

TWUC AT COURT: AN UPDATE FROM THE CHAIR



Greg Hollingshead

photo by Kim Griffiths

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One of the arenas in which TWUC seeks to defend your rights is the court of law. Recently we've been involved in three significant cases.

The first I'll mention you may have already read about, two weeks ago. On October 19th the Supreme Court of Canada handed down a good-news decision for writers. TWUC, with seven other writer as well as publisher organizations, intervened last year in the case of Crookes v. Newton in support of the position that a blogger should not be liable for defamation for providing a hyperlink to a website that contains defamatory material. The Court observed that the Internet cannot function without hyperlinks, and a defendant should not be held responsible for "a simple reference — like a hyperlink." This "would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential 'chill' in how the Internet functions could be devastating.... Making reference to the existence and/or location of content by hyperlink or otherwise, without more, is not publication of that content. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be 'published' by the hyperlinker." Hear hear.

The other two cases both involve not freedom of information but copyright. Both are ongoing.

On October 6th I reported to you that TWUC has joined the U.S. Authors Guild suit against the HathiTrust, a group of American universities headed by the University of Michigan that have pooled approximately seven million copyright books that they and Google have digitized without permission. They're currently working to identify and release "orphaned" ones in their entirety for free viewing, downloading, and printing by students and faculty in university libraries in the U.S. The titles include more than 40,000 Canadian books, most probably authored by Canadian writers. Can you imagine how difficult it is NOT to be able to find either the publisher or the author of a book? And yet the HathiTrust intends to take it upon itself to identify a significant number of these books — perhaps as many as a million! — as orphans. This is a project that we as authors must oppose.

Finally, your Chair is the affiant (a term he had never heard before) in an intervention in an appeal, by the provincial Ministers of Education (excluding Quebec) and Ontario's school boards, of a Copyright Board decision on the amount of copying of copyright material in K-12 schools that must be paid for. The application to intervene was made in September by TWUC and seven other writers' organizations (as the Writers' Coalition) to the Supreme Court of Canada. The Ministers of Education et al. are appealing Access Copyright's tariff for K-12 schools, a tariff approved by the Copyright Board and upheld by the Federal

Court of Appeal. The Ministers are claiming that the Copyright Board should have categorized much more copying in schools than it did as “fair dealing,” by which they mean that more should be exempted from payment. Although the Ministers and school boards opposed the intervention by our Writers Coalition, as well as that of other groups, we were given leave to participate, initially by filing a written argument. For Canadian writers, this is an extremely important copyright case that will give guidance on where users and rightsholders must draw the line between what is “fair dealing” and what can be controlled and licensed by authors, publishers and copyright collectives.

Wish us well, everybody.

A handwritten signature in black ink, appearing to read "Greg Hollingshead". The signature is fluid and cursive, with a long horizontal stroke at the end.

Greg Hollingshead