

Where *Authors Guild* v.  
*HathiTrust* Might Go

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# Two Lawsuits

- *Authors Guild (2005)*
  - v. Google
  - commercial
  - scanning & snippets
  - “class action”
  - seeks damages
- *HathiTrust (2011)*
  - v. libraries
  - non-commercial
  - scans + orphans
  - individual
  - seeks injunction

# Procedural problems

- Sovereign immunity
- Laches
- Standing

# Outcome 1: shutdown

- Authors Guild runs the table
  - Scanning = infringement
  - Existing copies impounded
  - Public-domain scans in limbo
- Chilling effect on scanning projects

# Outcome 2: it's the uses, stupid

- Scanning *per se* is legal, but further uses are tightly restricted
  - Snippet display is out
  - Orphan reuse even more out
- Purely archival and preservation-oriented projects can continue, but no patron-facing “consumptive” uses

# Outcome 3: split decision

- Google loses, libraries win
  - Possibly not on a logical distinction
- In theory, good news for libraries ...
  - ... but if Google quits the field?

# Outcome 4: *de minimis non curat lex*

- Wholesale display isn't okay, but scanning, indexing, automated uses, etc. are
- Return to the *status quo ante* before the HathiTrust Orphan Works Project
- This is good news for libraries, right? Right?

# Outcome 5: the elephant triumphant

- HathiTrust wins across the board
- Full speed ahead for Orphan Works Project
- Lots of new possibilities ...
  - ... but also new uncertainties



# Outcome 6: all I got was this lousy t-shirt

- Google wears down the Authors Guild
- The *HathiTrust* suit founders on procedure
- Projects underway continue
- But the clouds overhead remain

# If I had to guess

- Scanning will continue, possibly with the blessing of the legal system
- Indexing and snippet display will be regarded as likely to be legal
- This is not going to open the orphan works floodgates