



Via Email

April 10, 2020

Senator Thom Tillis
Chairman, Subcommittee on Intellectual Property
United States Senate Committee on the Judiciary
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Tillis,

Thank you for your letter of April 8th and your interest in the National Emergency Library. I would like to take this opportunity to explain more about this effort and address some of the concerns raised in your letter.

The Internet Archive is a 501(c)(3) nonprofit and a library recognized by the State of California. Our doors have been open for nearly twenty-five years, and we have been making digitized versions of books available to those with print disabilities and lending them out in a “one reader at a time” manner for almost a decade. Our digital books are protected using the same technical protections that publishers use to ensure that readers only have access to a book for the two-week period of their loan, and further copies cannot be made.

The National Emergency Library was developed to address a temporary and significant need in our communities—for the first time in our nation’s history, the entire physical library system is offline and unavailable. Your constituents have paid for millions of books they currently cannot access. According to National Public Library survey data from 2018-2019, North Carolina’s public libraries house more than fifteen million print book volumes in three-hundred twenty-three branches across the State.¹ Because those branches are now closed and their books are unavailable, the massive public investment paid for by tax-paying citizens is unavailable to the very people who funded it. This also goes for public school libraries and academic libraries at community colleges, public colleges and universities as well. The National Emergency Library was envisioned to meet this challenge of providing digital access to print materials, helping teachers, students and communities gain access to books while their schools and libraries are closed.

¹ <https://statelibrary.ncdcr.gov/ld/about-libraries/data/library-statistics>

We acknowledged from the outset that we would not be able to meet everyone's needs; our collection, at 1.4 million modern books, is a fraction of the size of a large metropolitan library system or great academic library. The books we have digitized were acquired with a focus on materials published during the twentieth century, the vast majority of which are not commercially available in electronic form ("e-book"). No books published in the last five years are in the National Emergency Library; for access to those books, readers and students can continue to turn to services like OverDrive and Hoopla. However, OverDrive and Hoopla only have access to e-books. They do not have access to the paper books sitting inaccessible on library shelves and schools. That is where the National Emergency Library fills the gap.

In an early analysis² of the use we are seeing what we expected: 90% of the books borrowed were published more than ten years ago, two-thirds were published during the twentieth century. The number of books being checked out and read is comparable to that of a town of about 30,000 people. Further, about 90% of people borrowing the book only looked at it for 30 minutes. These usage patterns suggest that perhaps that patrons may be using the checked-out book for fact checking or research, but we suspect a large number of people are browsing the book in a way similar to browsing library shelves.

Our focus is on helping students and teachers, and from the feedback we've received within just two weeks, the National Emergency Library is meeting a very real need in our educational community, as evidenced by this message from a middle-school teacher in New Mexico:

I teach all of the 6th, 7th and 8th grade students in my district, and Quarter Four (the time we are in right now) is set aside for a novel study. I cannot pass out our classroom sets of novels and was looking for a way for students to read the books digitally. Your site is a Godsend. Thank you for your help.

We also understand that authors are being impacted by this global pandemic, and we have been engaging in a dialog with authors around the National Emergency Library. Some have expressed concern about recently published books or books that are being released this year. As noted above, such books are not part of the National Emergency Library. Moreover, when we launched the National Emergency Library we urged people in a position to buy books to do so. We were also clear that any author who did not want a book in the Library need only to send us an email³ and we have responded to them quickly. This is contrary to the process claimed by the Authors Guild, which asserts that authors must send us a formal DMCA notice.⁴ We have

² <http://blog.archive.org/2020/04/07/the-national-emergency-library-who-needs-it-who-reads-it-lessons-from-the-first-two-weeks/>

³ <http://blog.archive.org/2020/03/24/announcing-a-national-emergency-library-to-provide-digitized-books-to-students-and-the-public/>

⁴ <https://www.authorsguild.org/industry-advocacy/tell-internet-archive-to-remove-your-books-from-the-so-called-national-emergency-library/>

also had authors contact us directly to have their book included in the National Emergency Library because they want their work to be part of this equitable approach to lending while libraries are closed.

You raise the question of how this comports with copyright law. Fortunately, we do not need an “emergency copyright act” because the fair use doctrine, codified in the Copyright Act, provides flexibility to libraries and others to adjust to changing circumstances.⁵ As a result, libraries can and are meeting the needs of their patrons during this crisis in a variety of ways.⁶ The Authors Guild, the leading critic of the National Emergency Library, has been incorrect in their assessment of the scope and flexibility of the fair use doctrine in the past⁷ and this is another instance where we respectfully disagree.

We would like to thank you and your staff for your diligence and are available for a further conversation on this subject. We welcome further discussion on these topics including what new legislation may be needed to preserve and extend the role of libraries in the digital age. We recognize that in our haste to respond to the urgent needs of teachers, students, and librarians, we did not do enough to engage with the broader information ecosystem, like authors, publishers and policymakers. We are engaging in those conversations now and we would welcome your participation in discussions about how to meet the urgent access needs of our country during this crisis and beyond.

Respectfully,
Brewster Kahle
Founder and Digital Librarian

cc: Brad Watts, Chief Counsel
Senator Thom Tillis

Elliot Tomlinson, Counsel
Senate Judiciary Committee, Intellectual Property Subcommittee

⁵ 17 U.S.C. 107

⁶ A few examples of librarians, teachers and others relying on fair use to translate various research and classroom functions online during the COVID19 pandemic include the HathiTrust’s Temporary Emergency Access Service (available at: <https://www.hathitrust.org/ETAS-Description>), Reading Aloud: Fair Use Enables Translating Classroom Practices To Online Learning (available at: <http://infojustice.org/archives/42134>) and the Public Statement of Library Copyright Specialists: Fair Use & Emergency Remote Teaching & Research (available at: <http://infojustice.org/archives/42126>).

⁷ See *Authors Guild, Inc. v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015) and *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014).