. § 107.

Regarding the purpose and character of the use, the court found that Internet Archive's digitization of books was non-transformative, as it merely replicated the original works in a different format without adding new meaning or commentary. The process of digitizing the books from print is not transformative, but created derivative works of the originals. The court emphasized that a transformative use must add something new beyond mere duplication, and here, Internet Archive's actions failed to do so. Although Internet Archive is a nonprofit, its activities had a commercial dimension, as it solicited donations and linked users to a commercial partner for book purchases.

The court considered the nature of the copyrighted works, noting that the scanned books were creative, published works, which are closer to the core of copyright protection. This factor weighed against Internet Archive, as it generally limits the application of fair use to creative works.

In examining the amount and substantiality of the portion used, the court determined that Internet Archive copied the entirety of the works, which is disfavored under fair use analysis. Although copying an entire work may sometimes be permissible for transformative purposes, Internet Archive's lack of transformation and direct substitution of the original books weakened its fair use defense.

Finally, the court assessed the effect of Internet Archive's actions on the market for the copyrighted works. The court concluded that the digital lending practices harmed the publishers' ability to license their works and sell eBooks. By providing free digital copies, Internet Archive undermined the market for licensed eBooks, which directly competes with the publishers' authorized versions.

The Second Circuit affirmed that Internet Archive's reproduction and distribution of digital copies violated the publishers' rights under the Copyright Act and that the fair use defense did not apply.

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