



**AUTHORS ALLIANCE**  
2017 Annual Report





**BRIANNA SCHOFIELD**

Executive Director  
Authors Alliance



Our heartfelt gratitude goes to our members and allies for making our work possible.





# A Note From the Executive Director

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2017 was a bumper year for Authors Alliance's support and representation of a growing community of authors. We are pleased to share our educational and advocacy successes and to highlight what we have in store for 2018.

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This year culminated in the release of our newest guide, Fair Use for Nonfiction Authors. Designed to demystify fair use, the guide gives nonfiction authors the information they need to make confident fair use decisions. Likewise, our new Termination of Transfer tool unlocks the mysteries of the termination of transfer provisions of U.S. copyright law that give authors the right to get back copyrights signed away decades ago. And our accompanying guidance and templates help authors exercise that right. We continue to celebrate the open access and reversion successes of authors who have used our resources to take control of their works. We travelled the length of the country—and beyond—to share our resources with authors and answer their questions about contracts, copyright, and authors' rights.

In the policy arena, we advocated for authorial rights to integrity and attribution and encouraged the Copyright Office to recognize the right to revive and revise one's works. We spoke up for authors' fair use rights by petitioning for exemptions to laws that could otherwise prevent authors from making fair use of multimedia content in e-books. In a high-profile fair use case, we gave voice to academic authors whose motivation to write and publish scholarly works is grounded in their desire to share and

advance knowledge. And we voiced our support for modernizing copyright recordation so that authors can increase the compensation for and dissemination of their works, and so that their works are less likely to become orphaned.



We have ambitious plans for 2018, including a much-requested guide to help authors decipher publishing contracts and negotiate for author-friendly publication terms. We will continue our advocacy for a robust interpretation of fair use and defend educational uses of copyrighted material. We have resources underway to help authors make their works accessible to all learners. And we will continue to fulfill our mission to support authors who write to be read.

Thank you to our members and allies for your commitment to authorship for the public good. Your support makes our work possible.



# Our Issues



## Managing Authors' Rights

We help authors understand and manage the rights necessary to make their works broadly available now and in the future.



## Authorship Law & Policy

We provide education and advocacy for sound policies that help authors create their works, make them accessible to the public, and ensure their preservation.



## Reaching Audiences

We help authors identify tools, techniques, and partners that can help them get and keep their works in the hands of readers.



## Reputation and Integrity

We work to ensure that authors can make their works widely available without sacrificing their interests in reputation and integrity.



# Our Mission

The mission of Authors Alliance is to further the public interest in facilitating widespread access to works of authorship by assisting and representing authors who want to disseminate knowledge and products of the imagination broadly. We provide information and tools designed to help authors better understand and manage key legal, technological, and institutional aspects of authorship in the digital age. We are also a voice for authors in discussions about public and institutional policies that might promote or inhibit the broad dissemination they seek.





# Our People



## Board of Directors

### Pamela Samuelson

Pamela Samuelson is a Professor of Law and Information at the University of California, Berkeley and a Co-Director of the Berkeley Center for Law & Technology.

### Molly Shaffer Van Houweling

Molly Van Houweling is a Professor of Law and a Co-Director of the Berkeley Center for Law & Technology at the University of California, Berkeley, School of Law. She serves as Chair of the Board of Directors of Creative Commons.

### Jeffrey MacKie-Mason

Jeffrey MacKie-Mason is the University Librarian and Chief Digital Scholarship Officer at the University of California, Berkeley. He has joint appointments as a professor in the School of Information and in the Department of Economics.

## Authors Alliance Staff

### Brianna Schofield

Brianna Schofield is the Executive Director of Authors Alliance. She is a copyright attorney licensed to practice in California.

### Carla Hesse

Carla Hesse is a Professor of History and Dean of Social Sciences at the University of California, Berkeley. A fellow of the American Academy of Arts and Sciences since 2009, she is a specialist in modern European History and the history of communication.

### Thomas Leonard

Thomas Leonard is University Librarian Emeritus and a Professor of Journalism Emeritus at the University of California, Berkeley. He has served as the President of the Association of Research Libraries and as an Associate Editor of American National Biography.

### Erika Wilson

Erika Wilson is the Communications & Operations Manager at Authors Alliance and staffs the office in downtown Berkeley.



# Fair Use Resource

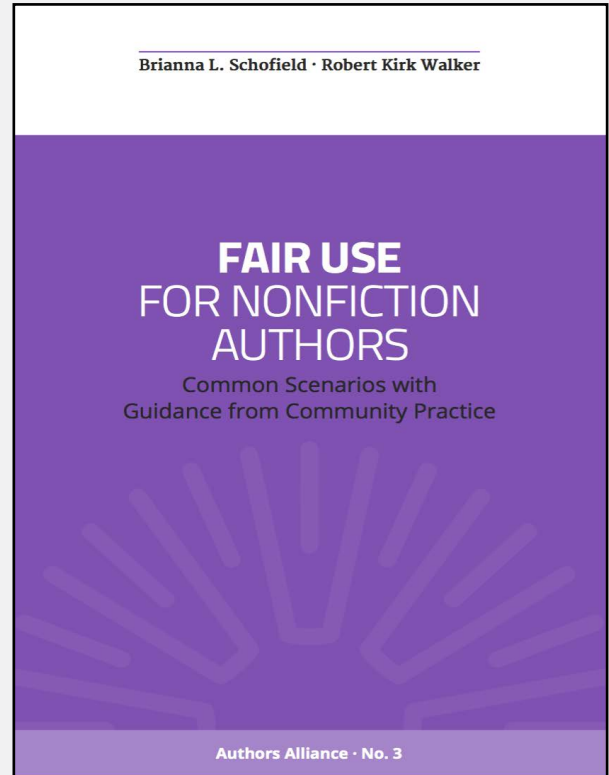
## Demystifying Fair Use: A New Guide for Nonfiction Authors

In November, we celebrated the publication of the newest addition to our series of educational handbooks: *Fair Use for Nonfiction Authors: Common Scenarios With Guidance from Community Practice*, designed to help nonfiction authors make confident fair use decisions when incorporating source materials into their works.

Inspired by the work of Peter Jaszi and Patricia Aufderheide at the Center for Media and Social Impact at American University, the third volume in our growing library of educational resources focuses on best practices for nonfiction authors—from biographers to science writers, historians to literary critics, memoirists to academics, and beyond—who depend on the use of copyrighted materials in their work.

The guide addresses three common situations faced by nonfiction authors in which fair use may apply: 1) criticizing, discussing, or commenting on copyrighted material; 2) using copyrighted material to support a point made in the author's work; and 3) using copyrighted material for non-consumptive research. It features extensive input from non-fiction authors, copyright experts, and partner organizations, as well as analysis of existing case law.

The guide also addresses the most frequently asked questions about fair use and clears up some common misconceptions about when it might apply. For example: Can you still claim fair use if you



are using material that is highly creative? What if you want to use copyrighted material for commercial purposes? Does fair use apply to copyrighted material that is unpublished? For answers to these questions and more, [download the guide](#) today.

We are grateful to the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley for help with researching and drafting and to the American Council of Learned Societies and the Association for Information Science and Technology for endorsing the guide.



This work draws on many sources to provide one of the most comprehensive presentations available concerning fair use in nonfiction works. Anyone who is involved in the creation of nonfiction works should read this thoroughly.

- Michael Donaldson, Founding Partner, Donaldson + Callif





# Fair Use Advocacy

## Academic Authors' Perspectives on Educational Fair Use

We continue to speak out in defense of fair use. In February, we filed an [amicus brief](#) with the 11th Circuit in *Cambridge University Press v. Albert* arguing that incentives to write and publish scholarly works will not be impaired by a ruling that nonprofit educational uses of chapters from scholarly books is fair use.

Our brief explained that academic authors' primary motivation to write and publish scholarly works is grounded in their desire to share and advance knowledge. We featured several authors with works at issue in the case who support the fair use defense.

I want my work to be read as widely as possible. I have no trouble with articles or individual chapters of my book being copied for use in the classroom. In fact, I welcome it.

”

- Carolyn Ellis  
Professor of Communication at University of Southern Florida, Authors Alliance member, and author of a book at issue in the case

## Reasonable Exemptions to Breaking Digital Locks

Since our founding, Authors Alliance has promoted reasonable exemptions to the DMCA's prohibition against circumvention of technological measures that control access to copyrighted works.



Over the years, we've supported exemptions to improve access to copyrighted works by people with print disabilities and exemptions that allow nonfiction authors to use film clips in e-books offering film analysis. We commend the Copyright Office's recommendation to renew these and other exemptions, as well as its efforts to streamline the renewal process.

That said, the current exemption for multimedia uses in e-books does not go far enough. Even though fair use allows authors to use copyrighted video in their e-books in certain situations, Section 1201 still restricts some authors' access to such material. That's why we are petitioning for a modified exemption that will allow all authors of e-books to access the clips they need from DVDs, Blu-ray discs, and digital streaming services.

In December, together with our friends at the Organization for Transformative Works, [we submitted comments](#) to the U.S. Copyright Office calling for a modified exemption that:

- Allows for lawful circumvention of digital rights management ("DRM") for use in fiction multimedia e-books;
- Allows for circumvention of DRM for use in multimedia e-books on other subjects besides film analysis; and
- Removes limitations that refer to screen-capture technology.

We look forward to building on the success of our previous efforts in this space and reporting on the outcome in 2018.



# Termination of Transfer Tool

**IS THE ToT TOOL USEFUL TO ME?**

The Termination of Transfer (ToT) tool helps authors understand the termination of transfer provisions of U.S. copyright law, which allow authors to regain copyright to creative works they have previously signed away, even if their contracts say otherwise

**AUTHOR CREATES WORK**

Art Academic Literature Music Film

**AUTHOR TRANSFERS RIGHTS**

**TIME PASSES**

**AUTHOR TERMINATES TRANSFER TO GET RIGHTS BACK**

**AUTHOR GETS A SECOND CHANCE**  
to do things like share the work with the public or renegotiate a contract

MY WORK BY ME

## New Tool Launched at Rightsback.org

One of our signature achievements in 2017 was the launch of a new online tool at [rightsback.org](https://rightsback.org). The tool, created and jointly-stewarded with our partners at Creative Commons, is designed to help authors navigate the notoriously complex termination of transfer provisions of U.S. copyright law.

Authors who enter into publishing, recording, or other types of agreements involving their creative works are routinely asked to sign away their rights for the life of copyright—which generally lasts 70 years after the author dies in the United States. Fortunately, authors do have options if they come to regret these decisions and want to share (or renegotiate the terms of sharing) at a later date. The termination of transfer provisions, when exercised properly, let authors (or, in some cases, their family members) regain copyrights to creative works they may have signed away decades ago. The key feature that makes these rights so powerful is that termination rights can't be signed away. They apply "notwithstanding any agreement to the contrary."

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**Our tool helps authors understand if termination rights exist, and if not, when they may exist in the future.** ”

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Though these termination rights are an extremely powerful boon for authors, exercising them can be daunting. The law is complex and difficult to navigate, requiring attention to detail and careful timing. The termination process is only available within a five-year window, and it can only be exercised if notice is provided significantly in advance of the actual termination.

Our tool helps authors understand if termination rights exist, and if not, when they may exist in the future. The tool provides basic information about the eligibility and timing of termination rights based on user input, along with suggestions on next steps that authors may wish to take in securing rights.

With rights back in hand, authors have many options for getting their works in front of new audiences, from sharing their works with the public using a Creative Commons license to negotiating new agreements with publishers. We encourage you to check out the tool at [rightsback.org](https://rightsback.org)!





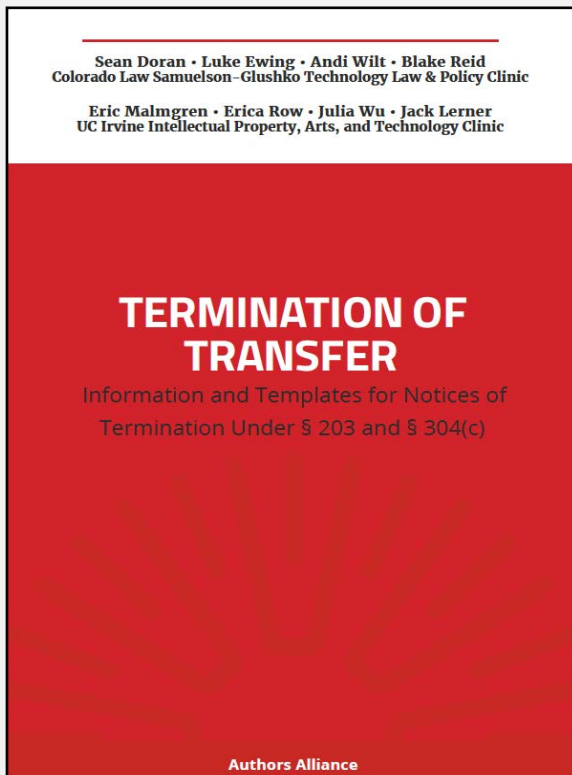
# Spotlight on Termination of Transfer

## Notice of Termination Templates Now Available

To complement our online Termination of Transfer tool, we developed guidance and templates for notices of termination.

To effectuate a termination right, authors need to provide notice to the party whose grant is being terminated and submit a copy of that notice to the U.S. Copyright Office. Our new guidance and templates help authors do just that. We extend our thanks to the Colorado Law Samuelson-Glushko Technology Law & Policy Clinic and the UC Irvine Intellectual Property, Arts, and Technology Clinic for their assistance with the development of these resources.

To access these templates, frequently asked questions about termination, termination news, and more, visit the new [Termination of Transfer resource page](#) on the Authors Alliance website.



Learn more about termination of transfer with our series of blog posts by copyright experts offering a deep dive into theory and practice.



### Graeme Austin

urges courts to think about the implications for authors' human rights when assessing policy dimensions of difficult cases, using termination as an example.

### Lydia Loren

explains why Congress included the significant right of termination in the Copyright Act, even if an author's contract purports to assign copyright "in perpetuity."



### R. Anthony Reese

discusses how copyright law has treated authors with same-sex partners less favorably than authors with different-sex partners.

### Julia Wu & Eric Malmgren

share how they grappled with the complex provisions of U.S. copyright law to develop the Termination of Transfer tool.





# Policy Advocacy

## Authors' Rights

In March, we submitted comments to the U.S. Copyright Office endorsing the idea that Congress should extend statutory protections for attribution (the right of an author to be credited as the author of her work) and integrity (the right of an author to prevent prejudicial distortions of her work).

Supporting authorial rights has been a longstanding issue for Authors Alliance. In our Principles and Proposals for Copyright Reform, we wrote that "attribution serves not only our interests as authors, but also the reading public's interest in knowing whose works they are consuming and society's interest in an accurate record of the intellectual heritage of humankind."

Dig in deeper with our "Spotlight on Moral Rights" series:



1

### [A Case for Authorial Rights](#)

We explain why it is in the interest of authors and the public for authorial attribution and integrity to be statutorily recognized in U.S. copyright law.

2

### [The Right to Revive & Revise](#)

We propose two additional authorial rights: the right to revive one's work if it is no longer commercially available and the right to revise one's work over time.

3

### [A Nuanced Approach](#)

We note that moral rights should be carefully cabined to prevent attribution and integrity rights from stifling onward creativity and speech.

## Other 2017 Policy Highlights

In addition to the DMCA, fair use, and moral rights, our other law and policy initiatives included:



A comment to the U.S. Copyright Office in support of [modernizing copyright recordation](#).



A comment to the House Judiciary Committee in support of [reforms to the Copyright Office](#).



Speaking out in support of [funding for the National Endowments for the Arts and the Humanities](#).



A joint letter to NAFTA negotiators in support of [transparency and balanced copyright policy](#).



# Featured Events

## AWP Conference

Authors Alliance traveled to Washington, DC for the 2017 Association of Writers and Writing Programs (AWP) conference. We presented a panel on "Demystifying Copyright: A Crash Course in the Law of Literature," featuring Brianna Schofield and intellectual property expert Rebecca Tushnet of Harvard Law School.



## Authors, Educators, Libraries, and Digital Accessibility Roundtable

Together with the Berkeley Center for Law and Technology and Silicon Flatirons, Authors Alliance convened activists, academics, technologists, and other stakeholders to discuss how to reduce gaps in the accessibility of digital works for people with disabilities. Although new practices, tools, and heightened awareness have increased the accessibility of digital creations, much still needs to be done. We look forward to working with the Colorado Law Samuelson-Glushko Technology Law & Policy Clinic to produce materials that will help authors to improve the accessibility of their digital works.

## Educational Copyright Conference

Authors Alliance was invited to speak at a conference on Educational Copyright at Tel Aviv University. The conference focused on recent cases challenging educational uses of copyrighted material and on lessons learned and alternative solutions moving forward. Brianna presented information Authors Alliance gathered in conjunction with our *amicus* brief in the Georgia State case, including how academic authors' incentives to publish support the fair use defense.



## Bay Area Book Festival

For the third year in a row, Authors Alliance was proud to be a part of the Bay Area Book Fest in downtown Berkeley. We hosted a table on the central lawn of the festival and fielded questions from authors about everything from contract terms to rights reversion to fair use. We are already looking forward to the next Book Fest in April 2018!

## Library Leaders Forum

Authors Alliance joined a two-day meeting at the Internet Archive focused on Open Libraries, a project to curate, digitize, and lend four million diverse and inclusive books through libraries across North America. Brianna was invited to join early adopters, partners, and stakeholders to share perspectives "from the field." She explained how many of Authors Alliance's initiatives, like rights reversion and termination of transfer, dovetail with Open Libraries' goal to unlock millions of books for broader access.





# Member Spotlight



**Amy Brand**  
Director, MIT Press

[DIGITIZING THE MIT  
BACKLIST:  
A NEW PARTNERSHIP  
WITH INTERNET  
ARCHIVE](#)

We interviewed Authors Alliance Advisory Board member Amy Brand about MIT Press' initiative to digitize its backlist in partnership with Internet Archive and highlighted how publishers can help make books more available.



**Ian Watson**  
Professor & OA Advocate

[MAKING IN-  
COPYRIGHT WORKS  
OPEN ACCESS:  
A REPORT FROM  
ICELAND](#)

In this Q&A, Professor Watson described his success in working with Icelandic authors to make their scholarly books newly discoverable by creating digitized editions and publishing them open access in HathiTrust.



**Tracee Lydia Garner**  
Novelist

[RIGHTS REVERSION  
SUCCESS STORY:  
TRACEE LYDIA  
GARNER](#)

Author Tracee Garner shared her rights reversion success story with us and explained how reversion enabled her to resume work on a planned trilogy of novels, due to be released with new edits and cover art in the spring of 2018.



When Authors Alliance was founded, I was very happy to be an inaugural member, and I think it continues to acquit itself very well in defending not just individual authors but the wider question of authorship and its role in the 21st century.

- Cory Doctorow  
Author, Activist, Journalist




photo by Paula Mariel Salschik  
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