



## A2P2 ISSUE BRIEF: CONTROLLED DIGITAL LENDING

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### ABOUT CONTROLLED DIGITAL LENDING

“Controlled digital lending” (CDL) is a model in which libraries digitize works in their collections and circulate the digitized title in place of a physical one. Under the CDL’s digitize-and-lend model, libraries make digital copies of scanned books from their collections available to patrons (the hard copy is not available for lending while the digital copy is checked out, and vice versa). A library can only circulate the same number of copies that it owned before digitization. Like physical books, the scanned copies are loaned to one person at a time and are subject to limited check-out periods. Additionally, the library must use technical measures to ensure that the digital file cannot be copied or redistributed.

Supporters of CDL believe that libraries can apply CDL to their collections in order to lend materials more effectively and fulfill their missions. According to proponents, CDL makes materials that have not circulated in decades more visible and accessible, provides more convenient and efficient delivery of library resources, and preserves and protects library collections.

**Read More:** [Controlled Digital Lending](#) website  
[Controlled Digital Lending Fact Sheet](#)

### IS CDL LEGAL?

Supporters of CDL argue that two main areas of copyright law support CDL when properly implemented: the fair use doctrine and the principle of exhaustion. Because there is no directly analogous case on point, supporters have developed a position statement to provide an explanation of how fair use and copyright exhaustion can work together to effectuate CDL practices. A white paper further elaborates on these arguments and provides additional risk factors and practical considerations to guide libraries seeking to implement CDL. Critics of CDL, on the other hand, argue that it infringes on copyright, does not fall under fair use, and is not supported by recent court decisions.

**Read More:** [Position Statement on Controlled Digital Lending](#)  
[A White Paper on Controlled Digital Lending of Library Books](#), D. Hansen and K. Courtney  
[Statement on Flawed Theory of Controlled Digital Lending](#), Association of American Publishers

## WHY DO SOME AUTHORS OPPOSE CDL?

Some authors' groups, notably the Authors Guild and the National Writers Union, have sharply criticized CDL. They argue that, in addition to being copyright infringement, CDL sharply reduces authors' income from e-books and undermines authors' incentives to bring their older works to new markets. In its statement against CDL, Authors Guild argues that "allowing libraries to digitize and circulate copies made from physical books in their collection without authorization, when the same books are available or potentially available on the market directly competes with the market for legitimate e-book licenses, ultimately usurping a valuable piece of the market from authors and copyright holders."

**Read More:** [Controlled Digital Lending is Neither Controlled Nor Legal](#), Authors Guild  
[Controlled Digital Lending](#), National Writers Union  
[Open Letter to Internet Archive About Controlled Digital Lending](#), Society of Authors

## WHY DO SOME AUTHORS SUPPORT CDL?

Authors Alliance supports CDL and points to the fact that many books—especially works with little to no commercial value—are unavailable online. Authors Alliance believes that system design choices and collection decisions, like selecting books that are orphaned (works for which the copyright owner cannot be identified or located), books that are out of print, or books that are non-fiction or primarily factual, enhance the fair use arguments that underpin CDL. In addition to being a reasonable interpretation of fair use, members of Authors Alliance argue that CDL helps to increase access to out-of-print and otherwise unavailable works, can alleviate the gaps in availability brought about by overly long copyright terms, and helps authors reach audiences. As the CDL website states, "one significant advantage of CDL is addressing the 'Twentieth Century Problem' of older books still under copyright but unlikely ever to be offered digitally by commercial services."

**Read More:** [Authors Speak Out in Favor of Controlled Digital Lending](#), Authors Alliance

## WHAT'S NEXT?

To date, twenty libraries, including the Boston University Libraries and the Denver Public Library, are included on a list of libraries participating in the [Open Libraries](#) program, which uses the [Internet Archive's CDL platform](#). As of September 2019, there is no pending litigation involving CDL. Authors Alliance will continue to monitor CDL developments and provide updates on significant developments.