

Opening Up Content in HathiTrust: Using HathiTrust Permissions Agreements to Make Authors' Work Available

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Background note: HathiTrust is a repository based at the University of Michigan for the digitized content of some of the nation's great research libraries. Content is growing daily and already contains more than 5.6 million volumes. Works in the public domain are open to all researchers—whenever and wherever they may be. Access to materials still in copyright is governed by copyright law and permissions granted by individual rights holders. Works that HathiTrust partners do not have rights to make available are not made available—or are made available under very limited circumstances, such as for certified users with disability who need to make use of a screen reader in order to access materials. This article is about steps put in place by the University of Michigan Library to empower authors to open up access to the in-copyright titles that are deposited in the HathiTrust repository.

At the University of Michigan Library, efforts to maximize the amount of legally accessible material in HathiTrust have brought renewed attention to the options available to authors as copyright holders of works. Many scholarly works are out of print and commercially unavailable, thus as a practical matter a tremendous amount of information, thought, and knowledge is unavailable to today's scholars and students. Print runs for monographs are expensive and historically rather small. Articles, if available at all, are typically accessible only to those people affiliated with a research library that can sustain expensive subscriptions and licenses.

HathiTrust seeks ways to open as much content as legally possible with an overarching philosophy consistent with a research library's commitment to inquiry and concurrent needs for preservation and access, with all of their parallel complexities. Simply, the library is looking for ways to educate scholars



HathiTrust Partners

HathiTrust membership currently consists of the member libraries of the Committee on Institutional Cooperation (CIC), the University of California system, Columbia University, and the University of Virginia, but is open to interested research libraries internationally. Current institutions include:

- California Digital Library
- Columbia University
- Indiana University
- Michigan State University
- Northwestern University
- Ohio State University
- Penn State University
- Purdue University
- University of California, Berkeley
- University of California, Davis
- University of California, Irvine
- University of California, Los Angeles
- University of California, Merced
- University of California, Riverside
- University of California, San Diego
- University of California, San Francisco
- University of California, Santa Barbara
- University of California, Santa Cruz
- University of Chicago
- University of Illinois
- University of Illinois at Chicago
- University of Iowa
- University of Michigan
- University of Minnesota
- University of Wisconsin—Madison
- University of Virginia

See the HathiTrust Web site for information about how to get involved: <http://www.hathitrust.org/join/>.

about their rights, to help them exercise copyrights they may have long after a book is published and is out of print, to increase awareness as to how these rights can be availed to give their books new life. For many of these books—and their authors—this is a renaissance in the true sense of rebirth.

Past Practice for Copyright Assignment

Scholars typically assign or transfer copyrights to their works to publishers in order to gain the reputational benefit of publication, peer-review resources, copyediting, marketing, and design for their work. All of these benefits can be more significant for academics than any direct expectation of monetary reward in the form of royalties or fees from publishers, but sales are also important for many. In addition to assigning copyright to the original scholarship, authors are typically expected to obtain and pay for permissions, to reproduce images or other copyrighted material in their work, provide documentation of permissions to their publishers, as well as sign a “hold harmless” agreement. Even though suits against scholarly authors by their publishers are almost unheard of, technically, authors are contractually liable for any flaws in their chain of permissions.

Publishers absolutely need these assurances, yet this seems a significant administrative and legal burden for many writers. Scholarly writers often express frustration at the administrative burden and the anxiety associated with obtaining permissions that a publisher will find adequate. A corollary of this is a certain understandable conservatism or fear that may lead to a reduced exercise of legitimate fair uses. Many of the efforts to engage academics in

open access today are in response to these concerns. At its foundation, the issue for scholarly authors and their readers is simply meaningful access to out-of-print and unavailable works.

Opening Content through MPublishing

Thinking about authors, publishers, and long-term preservation and access as an ecosystem pervades libraries and is certainly evident within the newly created MPublishing group at the University of Michigan Library.

To create MPublishing, the library brought together the Scholarly Publishing Office, University of Michigan Press, Deep Blue (the university's institutional repository), administration of the Text Creation Partnership, and the Copyright Office under the leadership of a new Associate University Librarian for Publishing, Maria Bonn.

One example of MPublishing's ecosystem approach is demonstrated by Jim Ottaviani, who directs Deep Blue and works tirelessly to engage campus authors, to help them deposit their work in Deep Blue, and to encourage open access on a practical level.

The University of Michigan's Scholarly Publishing Office is developing an authors' reprint service for sales (essentially at or just above cost), digital access, printing on the Espresso Book Machine, or distribution via Amazon.

In addition to committing the majority of its scholarly titles to be full-text viewable within the HathiTrust, the University of Michigan Press has welcomed the use of Creative Commons licensing by its authors to encourage wider distribution and access to the author's work.

MPublishing is also exploring ways to engage with open educational resources and open courseware with Open Michigan (based at the University of Michigan Medical School).

For more details, visit the MPublishing Web site <http://www.lib.umich.edu/mpublishing/>.

Enter HathiTrust

Over the last year or so, authors began to contact the University of Michigan Library, requesting that HathiTrust open the full text of their works for public access. This interest corresponded to the increased visibility of the titles resulting from public access to the bibliographic information available through HathiTrust. In response, the University of Michigan Library developed a simple agreement form for HathiTrust that allows HathiTrust to obtain permission from the copyright holder to make digital copies and reproduce the full text in HathiTrust's repository without restriction.¹

This short agreement lets the author retain all of his or her rights, and the grant of rights is non-exclusive. This allows HathiTrust to make and distribute reprints or other paper copies for noncommercial scholarly purposes. The author does need to promise ("warrant") that they are the copyright holder of the work and can authorize the proposed copying and distribution. HathiTrust asks the author to indicate whether they still possess the copyright, whether the publisher transferred ("reverted") the work back

to the author, or whether the copyright was obtained in some other way (such as transfer, gift, divorce decree, or inheritance). A space for "other" is included allowing the copyright holder to indicate his or her particular situation.

The agreement requires the author to confirm that the work does not violate the rights of others and that all permissions needed were obtained that would allow the full use of the work in HathiTrust, including the creation of digital copies. The agreement form includes such key information as name, mailing

address, e-mail address, and phone number, with a signature and date area. The agreement maintains administrative ease.

Rights-Reversion Clauses

This HathiTrust approach works where the author is, in fact, the copyright holder. Most authors transfer rights to publishers as discussed above; however, their contracts typically include provisions that allow the author to reclaim his or her rights if the book goes out of print. These rights reversion clauses typically look like this:

If after __ years following the date of publication, the Publisher shall advise the Author in writing that they find it necessary to discontinue publication, or if the Publisher fails to keep the work in print and neglect to reprint it within six months of the Author’s written request that they do so, then the Author shall have the right to terminate this agreement by written notice.

Clauses like this usually allow the publisher to elect to put the work back in print or alternatively revert the rights to the author. The author usually has the

...the cycle starts with and returns to authors, who can be newly empowered to exercise rights they do have....

opportunity to purchase printing plates if they exist at around 25% of cost and to purchase any remaining copies of the work at or below cost. However this kind of clause is somewhat outdated: consider language regarding “plates” as part of the printing process. As a practical matter, as

publishers are able to work with authors to develop publishing models for digital materials, this kind of provision may become obsolete as no work need ever go out of print.

The essential framework for rights reversion to the author is fairly simple though not often exercised.² The Copyright Office at the University of Michigan Library helps authors understand the provisions of their publishing contracts and discusses these provisions with authors who are interested in exploring their options for their work deposited in HathiTrust. Broadly, HathiTrust is looking for ways to make content widely available. Authors want citations, a sense of participating in an academic legacy, and renewed relevance. Some of the most enthusiastic voices come from retired faculty who want to leave a legacy through their written work that is independent of any expectation of payment.

Together, the libraries in the HathiTrust are thinking about how to consider

the larger framework of scholarly publishing and how it supports scholarship and society. How can HathiTrust think about new roles and different funding models to sustain the stewardship of intellectual resources? The academic in the ivory tower may be a romantic and outdated image—especially as academics can sit in their towers (well, cubicles) and communicate globally with ease.

Strategies to Empower Authors

John Wilkin is the University of Michigan Library's Associate University Librarian for Library Information Technology and Executive Director of HathiTrust. Wilkin says that "one of the more gratifying parts of building HathiTrust is bringing together the monographic works of our own scholars, of the stars at our research institutions. As the initiative has gained recognition, faculty from universities around the world have sent in permissions forms to open their works. Being able to permit broad access to these works feels like the epitome of scholarly communication."

HathiTrust and its partners hope that research libraries will think about how they can leverage their relationships with their authors to do novel things in conjunction with their repositories, especially in the area of author reprints. HathiTrust tries to think creatively and identify opportunities across activities; ideas sometimes come simply from sharing a cup of coffee. As individuals and institutions, librarians and libraries often maintain longstanding professional and personal relationships with current and retired faculty. Over time, personal contact with a faculty member can generate significant contributions—for example, gaining their permission to open all the content where they have the authority to do so. The experience of HathiTrust confirms that the cycle starts with and returns to authors, who can be newly empowered to exercise rights they do have and to be active participants in the global distribution, preservation, and access to their work as never before.

¹ The agreement form is listed with other rights information on the HathiTrust Web site http://www.hathitrust.org/rights_management.

² As a separate matter, Section 203 of the US Copyright Act provides for termination of transfers and licenses granted by the author—essentially, certain limited opportunities to "revert" transferred rights in very specific situations. Interestingly this provision is the focus of a recent *Federal Register* from the US Copyright Office. See the request for comments, "Gap in Termination Provisions; Inquiry," *Federal Register* 75, no. 59 (March 29, 2010): 15390–15391, <http://www.copyright.gov/fedreg/>.

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