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OPINION

The Internet Archive Is a Cautionary Tale for Growing Nonprofits

A legal battle involving the organization behind the Wayback Machine shows why a nonprofit's ambition shouldn't come at the expense of its users.

By [Keith Porcaro](#) | November 20, 2024



INTERNET ARCHIVE

Over time, the services provided by the Internet Archive became a public resource, the author argues. Above, the organization's headquarters in San Francisco.

The most important nonprofit cataloging the internet lost a copyright case earlier this fall. The Internet Archive, best known for the Wayback Machine — a digital repository of billions of webpages dating back to 1996 — was found by a federal appeals court to have violated author and publisher rights by scanning and lending out electronic copies of books.

But for growing nonprofits, the real lesson from this case isn't about copyright. It's about what risks they choose to take, who bears the cost of these risks, and how organizations protect themselves from fallout. It's a story with relevance to any nonprofit providing a service that a community relies on.

Since its founding nearly three decades ago, the Internet Archive has gone from ambitious private effort to vital and irreplaceable public resource. The Wayback Machine is essentially the internet's memory.

Every day, a bit of the internet disappears: websites evaporate, organizations shutter, embarrassing statements from political candidates get memory-holed. The Wayback Machine archives it all for the public, including journalists, historians, and researchers. Even Google uses the Wayback Machine to display archived versions of search results. When a cyberattack shut it down for a few weeks in October, users got a glimpse into just how useful a service it is.

This transition to public resource sneaks up on many successful nonprofits. A private philanthropic project becomes a service that a community depends on and can't replace. The membership of a patient advocacy nonprofit expands to a point where those with the illness consider it critical to their care. An organization founded to help people get benefits becomes a key partner to state benefits programs. An archive grows.

When that happens, the risky bets that a small, plucky nonprofit might make without blinking an eye are now much more dangerous. There's more at stake — and more people who might be affected.

A Cautionary Tale

Here's how all of this played out at the Internet Archive: In March 2020, the organization launched the National Emergency Library, or NEL. Prior to the pandemic, the Internet Archive had made thousands of scanned books available to the public under something called controlled digital lending. If it had one physical copy of a book, one person at a time could check out the digital version.

Then suddenly, during the pandemic, the NEL dropped the "controlled" part. Multiple users could check out any book in the Internet Archive's collection without waiting.

By its own admission, the nonprofit moved in "internet time" to create the NEL, acting on a perceived need without consulting authors or publishers. After a group of major publishers filed a lawsuit on June 1, the NEL closed. But the legal case continued.

Copyright cases are expensive. A copyright owner can claim up to \$150,000 per violation, and when thousands of works are stored, that math can get ugly fast. In this instance, the Internet Archive reached a confidential monetary settlement with publishers, pending the outcome of any final appeal.

But the Internet Archive's legal problems aren't over. The notoriously litigious recording industry is now suing the organization over an obscure collection of digitized records. The damages could be as much as \$400 million, and a loss may "pose an existential threat to the nonprofit," according to *_Wired_*. Other copycat cases could follow. While donors helped the Internet Archive afford a settlement payout to resolve the NEL case, it might not be so lucky this time.

Growing Up

Not every nonprofit will become as large as the Internet Archive. But many successful nonprofits will one day find themselves managing resources people rely on: some essential or irreplaceable project, asset, or service. When they do, they may need to trade ambition for preservation. This can be a hard swap for organizations that want to dream big and keep funders happy. But such a move is often essential.

The Internet Archive offers a worst-case scenario for one project's risks leaving an entire organization vulnerable. The National Emergency Library may have been a good cause, but would you bet the memory of the internet on it?

One solution for organizations like the Internet Archive is to spin off projects into different nonprofits, which can help separate the project's operations, finances, and legal liabilities from the nonprofit's other bets. The Vera Institute of Justice, for example, has spun off at least 20 nonprofits as part of its broader criminal justice reform mission. As its former executive director argues, a spin-off might attract additional resources, build a more focused board, and develop new leaders to sustain the initiative over time.

Such a strategy also benefits users. Under one roof, the Internet Archive's various initiatives have different communities of people who depend on them. The people who badly needed a National Emergency Library may not be the same as those who rely on the Wayback Machine. Spinning off the Wayback Machine, for instance, could allow a board to be more closely aligned with its community, while empowering the Internet Archive to take on more daring legal cases and preservation projects without fear that the whole institution will crumble.

Backup Plan

The Wayback Machine and the Internet Archive are so vital because nothing lasts forever — not even nonprofits. That's why organizations also need a backup plan. After all, the need for the service could outlive the nonprofit that manages it.

Even the Internet Archive acknowledges this, stating in a recent report that it "cannot be the only mechanism for historical preservation." In an email to me, its founder, Brewster Kahle, said that "long term preservation is a crucial concern for all libraries, and for the Internet Archive in particular because its digital holdings require extra care."

In a worst-case scenario in which the Internet Archive was forced to close its doors, it could lean on its network of peer libraries and archives. As Kahle explains, “To aid long term preservation and access, the Internet Archive works with libraries in many countries to share in the responsibility of preserving digital collections.”

In the same vein, any nonprofit that offers essential services should think like an archivist and build a backup plan for its projects. That includes identifying similar organizations or community members who could assume control of key initiatives if the nonprofit is forced to close and laying the legal groundwork that would facilitate a smooth transition.

This doesn’t have to be complex. A nonprofit and a potential successor could start with an informal agreement — or memorandum of understanding— that captures the successor’s commitment and lays out the basics for how the successor might assume responsibility of an initiative. That may be all many organizations need.

Initiatives that own certain property, which includes assets such as data, code, or branding, could also establish a trust. Similar to Patagonia’s Purpose Trust, it can legally obligate a potential successor to continue pursuing the initiative’s purpose, and limit a successor’s ability to use its assets for other ends.

If this sounds a lot like a will, that’s because it is. And just like a will, a nonprofit succession plan should be built and maintained in times of good health. Waiting until a crisis or an actual closure may leave too little time for an orderly transition — and too few resources to carry one out.

A nonprofit project that becomes an essential service should be celebrated. But sustaining those services requires organizations to evolve, sometimes dramatically. Because as the Internet Archive case demonstrates, a resource doesn’t just belong to the organization that maintains it — it belongs to everyone who needs it.

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