



2022

**ANNUAL
REPORT**

AUTHORS ALLIANCE

Dear Members and Allies,

Since I joined Authors Alliance as Executive Director in June of 2022, I've experienced our members' incredible creativity, enthusiasm, and commitment to advocating for a future of authorship and publishing that values the public interest.

I've also become more convinced than ever that our vision and voice are unique among organizations participating in debates about copyright, free expression, fair use, and other public policy issues affecting authors. While several non-profit organizations represent the interests of libraries and of the public at large, Authors Alliance is the only non-profit, membership-based organization that brings a public-interest-minded author's perspective to bear on issues of information policy. We provide an alternative viewpoint to the protectionist positions of entertainment and big media lobbyists that represent only a limited perspective on the interests of authors.

I'm so pleased to be able to share this report on our work from 2022. I'm proud that we have consistently spoken out on information policy issues to help authors see their creations reach as many readers as possible. We've done that through briefs, testimony, regulatory submissions, and other outreach designed to provide a more balanced perspective on how copyright and related policies impact authors in the digital age. Without our voice, legislators and policy makers could all too easily conclude that maximalist copyright positions promote the best interests of all authors.

As you'll see, we have a number of exciting projects ahead of us. I hope you'll [join us in supporting Authors Alliance](#) so we can continue to speak out on your behalf in 2023.

Thanks,
Dave Hansen
Executive Director



note from the
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.

Priorities for 2023

We have ambitious goals for 2023 in areas where we believe Authors Alliance can make a big difference. For the coming year, we plan to focus on:

HELPING AUTHORS TO OVERCOME BARRIERS TO REACHING READERS

by proactively promoting robust digital markets that serve authors' interests. Big ideas like "digital ownership" deserve more attention—we want to spur those conversations forward by contributing author perspectives on what's wrong with the current system of mass licensing and platform lock-in, and how it can be improved. We also want to provide continued support for libraries by bringing author voices together in court and in the public sphere to explain how libraries serve our interests in providing access to and preservation of our works.

STRENGTHENING AUTHORS' ABILITY TO RECLAIM RIGHTS

by making it easier for authors to regain and exercise their rights. We hope to reinvigorate a discussion about how the copyright "termination of transfer" system is failing authors, by creating a series of policy papers to share with policy makers. We also want to help improve the legal infrastructure that supports authors who want to make their writing and research available on an open access basis.

PROTECTING AUTHORS' FREEDOM TO CONDUCT RESEARCH

by continuing to defend their free expression and fair use rights in court. We also intend to continue to support fair use for text data mining research by helping researchers use the rights they have under fair use and the DMCA, reporting on where current law is falling short, and petitioning for an expansion of the current DMCA text data mining exemption this coming summer.

PROMOTING A HEALTHY PUBLISHING ECOSYSTEM

by leveling the playing field in publication contract negotiation by offering new resources on publication contracts with guidance on terms for authors. We also want to address how Authors Alliance can most effectively support efforts to address anticompetitive behavior and platform integrity challenges, including copyright as well as issues related to misinformation, censorship, and privacy.

New & Noteworthy

Text Data Mining: Demonstrating Fair Use

We're very pleased to announce a new project for 2023, generously supported by the Andrew W. Mellon Foundation, that focuses on lowering and overcoming legal barriers for researchers who seek to exercise their fair use rights, specifically within the context of text data mining (TDM) research under current regulatory exemptions. Fair use is one of the primary legal doctrines that allow researchers to copy, transform, and analyze modern creative works—almost all of which are protected by copyright—for research, educational, and scholarly purposes. Text data mining is a prime example of work that demonstrates the power of fair use, as it allows researchers to discover and share new insights about how modern language and culture reflect on important issues ranging from our understanding of science to how we think about gender, race, and national identity. Authors Alliance has worked extensively on supporting TDM work in the past, including by [successfully petitioning the Copyright Office for an exemption](#) to allow researchers to break digital locks on films and literary works distributed electronically for TDM research purposes (discussed further on page 8), and this project builds on those previous efforts.

The **Text Data Mining: Demonstrating Fair Use** project has two goals in 2023:

1. To help a broader and more diverse group of researchers understand their fair use rights and their rights under the existing TDM exemption through one-on-one consultations, creating educational materials, and hosting workshops and other trainings; and
2. To collect and document examples of how researchers are using the current TDM legal framework, with the aims of illustrating how the TDM exemption can be applied and highlighting its limitations so that policymakers can improve it in the future.

We'll be working closely with TDM researchers across the United States, as well organizations such as the Association for Computers and the Humanities, and will be actively exploring opportunities to work with others. If you have an interest in this project, we would love to hear from you!

New Writers' Guide

In 2022, we were at work on a new legal guide for authors, the forthcoming Authors Alliance guide to ***Writing About Real People***. We decided to create this guide because we regularly receive questions from our members and other authors about potential legal issues that can arise when writing about real people in memoirs, biographies, and other nonfiction works. There are few resources tailored to nonfiction authors writing about real people specifically, so we decided to create one.

Our guide covers a wide array of topics including defamation, false light, invasions of privacy, and the right of publicity. The guide also has a dedicated chapter on practical tips for authors to help them avoid liability and make the writing and publishing processes as smooth as possible. Because these issues are based on state law, we also highlight different trends in state laws and how these might affect authors. Throughout, the guide emphasizes the strong First Amendment protections for authors creating new, original works of authorship: in many if not most cases, this will be a potent shield for authors, empowering them to write freely about real people without fear of legal liability.

You can expect to see the guide to *Writing About Real People* published on our website in the first half of 2023, available for free on an open access basis. Print copies will be available soon thereafter. You can also find our other legal guides online, covering topics such as publication contracts, fair use, and third-party permissions, among others. Thanks very much to our allies, partners, and supporters for making this guide possible!

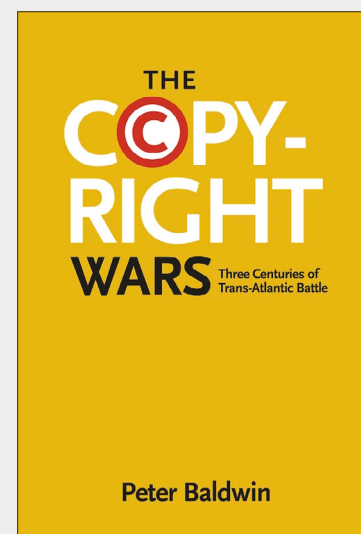
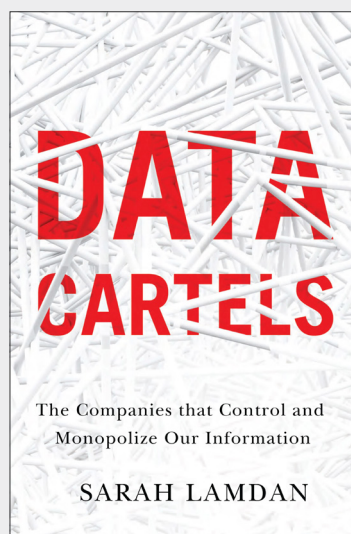
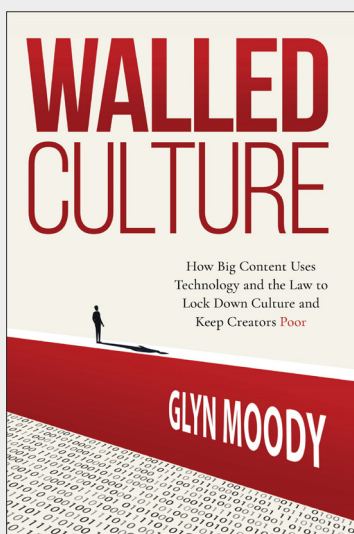


Author Talk Series

In the fall of 2022, Authors Alliance launched our first author talk series with the Internet Archive, drawing hundreds of participants to tune in for discussions of several leading works on the intersection of authorship, information policy, and technology.

[We hosted author Glynn Moody](#) in conversation with journalist and publisher Maria Bustillos to talk about his book, [Walled Culture](#), exploring how the transition from the physical to digital world has locked up access to culture and knowledge through copyright walls. [Law professor Sarah Lamdan then joined us](#), in conversation with SPARC Executive Director Heather Joseph, to talk about Lamdan’s book, [Data Cartels](#). The book explores how some of the largest academic publishers have transformed into “data cartels,” which mine, commodify, and sell our data while perpetuating social inequalities and threatening the democratic sharing of knowledge. And [historian Peter Baldwin joined us](#), in conversation with Authors Alliance Board President and legal scholar Pamela Samuelson, to talk about his book [The Copyright Wars](#), a transatlantic history of copyright from its origins to today, covering three centuries of copyright law and policy disputes.

For spring 2023, we’re looking forward to more! Check out our website in the coming months for information on additional author talks about the future of the internet, open access, and more. And if you’re an author writing in this area—get in touch! We’d love to hear from you and highlight your work.



Policy & Advocacy

Controlled Digital Lending

In July, Authors Alliance [submitted an amicus brief](#) in *Hachette Books v. Internet Archive*, a case about—among other things—the legality of a practice known as Controlled Digital Lending (CDL). CDL is a lending model in which libraries scan physical books and make a scan available for their patrons to borrow in lieu of the print book. A library can only lend out one scan at a time for each print copy it possesses, and the borrowed scans expire after a certain amount of time like all library loans.

Authors Alliance has [long supported the Internet Archive's CDL program and others like it](#), and [many of our members also support CDL](#). The plaintiffs in this case are four of the largest trade publishers. These publishers argue that their position represents the best interests of authors who publish with them, and even authors writ large. But this is plainly not the case: we [conducted a survey](#) of our members and other authors about their views on CDL, and many voiced very strong support for CDL. Our voice in this case was important because we represent authors who want libraries to be able to digitize and lend their works online, allowing us to show the court that authors are not a monolith, and that the publisher plaintiffs do not speak for all authors.

Our brief argues that CDL should be upheld for four reasons. First, CDL doesn't diminish incentives to create—authors have a variety of motivations for writing new works, and seeing their works made available via CDL can serve their interest in reaching readers. Second, CDL helps authors reach new audiences they would not have otherwise, ensuring books are broadly accessible rather than languishing on library shelves. Third, CDL ensures that works are preserved, keeping them from disappearing into obscurity once they are no longer available commercially, but remain protected under copyright. Finally, CDL can be an effective and efficient research tool for authors to access others' works during their writing process.

Section 1201 and Text Data Mining

Last year, Authors Alliance [successfully petitioned](#) for a new exemption to the Digital Millennium Copyright Act (DMCA) § 1201's prohibition on breaking digital locks that allows researchers to engage in text data mining on ebooks and films. More specifically, our exemption permits academic researchers to bypass technical protection measures (TPMs) for the purpose of assembling a corpus of ebooks and films on which to conduct their text data mining research.

While this was a huge win for Authors Alliance and TDM researchers alike, the exemption is not without limitations: for now, it is restricted to researchers affiliated with academic institutions, and requires that those institutions use very strong security measures to secure the corpora. Most importantly, ebook distributors' terms of service are often at odds with this exemption, forbidding bypassing TPMs for any reason. The issue of "contractual override" is a common one when it comes to ebooks and the way they are licensed, and one Authors Alliance plans to work on in the near future.

In 2023, Authors Alliance will begin the process of petitioning for an expansion of the existing exemption. The DMCA 1201 exemptions are granted in a triennial rulemaking process in which the Copyright Office considers proposals for new exemptions, renewals, and expansions, with the next cycle taking place in 2024. With the support of the Samuelson Clinic at UC Berkeley, we will once again explain to the Copyright Office the value of TDM and the importance of facilitating this valuable research tool through the exemption.

Policy & Advocacy (continued)

Authors Alliance Amicus Briefs

This was a year of unprecedented work in the courts for Authors Alliance. We weighed in on five separate federal lawsuits through “friend of the court” briefs, advocating for the interests of our members in a diverse array of debates over copyright and free expression. One of these amicus briefs, in *Hachette Books v. Internet Archive*, is discussed at length on page 8, and the other four are summarized below.

In June, [we submitted an amicus brief to the Supreme Court](#) in *Warhol Foundation v. Goldsmith*, a fair use case that asks the Court to consider what it means for a work to be transformative, and how transformative fair uses interact with the “derivative work right” in copyright. Our brief asks the Court to reject the lower court’s constrained interpretation of fair use, which would foreclose many transformative uses authors may want to make of existing works.

Later that month, [we signed on to an amicus brief](#) in *Vans v. MSCHF*, a trademark case about First Amendment rights of creators and their rights to parody other brands. Our brief argues that First Amendment protections must be taken seriously in the context of expressive uses of trademarks, and asks the Second Circuit to clarify a framework for answering these questions in litigation.

In August, [we submitted an amicus brief](#) in *Sicre de Fontbrune v. Wofsy*, a case about whether foreign copyright judgments can be enforced in U.S. courts when a fair use defense would have applied to protect the use if the lawsuit had been brought in this country. Our brief argues that such judgments should not be enforced in U.S. courts since fair use is a crucial First Amendment limitation on copyright, central to our very system of government.

In October, [we joined several civil society and library organizations on an amicus brief](#) in *Hunley v. Instagram*, a case about whether platforms like Instagram can face secondary copyright infringement when users



use its embedding feature to link to Instagram content on other websites. Our brief asks the court to reject this argument because it could introduce liability for activities like linking to other content, which is essential for the operations of the internet and for many authors contributing to the commons of knowledge.

#ebookSOS Partnership

This fall, we also had the opportunity to work directly with authors to advocate for their interests in seeing their books made widely available in electronic form through libraries. We partnered with #ebookSOS, an initiative out of the UK and EU that aims to investigate the current challenges in the library ebook licensing environment. The project grew out of frustration with publishers who often charge libraries thousands of dollars for electronic access to a single title, or in other cases refuse to license certain titles at all to libraries.

Policy & Advocacy (continued)

We [worked with #ebookSOS to reach out to authors](#) of some 1,300 titles abruptly removed by John Wiley & Sons from academic library ebook collections at the start of the semester. The move left instructors and students scrambling for access, while authors expressed frustration that they were not consulted, and in many cases would not have consented to such action since it limits the reach of their work. In the face of this opposition, Wiley agreed to restore access for the academic year, but left authors and librarians with no assurance that the titles wouldn't be removed in the future. We are proud to join with authors and #ebookSOS in opposing the move [in an open letter to Wiley](#).

Other Advocacy and Policy Work

Supporting Authors' Termination Rights

In November we filed comments with the Copyright Office supporting its proposed rule to protect authors' rights to terminate and recapture their rights in musical works. [Read more here](#).

Defending Linking from Copyright Creep

Authors Alliance joined 20 other public interest organizations in opposing the passage of the Journalism Competition Preservation Act (JCPA), which among other things would force websites that link to news to negotiate with websites for payment. Free and open linking is a fundamental building block of the web and legislation like this could inhibit access to important news resources for authors. [Read more here](#).

Protecting Researchers and Archives from Limits on Access to Broadcast Materials

We participated in a letter opposing the reach of a proposed treaty before the World Intellectual Property Organization that would create novel and expansive rights over broadcast copyrighted content. The proposed treaty would jeopardize the ability of archives



to maintain copies of broadcast materials and limit the ability of researchers to access and use such materials in their work. [Read more here](#).

Protecting Authors from Having their Works Used Against Them In Court

In September we wrote in support of proposed legislation in California (now passed) that would protect authors from having their creative work used as evidence against them. The bill—focused on addressing the discriminatory use of rap lyrics against defendants in criminal trials—provides broad protection to all creators and is similar to other pending legislation at the federal level and in New York. [Read more here](#).

Support Authors Alliance

Founded in 2014, Authors Alliance is a 501(c)(3) nonprofit that advocates for the interests of authors who want to serve the public good by sharing their creations broadly. Our vision and voice are unique among organizations participating in debates about copyright, free expression, fair use, and other public policy issues affecting authors. Authors Alliance brings a progressive author's perspective to conversations around copyright and information policy that are all too often dominated by entertainment and big media lobbyists, as well as other authors' groups aligned with these interests. But our existence is not guaranteed. We depend heavily on member donations to continue to do this work, and we need your financial support to help secure the future of Authors Alliance.

The policy work we've highlighted in this report focuses on issues that may seem arcane to many, and largely escape public attention. Yet entities with a vested interest in maximalist copyright, often at odds with the public interest, are certainly paying attention, and often claim to speak for all authors when they in fact represent only a small subset.

These positions do a disservice to authors who prioritize seeing their knowledge and creations reach as many readers as possible. Without a countervailing voice, legislators and policy makers can all too easily conclude that maximalist copyright positions promote the best interests of all authors. Authors Alliance provides that voice. We consistently show up and speak up—through briefs, testimony, regulatory submissions, and other outreach designed to provide a more balanced perspective on how copyright and related policies impact authors in the digital age.

Give to Authors Alliance

Authors Alliance has had a big impact with a small footprint. Our operating budget for 2023 is approximately \$325,000. For 2023, our goal is to secure twelve commitments of \$10,000 or more, and 100 commitments of \$250 or more, to support general operations for the coming year. If you value Authors Alliance, we urge you to join our effort to meet these goals.

To give, you can donate online at <https://www.authorsalliance.org/donate> or mail your check to:

Authors Alliance
2705 Webster St. #5805
Berkeley, CA 94705

If you have interest in other ways you can support Authors Alliance, we would be pleased to hear from you. You can reach Dave Hansen, Authors Alliance's Executive Director, at dave@authorsalliance.org.

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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.

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