



AUTHORS  
ALLIANCE

WRITERS

**2020 Annual Report**

# A Note From the Executive Director

We are pleased to share the highlights of Authors Alliance's work in 2020 to promote laws, policies, and practices that enable authors to reach wide audiences. Inside, you'll find details of how we're helping authors leverage their rights to make—and keep—their works available in the ways they want.

Notwithstanding the challenges of 2020, we had a very full year! We were delighted to welcome our first staff attorney, **Rachel Brooke**, to our team. We created resources to help you keep abreast of the latest developments in copyright and fair use, we strategized with you to bring your out-of-print books back to life, and we celebrated with you when you secured author-friendly contract terms. We gave creators who care about discoverability and availability a voice

in the policy conversations that affect how their works are created, used, and shared.

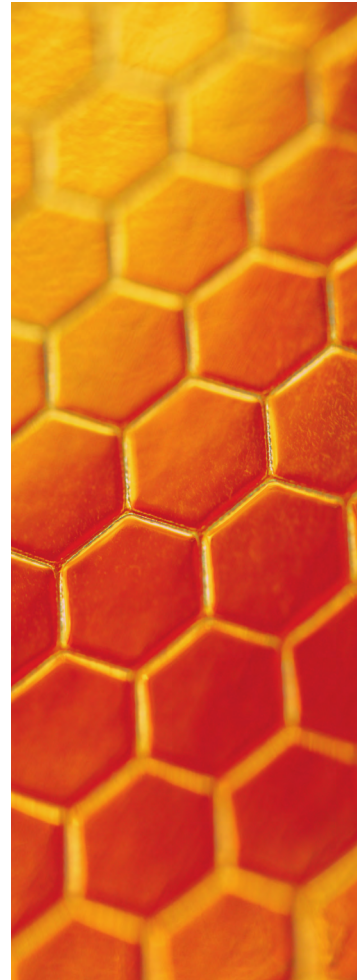
We have exciting plans for 2021, including a new guide to help authors navigate the legal issues that can arise when writing about real people, materials to facilitate permissions requests, and continued advocacy for exemptions to anti-circumvention laws that would advance text and data mining research.

Thank you to the thriving and engaged community of authors that make up our membership. We're honored to support you as you keep on writing to be read!

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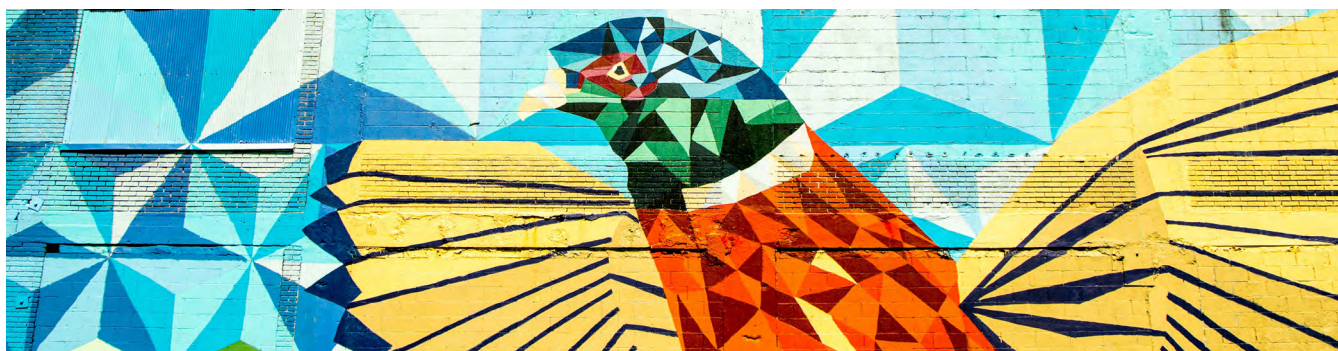
**Brianna Schofield**

Executive Director, Authors Alliance



# Our **Mission & Issues**

The mission of Authors Alliance is to advance the interests of authors who want to serve the public good by sharing their creations broadly. We create resources to help authors understand and enjoy their rights and promote policies that make knowledge and culture available and discoverable.



# Our Policy & Advocacy

## Petition for New Exemption to Enable Text and Data Mining Research

Authors Alliance, joined by the Library Copyright Alliance and the American Association of University Professors, **filed a petition** and **supporting comments** with the U.S. Copyright Office for a new exemption to section 1201 of the Digital Millennium Copyright Act (“DMCA”). Our proposed exemption would allow researchers to bypass digital rights management to conduct text and data mining research on literary works that are published electronically as well as motion pictures.

Text and data mining allows researchers and others to gain new insights into language, culture, scientific inquiry, and civic participation. For example, text and data mining can be used to examine the evolution of language over

time or to identify important but overlooked findings in scientific papers. While the possibilities of text and data mining are great, researchers face limitations in their ability to use the technique. Because of the DMCA’s prohibition on circumventing technological protection measures, researchers must either rely on collections of works created by others, which may be missing important, relevant works, or they must build their own collections, a prohibitively time-consuming process in which researchers manually scan printed books or capture video playback in real time. If this exemption is granted, researchers building their own collections of works will be able to bypass DRM measures to extract data directly from sources such as ebooks and DVDs.



### Termination of Transfer

Termination of transfer laws enable authors to regain rights in their works that they signed away—even if their contracts contain language to the contrary. We **supported** a U.S. Copyright Office proposal to develop templates and online tools for termination notices. Our comments invite the Office to look to our tools as a model and to count on us to support these efforts based on our experience developing termination resources.



### Online Publication

We **encouraged** the U.S. Copyright Office to adopt guidance stating that “publication” occurs when a work is first offered, under the rights-owner’s authority, for viewing online without technological restrictions that prevent downloading or other reuse. This position is supported by the statutory text, legislative history, case law, and policy goals of clear, bright-line guidance and promoting broad use of works.



### Open Access to Research

We **urged** the Office of Science and Technology Policy to adopt a federal policy that would make the results of all federally funded research immediately available for the public to freely access and use. Removing price and permission barriers is consistent with most scientific authors’ wishes; supports learning, teaching, research, and practice; and creates a more hospitable environment for scientific advancement.

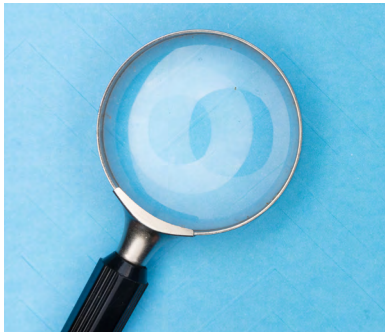
## Our **Policy & Advocacy** (continued)



### Copyright Small Claims

We **shared our concerns** about copyright small claims dispute provisions being considered by the Senate Judiciary Committee (*and subsequently signed into law in Dec. 2020*). We explained that while a well-designed small claims process could provide a faster and cheaper avenue to remedies for creators with limited resources, the copyright small claims dispute provisions in the bill draft were flawed and may well harm creators.

Our letter offered ways to improve the bill, including limiting availability of statutory damages, removing restrictions on grounds for judicial review, adding safeguards to deter abuse, and requiring respondents to affirmatively opt in to the small claims process.



### DMCA Reform

Sections 512 and 1201 of the Digital Millennium Copyright Act ("DMCA") were the focus of a recent U.S. Copyright Office **report** and Congressional **hearings**.

We **weighed in on DMCA reform** in response to questions from Senator Tillis. With respect to section 512, we cautioned against a notice-and-staydown regime, instead suggesting common sense reform to help creators in the digital age. With respect to section 1201, we advocated for new permanent exemptions and urged Congress to make clear in reforming legislation that there must be a nexus between the relevant use and copyright infringement for there to be a violation of section 1201.



### New Register of Copyrights

We **provided guidance** on the expertise needed by the new Register of Copyrights, encouraging the Librarian of Congress to appoint a Register who has a demonstrated willingness to take into account the diversity of viewpoints among creative communities, has the knowledge and skills to support the Office's modernization efforts, and places a high value on developing practices and policies that are informed by empirical data.

We congratulated Shira Perlmutter on her appointment as the new Register of Copyrights, and **shared how her record** gives us confidence that she will bring an open-minded and balanced approach to her new role.

# Author Successes

We celebrate the successes of authors who, armed with information about their rights, are empowered to make decisions that align with their goals for their works.



## Reviving Lost Works

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A 2018 *New Yorker* article called William Melvin Kelley “the lost giant of American literature,” but thanks to his daughter, his books are back in print. **Jesi Kelley** recounts her quest to republish her father’s books and how she successfully negotiated to design the covers.

## Promoting Access

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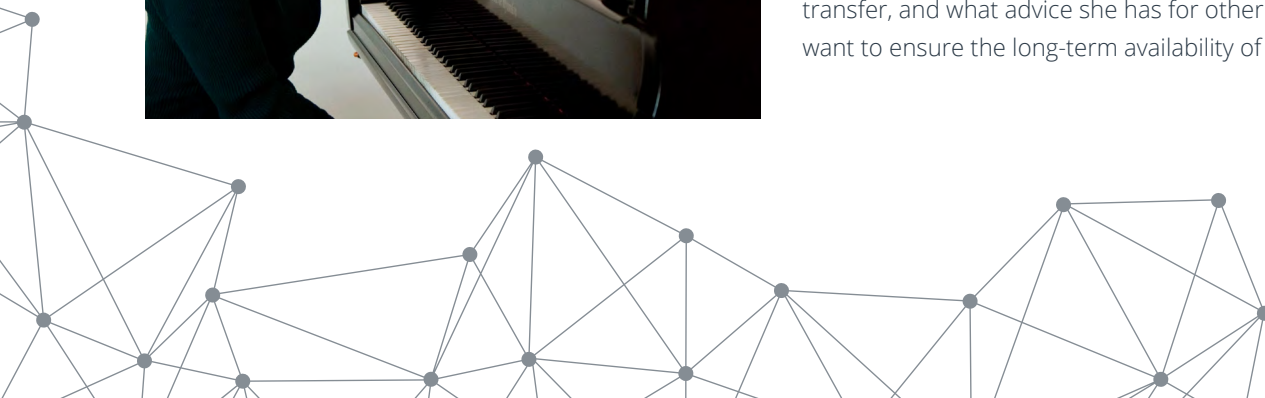
**Cynthia Willett and Julie Willett share** why a desire to make their research more accessible to those who lack resources (but often drive the conversation in trending fields) led them to the decision to publish their new book, *Uproarious*, under an open access license.



## Terminating Transfers

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**Dr. Elizabeth Vercoe explains** why she decided to get back the rights to six of her early musical compositions, the steps she took to initiate a termination of copyright transfer, and what advice she has for other authors who want to ensure the long-term availability of their works.



# Litigation Updates

## Authors Alliance Supports Controlled Digital Lending

We are following closely the lawsuit a group of commercial publishers initiated against the Internet Archive, alleging that making electronic copies of books available through Open Library constitutes copyright infringement. In part, the lawsuit takes aim at the Controlled Digital Lending (“CDL”) digitize-and-lend model, under which libraries make digital copies of scanned books from their collections available to patrons, subject to limitations. Like physical books, the scanned copies are loaned to one person at a time and are

subject to limited check-out periods. In addition, the original hard copy is not available for lending while the digital copy is checked out, and vice versa.

Authors Alliance has long been a supporter of CDL, which helps authors share their creations with readers, promotes the ongoing progress of knowledge, and advances the public good. We believe **fair use strongly supports CDL** and that the attempt to challenge it in the courts is without merit.

We are pleased to keep our members updated on cases of interest to authors:



### CC-NC License

In *Great Minds v. Office Depot*, the Ninth Circuit held that **Creative Commons “Non-Commercial” license terms** are not violated when a non-commercial user pays a for-profit enterprise, like a copy shop, to make copies at the non-commercial licensee’s direction.



### E-Reserves

A district court held that 37 of 48 infringement claims in *Cambridge University Press v. Becker* **are fair use**. The case involved allegations that Georgia State University faculty infringed publishers’ copyrights by assigning chapters from scholarly books to their students via secure course websites.



### Owning the Law

The Supreme Court of the United States issued a decision in *Georgia v. Public.Resource.Org*, holding that the annotations in Georgia’s Official Code are ineligible for copyright protection. The Court was guided by an animating principle that **“no one can own the law.”**



### Licensing Choice

A Federal Court of Appeal decision in *York University v. Access Copyright* confirms that educational institutions **can opt-out of the Access Copyright license**, representing a win for York and for a fair approach to copyright licensing that ensures users have licensing choice.



### Asserted Truths

In *Corbello v. Vali*, a case involving the hit Broadway musical, *Jersey Boys*, the Ninth Circuit held that historical facts—even those which an author later claims are untrue—are **not entitled to copyright protection** and cannot form the basis of a successful copyright infringement claim.



# New & Noteworthy Resources

## Distinguishing Trademarks from Copyrights: A Q&A for Authors

There is longstanding confusion between trademarks and copyrights, which can lead to disputes in author communities. Notably, in 2018 an author sparked controversy after she registered a trademark for the word “cocky” in connection with her series of romance novels and asked Amazon.com to take down all romance novels which used the word in the title. The trademark application was later surrendered and canceled following legal proceedings.

More recently, another author sought trademark registration for the word “dark,” used in the titles of a series of her books, though she also later abandoned the application. In light of these recurring issues, what should authors know about trademarks and copyrights, and how they might apply to their works? [Our recent Q&A](#) provides an overview of trademark rights and copyright and how these rights can arise in the publishing industry.



### Shaping Your Publication Contract

Book publication contracts deserve careful attention because their terms control the rights and obligations of authors and publishers for the life of the relationship between the parties, which can potentially last for decades. Our guide to [Understanding and Negotiating Book Publication Contracts](#) helps authors to understand common clauses in publication contracts, recognize how the terms might affect their goals for their books, and negotiate for author-friendly variations of those terms.

This year, in a two-part series, we applied the lessons from our guide to real-life contract terms to illustrate how authors can consider the implications of contract terms and formulate author-friendly variations that advance their interests. The [first post](#) addresses grant of rights clauses, subsidiary rights, and rights reversion. The [second post](#) covers options, non-competes, the look and feel of a work, and assignment of the agreement.



### Building Legal Literacies for TDM

In June, Authors Alliance joined other experts to teach at the Building Legal Literacies for Text Data Mining Institute. Our goal was to empower digital humanities (DH) researchers, librarians, and professionals to confidently navigate law, policy, ethics, and risk related to text data mining projects so they can more easily engage in this type of research and contribute to the further advancement of knowledge. [Lecture videos](#) are freely available, and an OER covering the course content is forthcoming.



### ICYMI

The law and ethics of copying: learn how [copyright infringement and plagiarism](#) differ



### FYI

Everything you need to know about [why and how to register your copyright](#)



## New & Noteworthy Resources (continued)

### Copyright in Fiction: Unprotected Elements, Characters, and Fair Use

In celebration of National Novel Writing Month, Authors Alliance published a series of blog posts about copyright issues relevant to fiction authors.

In the **first post**, we review categories of uncopyrightable subject matter affecting fiction writers: ideas, themes, and scènes à faire. These concepts are closely related, and the overarching justification for excluding them from copyright protection is that they are simply too general and standard to a particular genre or convention for an individual creator to be granted the temporary monopoly on them that copyright provides. Using examples involving *Jurassic Park*, *Harry Potter*, and *Monsters, Inc.*, we explain that though copying specific expression could constitute infringement, the similarity of general ideas, themes, or other elements of

a work which are standard in the treatment of a given topic cannot form the basis of an infringement claim.

The **second post** covers the copyrightability of characters in literary works. Reviewing cases involving characters from *Superman*, *Sherlock Holmes*, and *Inside Out*, we share how, as a general rule, the more well-defined and unique a character is, the more likely it is to be entitled to copyright protection.

The **final post** discusses issues in fair use and parody, reviewing how parody works as a form of comment and criticism in fiction, core purposes of fair use. While mimicking an original work is typically indicative of the kind of copying that can be infringement, in the context of parody, this similarity is essential for the parody to be successful.



#### Justice Amy Coney Barrett

To shed light on how the newest United States Supreme Court Justice, Justice Amy Coney Barrett, might rule in copyright cases, **we reviewed three copyright decisions** out of the 7th Circuit, for which then-Judge Barrett was one of three judges on a panel considering the cases. While it is difficult to extrapolate a comprehensive view of copyright law from the three copyright decisions Judge Barrett participated in during her time in the 7th Circuit, a theme of skepticism of overbroad copyright claims and excessive damages emerges from these decisions.



#### Sovereign Immunity

Sovereign immunity is a doctrine that makes states and state entities immune from lawsuits under federal law. Congress sought to eliminate sovereign immunity for copyright in a 1990 law, but a recent Supreme Court decision overturned the law. Now, the Copyright Office is conducting a study to determine whether copyright infringement by state entities is a problem warranting a new legislative remedy. We reviewed comments solicited as a part of the Office's study and **shared a summary of what was said for and against** sovereign immunity in the copyright context.

## New & **Noteworthy Resources** (continued)

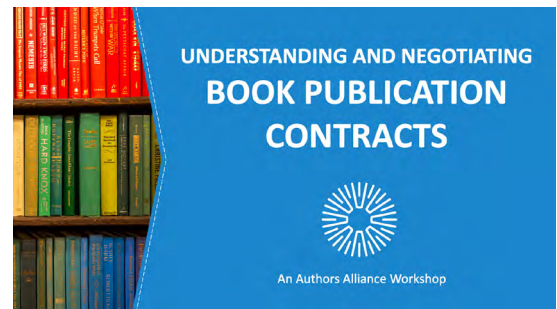
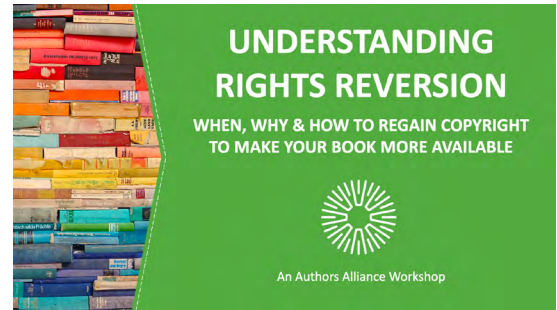
### Authors Alliance Partner Program

This year, we continued to produce resources for organizations participating in the **Authors Alliance Partner Program** (“A2P2”). Building on our existing high-quality educational materials that help authors understand and manage their rights, and with the support of a two-year grant from Arcadia—a charitable fund of Lisbet Rausing and Peter Baldwin—A2P2 helps organizations serve the scholarly communications needs of their author communities.

A2P2 members leverage our expertise in copyright, open access, publication contracts, and getting rights back to expand the capacity of library and scholarly communications professionals to serve faculty, researchers, and students on campus. A2P2 members have access to up-to-date, reliable, and consistent rights management education with our teaching and learning tools, including workshops in a box, news updates, and curated third-party materials.

Our suite of resources for A2P2 now includes workshops on Understanding Rights Reversion, Understanding and Negotiating Book Publication Contracts, Fair Use for Nonfiction Authors, Understanding Open Access, and Copyright for Graduate Students. We are also sharing regular issue briefs that help A2P2 members keep abreast of and navigate developments in the rapidly changing publishing landscape.

We’re grateful to our A2P2 partners who support the community of authors working to expand access to knowledge and culture for the public good.

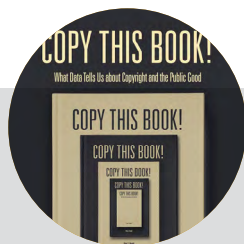


# From Our **Members & Allies**



## Implied Licenses

What happens when an author thinks she has permission to use copyrighted material in the absence of a clear contract, based on surrounding facts? Enter the implied license doctrine. On our blog, Jacqueline Lipton [shares what authors should know](#) about this defense to copyright infringement.



## Copy This Book!

In *Copy This Book!*, Paul Heald tells the data driven stories of orphan photographs, music parodies, copyfraud, movie and music piracy, gray market goods, and more. Heald [shares more on our blog](#) about his unflinching yet light-hearted new book detailing how too much copyright hurts public welfare.



## Notice & Takedown

Dave Hansen explains how the notice and takedown system can [disrupt the dissemination of knowledge](#) when open access licenses and fair use are not taken into account. Hansen concludes that it is important to have adequate processes in place to protect academic authors who rely heavily on fair use when sharing their research.



## User-Creators

Casey Fiesler and Corian Zacher [share results](#) from a survey of fan creators which suggest that notice and takedown has resulted in a great deal of non-infringing content being lost from the internet. They urge policymakers to weigh the experiences of creators who reasonably and legally rely on fair use when considering DMCA reform.



## Abandoning ©

In a new article, *Abandoning Copyright*, Dave Fagundes and Aaron Perzanowski [suggest reforms](#) to facilitate copyright abandonment, the voluntary and permanent relinquishment of an owner's rights in a copyrighted work prior to the expiration of the work's copyright term, and share how this would promote a richer public domain.



## Returning Rights

New empirical research by Joshua Yuvaraj and Rebecca Giblin reveals deficiencies in publication contracts, especially with provisions for returning rights to authors. Given [their findings](#), Yuvaraj and Giblin suggest protections that could improve author incomes, investment opportunities for publishers, and access for the public.

# Our Board of Directors

We are indebted to our Board of Directors who lend their invaluable leadership, vision, and expertise to our mission.



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## How You Can Help



- ✓ **Join:** By joining Authors Alliance, you stand with the community of authors who support the laws, policies, and practices that enable authors to reach wide audiences. **Join today** to amplify our advocacy on behalf of authors who write to be read.
- ✓ **Explore Our Resources:** Our resources cover copyright, fair use, publication contracts, open access, getting rights back, and more. **Use our resources** and be empowered to understand and leverage your rights!
- ✓ **Share Your Success Story:** Did you negotiate for author-friendly terms in your publication contract? Have you made your book newly available after regaining your rights? Are you reaching readers with an openly available work? **Share your story** with us today and inspire other authors to follow in your footsteps.
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