



## A2P2 ISSUE BRIEF: LAWSUIT AGAINST INTERNET ARCHIVE

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### ABOUT HACHETTE BOOK GROUP ET AL. V. INTERNET ARCHIVE

On June 1, 2020, Hachette, HarperCollins, John Wiley, and Penguin Random House filed suit against the Internet Archive, arguing that making electronic copies of books available through Open Library and the National Emergency Library constitutes copyright infringement. The lawsuit takes aim at the Controlled Digital Lending (“CDL”) model and the Internet Archive’s National Emergency Library. The publishers allege that these lending models are not supported by any exception or limitation to copyright, such as library exceptions, fair use, or the first sale doctrine. Among other remedies, the publishers ask the court to enjoin the Internet Archive from engaging in these activities and to award statutory damages for each work infringed.

**Read More:** [Complaint in \*Hachette Book Group et al. v. Internet Archive\*](#)

### HOW DO CONTROLLED DIGITAL LENDING & THE NATIONAL EMERGENCY LIBRARY DIFFER?

CDL and the National Emergency Library are two distinct approaches to lending works, each with different copyright implications. Under the CDL 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. The Internet Archive relies on CDL to make many of its scanned books available through the Open Library.

The National Emergency Library expands on the CDL model by eliminating waitlists for books through at least June 30, 2020. The Internet Archive launched the National Emergency Library in March 2020 after libraries across the country closed in response to the COVID-19 outbreak, leaving their physical collections inaccessible to patrons. Unlike books made available through CDL, books available through the National Emergency Library are not subject to the “owned-to-loaned” ratio.

**Read More:** [A2P2 Issue Brief on Controlled Digital Lending](#), Authors Alliance  
[Internet Archive responds: Why we released the National Emergency Library](#), Chris Freeland

## WHAT ARE AUTHORS' GROUPS SAYING ABOUT THE LAWSUIT?

The Authors Guild has voiced its support for the lawsuit, alleging that the Internet Archive's Open Library and National Emergency Library threaten author income. The National Writers Union reiterated its view that CDL is a violation of copyright law and its call for a dialogue among authors, publishers, and librarians to reach a solution.

Authors Alliance has voiced support for the CDL model, which it argues helps authors share their creations with readers, promotes the ongoing progress of knowledge, and advances the public good. Authors Alliance has not taken a position on the National Emergency Library, but urges publishers and others to recognize that this is an extraordinary time of emergency and to be flexible about efforts to enable students, scholars, medical professionals, and the shelter-in-place public to read.

**Read More:** [Authors Guild Affirms Support for Copyright Infringement Lawsuit Against Internet Archive Brought by Four Leading Book Publishers](#), Authors Guild  
[Publishers Sue the Internet Archive for Scanning Books](#), National Writers Union  
[Authors Alliance Statement on Publisher Lawsuit Against Internet Archive](#), Authors Alliance

## WHAT'S NEXT?

The litigation is still in very early stages and it will be some time until there is a final decision in the case. Authors Alliance will monitor the litigation and provide updates on significant developments.