



2021

ANNUAL  
REPORT

AUTHORS ALLIANCE

Dear Members and Allies,

This year was a busy one for Authors Alliance: now in our eighth year, we have continued to work on behalf of authors who write to be read in order to empower these authors to reach their writing goals. We have also continued to advocate for sensible copyright policies that make it possible for them to do so. We are pleased to share some highlights of our work in 2021 in this annual report.

2021 saw the creation of a myriad of new educational resources including a brand new guide, a comprehensive FAQ about copyright ownership for professors teaching courses online, and a wealth of blog posts on diverse topics from major fair use court cases to how libraries have coped with the COVID-19 pandemic. We advocated on our members' behalf to Congress and the Copyright Office, and we added our voice to international copyright debates in Canada and South Africa.

We extend tremendous thanks and best wishes to Brianna Schofield, who served as the Executive Director of Authors Alliance for the past five years. Brianna's leadership helped Authors Alliance to grow and evolve in order to meet the changing needs of our members. Our organization is indebted to Brianna's tireless advocacy and contributions to our core educational resources.

We can't wait for our members and allies to see what we have in store for 2022. You can look forward to another new guide for authors, more friend of the court briefs that represent the interests of public-minded authors, blog posts on new developments in copyright law, and much more.

With gratitude,

Rachel Brooke  
*Interim Executive Director*



*note from the*  
**Interim Executive Director**

# Our Mission & Issues

## MISSION

*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.*

## ISSUES

### Managing

#### AUTHORS' RIGHTS



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

### Improving

#### LAW & POLICY



We advocate for sound policies that help authors create works, make them available, and ensure their preservation.

### Reaching

#### AUDIENCES



We help authors identify platforms, journals, tools, techniques, and partners that can help them communicate with their audiences.

### Protecting

#### REPUTATION & INTEGRITY



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

# New & Noteworthy

## Copyright Ownership & Online Course Agreements FAQs

Many universities' policies and customs provide that professors have full copyright ownership in the traditional academic materials they create, such as syllabi and lesson plans. However, this arrangement may differ for online course materials. Since the shift to a virtual learning environment brought on by the COVID-19 pandemic has prompted faculty at many universities to create new course materials to facilitate distance learning, many faculty authors [have questions](#) about who owns the copyrights in these materials.

Because the allocation of copyrights affects how course materials can be used, modified, and shared, it is important for faculty to have clarity about copyright ownership in the materials they create. This is why we've created [a new FAQ](#) that answers common questions faculty may have about how to determine



who owns copyrights in the materials they create for online courses, as well as whether and how uses of those materials may be limited. We are grateful to Harry Levin and Elise Widerlite, student attorneys at Georgetown Law under the supervision of Amanda Levendowski and Nina Srejovic, for researching and authoring this new FAQ.



### PUBLIC DOMAIN

It's no secret that we love the public domain. If you share our enthusiasm, start with our post on the ways that works [enter the public domain](#) and our post celebrating [works from 1925](#) that entered the public domain in 2021. Explore more in our post discussing [new uses that can be made of works that are in the public domain](#).

### TEXT DATA MINING

[Building Legal Literacies for Text Data Mining](#) is a new comprehensive open educational resource to help digital humanities scholars navigate legal issues related to text data mining, including copyright, technological protection measures, privacy, and ethical considerations. Authors Alliance's former ED co-authored the chapter on copyright.

### PUBLIC RECORDS

The Freedom of Information Act ("FOIA") is a federal statute that allows members of the public to request non-public documents from the federal government. Learn more in our blog posts on [how FOIA can be a useful research tool for authors](#) and [litigation takeaways for authors](#) interested in using FOIA to access new primary sources of information.

# New Permissions Guide

Authors Alliance’s latest guide, *Third-Party Permissions and How to Clear Them*, is an educational resource for authors who would like to include third-party materials (text or images created by another person) in their own original work. We regularly hear from authors struggling with the third-party permissions process, and we have designed this guide to help authors navigate the issues involved.

[Download your copy today](#)

## WHAT THE GUIDE COVERS:



### Copyright, Publication Contracts & Permissions

The guide explains how copyright and common publication contract terms mean that clearing permissions, where required, is crucial for authors to avoid legal liability.



### Do You Need Permission?

The guide examines the most common situations in which authors do not need permission from a rightsholder.



### Finding Rightsholders

The guide walks authors through the process of identifying and tracking down relevant rightsholders for third-party materials.



### How To Secure Permission

The guide explains how authors can secure permissions on terms that are consistent with their publishing needs.



### When Best Efforts Fail

The guide provides options for alternative strategies when authors encounter roadblocks in the permissions process.



# Hot Topics



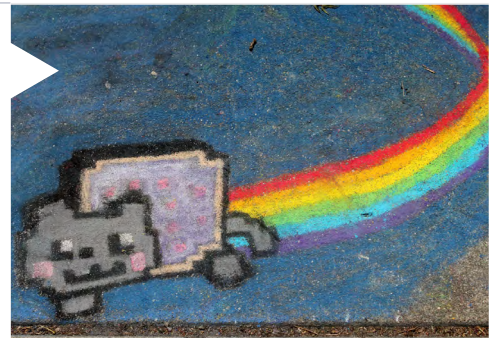
## Lending E-Books

In recent months, several states have proposed and in some cases passed legislation that requires publishers to license e-books to libraries under “reasonable terms.” Similarly, Amazon has taken steps to make its content available to libraries, following years of refusal to license e-books to libraries altogether. Read more in our [blog post](#) detailing these exciting developments.



## Non-Fungible Tokens

Non-Fungible Tokens (“NFTs”) offer a new avenue for creators to get paid for digital assets, but what exactly does an NFT holder “own” in relation to the digital object? Without an additional license or transfer of copyrights, the NFT holder does not acquire the rights to make and sell copies of the digital artwork. Learn more in our [blog post](#) on the topic.



## Libraries & COVID-19

By increasing digital offerings with a special emphasis on making e-book lending available to patrons, libraries have pivoted to serve the needs of a community forced by external circumstances to turn to the internet for information, culture, and human connection. Read more in [part one](#) and [part two](#) of our series looking at how libraries have responded to the COVID-19 pandemic.



## Fair Use Litigation

Two recent cases made waves in the copyright community in 2021: *Google LLC v. Oracle America, Inc.* and *The Andy Warhol Foundation v. Goldsmith*. Both cases discuss “transformativeness,” a key component of the fair use test, but reach different results. Check out [our post](#) on the cases to get up to speed.



# Hot Topics (continued)



## Book Publishing & Antitrust

In November, the Department of Justice announced that it was filing an antitrust lawsuit to block Penguin Random House, the largest major trade publisher in the country, from acquiring Simon & Schuster. Our blog post [surveys the landscape of antitrust publishing litigation](#) and explains how the proposed merger, as well as the antitrust lawsuit intended to stop it, might affect authors.



## Library Lending & Authors' Incomes

What is the relationship between author income and library lending? We explain [how authors make money from sales to libraries](#), and other ways libraries' roles in increasing the discoverability of books can help author income. Spoiler alert: In a 2020 survey, nearly a third of consumer respondents reported purchasing a book that they first found in a library, a number that was even higher for avid readers.



## Sovereign Immunity

This year, the Copyright Office released a report on Copyright and State Sovereign Immunity, concluding that, although the Office's study surfaced a number of allegations of state infringement, it is far from certain that the record would be found sufficient to meet the constitutional test to eliminate state sovereign immunity with regard to copyright claims. Learn more in [our post on the report](#).



## Presidential Libraries

The custom of preserving presidential papers in so-called presidential libraries has led to the archiving of millions of valuable documents. Presidential libraries are veritable treasure troves, containing archives of presidents' correspondence, documents, gifts, and more. Learn why [presidential papers can be excellent sources of research for authors](#).



# Policy & Advocacy

## Access Copyright v. York University

In July, the Supreme Court of Canada issued a [unanimous opinion](#) in *Access Copyright v. York University*, finding that approved tariffs for works in a collective copyright society's collection were not enforceable against a user that chose not to be bound, and suggesting that the lower courts had applied an unduly narrow interpretation of fair dealing. Authors Alliance, which together with Professor Ariel Katz intervened in the case, celebrated the Court's ruling, which adopted many of the principles set forth in our [factum](#) and advanced in our [oral arguments](#).

Our intervention made clear that authors are not a monolith, and Access Copyright did not represent the interests of all authors. By emphasizing that Access Copyright had no standing to sue for copyright infringement, as it was not a copyright holder, the court signaled that the mandatory tariffs were not aligned with the interests of all authors. Indeed, many authors



have as their highest goal seeing their works reach broad audiences and contribute to the progress of knowledge, such as being used in higher education, as the works in the case were. The robust interpretation of fair dealing offered in the decision was consistent with the thrust of our factum—that Authors Alliance's members interests are best served by a robust application of fair dealing that does not interfere with these dissemination goals.



*“[I]ncreasing public access to and dissemination of artistic and intellectual works, which enrich society and often provide users with the tools and inspiration to generate works of their own, is a primary goal of copyright.”*

- Former Justice Rosalie Abella, Supreme Court of Canada

## → Digital Copyright Act

We offered [feedback on the draft Digital Copyright Act of 2021](#), opposing changes that would shift the notice-and-takedown system to a notice-and-staydown system, as well as a proposal to relocate the Copyright Office to the Department of Commerce. We supported reforms that would limit liability for users of orphan works and language that would clarify that the Copyright Office can implement tiered fees. Finally, we asked Congress make it clear that there must be a nexus between circumvention and infringement for there to be a violation of section 1201.

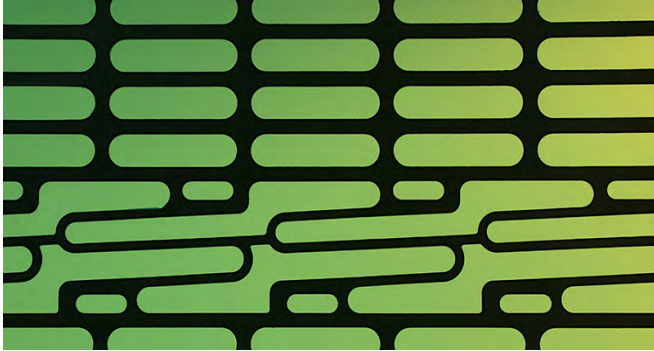
## → Controlled Digital Lending

We continued our [support of Controlled Digital Lending](#) (“CDL”) as a practice that is backed by a good faith interpretation of fair use, helps authors share their creations with readers, promotes the ongoing progress of knowledge, and advances the public good. CDL is particularly beneficial for authors whose works are out-of-print: in the absence of digitizing and lending these books, many would simply be inaccessible to readers. The CDL model is a boon to the authors of these and other books, allowing them to find new audiences online.



# Policy & Advocacy (continued)

## 1201 Text and Data Mining



Authors Alliance, joined by the Library Copyright Alliance and the American Association of University Professors, successfully petitioned the Copyright Office for a new three-year exemption to section 1201 of the Digital Millennium Copyright Act (“DMCA”). The new exemption allows researchers to bypass technical protection measures (“TPMs”) in order to conduct text and data mining (“TDM”) research on literary works that are distributed electronically and on motion pictures.

In announcing the recommendation to grant the exemption, Register of Copyrights Shira Perlmutter stated the Copyright Office “recognizes the academic and societal benefits that could result from TDM research and concludes that properly tailored exemptions meet the statutory requirements for adoption.” Because existing alternatives to circumventing TPMs were not adequate to meet the researchers’ needs, the Copyright Office recognized the importance of the exemption for those researchers.

Several limitations, including onerous security measures and conditions for how e-books can be acquired through licenses, are required in order for researchers to take advantage of the exemption. It remains to be seen how these limitations will affect researchers’ ability to make use of the new exemption. This being said, the exemption is a victory for TDM researchers and authors who care about contributing to the progress of knowledge.

## → South Africa Copyright Bill

We submitted comments to South Africa’s Portfolio Committee on Trade and Industry [in support of the copyright exceptions](#) included in South Africa’s draft Copyright Amendment bill. We shared how copying, quoting, and reusing existing material is critically important to the production of new creative works and the advancement of knowledge. We also explained how educational exceptions enable authors to reach wider audiences and help them to build reputational capital. Finally, we shared how exceptions for libraries, archives, museums, and galleries ensure that authors’ works are discoverable and preserved.

## → Copyright Small Claims

We provided input to the Copyright Office as it develops [regulations to govern the copyright small claims procedure](#) under the CASE Act. We urged the Office to ensure that the Copyright Claims Board (“CCB”), which will hear copyright small claims, is an efficient, effective, and respected forum that serves the individual authors it is intended to benefit. Our feedback discussed content of notices, opt-out procedures, and case limits, as well as suggesting that the Office develop guidelines for the CCB to use when determining whether a particular claim is appropriate for the forum and guidelines for the award of statutory damages.

## → Copyright and Linking

Authors Alliance joined Public Knowledge and four other civil society groups to urge Congress to amend the Journalism Competition and Preservation Act (“JCPA”) to clarify that the bill [does not expand copyright protection to article links](#) and that authors and other internet users will not have to pay to link to articles or for the use of headlines and other snippets that fall within fair use.



## Authors Alliance Partner Program (A2P2) Resources Now Openly Available

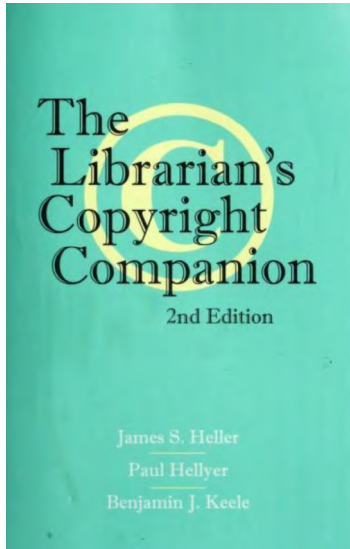
Authors Alliance is thrilled to announce the open release of our [Authors Alliance Partner Program \(A2P2\) resources](#). For the past two years, we have been collaborating with library partners to develop a suite of resources that scholarly communications and library professionals can deploy to help faculty, researchers, and students understand and manage their rights throughout their careers. A2P2 materials are now available for everyone to freely use, adapt, and share under Creative Commons licenses.

Workshops in a box (“WIBs”) are the centerpiece of our A2P2 resources. These all-in-one tool kits contain all the materials trainers need to host educational workshops at their institutions. Corresponding on-demand webinars are available to supplement A2P2 in-person training. Alongside the WIBs and webinars, we offer an ongoing series of issue briefs which provide timely and approachable introductions to emerging topics in copyright and publishing.

By leveraging these materials and Authors Alliance’s expertise in copyright, open access, publication contracts, and getting rights back, organizations can expand their educational capacity to serve authors on their campuses, and ultimately improve the availability and discoverability of knowledge and culture.

# From Our Members & Allies

## Rights Reversion Success Story: Benjamin Keele



Our Q&A with Benjamin Keele, Research and Instructional Librarian & Lecturer in Law at Indiana University, reviews how he [got back the rights](#) to *The Librarian's Copyright Companion* (co-authored with James Heller and Paul Hellyer). Keele shares how reversion is helping him reach his goals for the book and his advice for other authors who want to pursue a reversion of rights. Thanks to their successful reversion, the book is now available for all to read under a CC BY 4.0 license.

“ I'm privileged enough to work in a research library, and I regularly hit paywalls and other access barriers to useful information. Making the book open access was a way we could make information about copyright available to anyone that found it useful.”

- Benjamin Keele



## Credible Information

Argyri Panezi's new article, [A Public Service Role for Digital Libraries](#), reflects on the role of copyright in preserving the institutional functions of libraries and discusses how the COVID-19 emergency exposed new and existing market failures. Panezi argues that both on- and off-line libraries serve a function as trusted and, in principle, neutral places dedicated to equalizing access to credible information. Panezi's article examines the extent to which current U.S. copyright law supports libraries in these increasingly pertinent functions and advocates for a copyright framework that provides enhanced support to libraries.



## Open Access Success

Author Peter Kaufman sat down with us to [answer some questions](#) about his experience releasing his new book, *The New Enlightenment and the Fight to Free Knowledge*, under a CC-BY license upon its print publication by his publisher. In his book, Kaufman discusses “the powerful forces that have purposely crippled our efforts to share knowledge widely and freely.” By releasing his work under an open access license, Kaufman has pushed back on these forces while also ensuring that his work reaches a wide audience.



## Quantifying Reversion

Cory Doctorow discusses the findings of the landmark study, [U.S. Copyright Termination Notices 1977-2020: Introducing New Datasets](#). The data reveal that few authors are using the termination of transfer mechanism under U.S. law to get their rights back. A few successful authors, including Stephen King, George RR Martin, and Nora Roberts, are the exception. According to Doctorow, the data show that while termination does help creators, it is needlessly complex. “Improving reversion—simplifying it, or even making it automatic at 25 years—is a no-brainer if you want to improve creators' share of the bounty of their most successful works.”

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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!

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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.

### ➔ Donate

Authors Alliance is a 501(c)(3) nonprofit organization that depends on the contributions of our members, allies, and supporters. Please consider [donating today](#) to support our work.

### ➔ Spread the Word

Share our message with your followers on social media and use our [members' badge](#) on your own website.

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