

**AUTHORS  
ALLIANCE**

## Principles and Proposals for Copyright Reform

We have formed an Authors Alliance to represent authors who create to be read, to be seen, and to be heard. We believe that these authors have not been well served by misguided efforts to strengthen copyright. These efforts have failed to provide meaningful financial returns to most authors, while instead unacceptably compromising the preservation of our own intellectual legacies and our ability to tap our collective cultural heritage. We want to harness the potential of global digital networks to share knowledge and products of the imagination as broadly as possible. We aim to amplify the voices of authors and creators in all media who write and create not only for pay, but above all to make their discoveries, ideas, and creations accessible to the broadest possible audience.

We believe that copyright law has been diverted from its founding principles. The Constitution granted Congress the power to “promote the Progress of Science and useful Arts” by conferring on authors a limited set of rights in their works. While recognizing authors’ right to a “fair return,” for their “creative labor,” the Supreme Court has repeatedly recognized that “the primary object in conferring the monopoly . . . lie[s] in the general benefits derived by the public from the labors of authors.”

We believe it is high time for authors like us to speak up for a “Next Great Copyright Act” that will carry forward the Founders’ vision of copyright and meet its goals in the digital age. We encourage all authors who share our values and mission to join us as members of the Authors Alliance. Together we can develop reform proposals that will renew the nation’s commitment to a copyright law that secures a just balance between private ambitions and the public good.

To this end, we propose four principles that should guide copyright law and appropriately align the interests of individual creators with the interests of the public for whom they create:

1. Further empower authors to disseminate their works.
2. Improve information flows about copyright ownership.
3. Affirm the vitality of limits on copyright that enable us to do our work and reach our audiences.
4. Ensure that copyright’s remedies and enforcement mechanisms protect our interests.

Stating these principles is only the first contribution of the Authors Alliance to its mission of supporting a creative economy that favors accessibility and dissemination. We will continue to pursue this vision by providing authors with resources to enable wide distribution, educating the public on issues relevant to public interest authorship, and advocating for authors who create to be read, seen, and heard.

On the following pages, we further explain these principles and propose means for carrying them out. The specific proposals here are directed toward copyright law in the United States, though we think the principles are more broadly applicable and we hope that they can inform the reform efforts of other countries.



## **1. Further empower authors to disseminate their works.**

Public-minded authors need a legal toolkit to enable us to take advantage of the unprecedented opportunities presented by global digital networks so that a new and globally expanding generation of readers, viewers, and listeners can find and enjoy our works.

Here are our proposals to implement this principle:

### **Preserve and extend author-friendly rules about copyright ownership.**

Copyright law should continue to protect our interests as authors by requiring, for instance, that an exclusive license or assignment be in writing and signed by the author in order to be effective. The law should clarify the narrow set of circumstances under which those who employ authors can claim initial ownership of the author's work under the "work made for hire" doctrine. To protect academic freedom and the integrity of academic work, educators should have rights in their own research and teaching materials.

### **Recognize our interests in being attributed as authors of our works.**

The law should recognize the right of authors to be acknowledged as creators of our works. This is especially important for those of us who create in order to contribute to knowledge and culture. Attribution serves not only our interests as authors, but also the reading public's interest in knowing whose works they are consuming and society's interest in an accurate record of the intellectual heritage of humankind.

### **Simplify authors' rights to terminate transfers.**

Under current law, authors can reclaim their copyrights by terminating licenses or assignments after 35–40 years. These termination rules are too complicated and formalistic. The rules should be simplified so that public-regarding authors can reclaim rights in our works. This is especially important when works are out of print or otherwise inaccessible, so that we can make them available again.

### **Make it easy for us to dedicate our works to the public domain.**

It used to be easy to dedicate our works to the public domain, that is, the realm of works not subject to copyright restriction. Until 1989, we could publish our works without a copyright notice and they automatically entered the public domain. A benefit of the public domain is that it maximizes the potential for our works to be accessible and reused. Current law does not clearly provide a mechanism for authors to contribute their works directly to the public domain. The next copyright act should ensure that public domain dedication is available to those authors who want to do so.

### **Make copyright law more comprehensible.**

Copyright law today is too long and too complex. It often employs terminology that only experts can understand. Ordinary authors should be able to read it, understand it, and comply with its norms without difficulty. Furthermore, before we enter into agreements with publishers, employers, or other people or institutions regarding the use of our works, we should understand what rights we are giving up and what rights we are retaining. This is difficult under current law.



## **2. Improve information flows about copyright ownership.**

The copyright system works best when we authors as well as the public can identify and locate copyright owners. Accurate ownership records facilitate securing permission to use works and help clearly establish how long copyright lasts for any given work. In doing so, they prevent works from becoming “orphans,” that is, works still protected by copyright whose owners cannot be found. Because we worry about oblivion for works that are locked into copyrights for which no one can find the key, the law needs to provide better incentives for rights holders to provide accurate information on copyright ownership. Transparency will benefit authors, readers, and intermediaries alike.

Here are our proposals to implement this principle:

### **Simplify the copyright registration process and provide more incentives to register.**

Although the law no longer requires authors or other rights holders to register their claims of copyright with the Copyright Office, registration provides some benefits to both authors and the public. Copyright registration should therefore be made as easy as possible so that all authors can let the public know about their rights in their works. The benefits of registration for authors should be clearer and stronger than they are today.

### **Strengthen incentives for updating copyright owner contact information.**

The benefits of registration cannot be realized unless the public record about copyright owner information is accurate and up to date. There should be meaningful incentives for copyright records to be accurate. The next copyright act might, for instance, limit the remedies available to owners who do not timely update their contact information when a defendant can show that the inaccurate information derailed a good faith attempt to secure permission from the owner.

### **Require public recording of changes in copyright ownership.**

Authors may have registered their copyright claims, but when they transfer copyrights to others the law currently requires no recording of a traceable link to the original rights holder. It may be hard (or even impossible) to trace copyright ownership unless the law requires all transfers to be recorded. Authors who want to save their own works from becoming legally “orphaned” and thereby relegated to out-of-print oblivion will benefit from such a requirement.

### **Condition the last 20 years of protection on registration.**

Many of us think that copyright terms are far longer than is necessary to induce authors to create new works, but an international treaty, the Berne Convention, constrains Congress’ power to adopt shorter terms. That treaty requires that copyrights must last the life of the author plus 50 years. In 1998, Congress extended existing copyright terms by another 20 years beyond that. It would not violate our treaty obligations for Congress to require copyright owners to register their claims to enjoy that last 20 years of protection. Those rights holders who are continuing to make works available to the public will have ample incentive to register. It is in our and society’s interests that there be a way to reuse works created many decades ago that have fallen out of commerce and whose owners do not care enough about them to register for additional protection.



### **3. Affirm the vitality of limits on copyright that enable us to do our work and reach our audiences.**

Authors routinely rely on copyright's limitations as well as its rights. By making knowledge and creative works available to future scholars and creators, fair use and other limitations on copyright are vital to our work as authors and to the public's ability to locate, preserve, and use our works now and for generations to come. Copyright law should continue to keep the basic building blocks of authorship unshackled and free for all to use. We need a copyright law that favors dissemination and combats obscurity by explicitly making room for technologies and intermediaries that preserve, archive, and index our works so that they might survive us and reach new audiences. We need a copyright law that does not needlessly restrict access to works whose owners can no longer be found. Many of these limitations exist in the law as it stands today, but they need to be clarified, protected, and, where appropriate, extended.

Here are our proposals to implement this principle:

#### **Reaffirm the flexibility of fair use to accommodate unforeseen uses.**

Copyright law has long recognized that some uses of copyrighted works by authors and by others are fair and non-infringing. Criticism, comment, news reporting, teaching, research and scholarship, are among the favored uses in the statute. Fair use is an essential part of a vibrant authorial culture. Without the flexibility of fair use, our ability to criticize, parody, educate, and innovate would be threatened. The next copyright act should affirm that its characteristic flexibility continues to allow it to apply to unforeseen and socially important uses of copyrighted works.

#### **Clarify that more than ideas are excluded from the scope of copyright.**

Copyright should encourage the free use of the basic building blocks of authorship. These building blocks include not only ideas, concepts, and principles, but also procedures, processes, systems, methods of operation, as well as facts, data, information, know-how, laws, judicial opinions, regulations, and other government edicts. The law's recognition of the exclusion of these building blocks from copyright protection should be solidified.

The law should continue to exclude from copyright U.S. government works, but perhaps that exclusion should extend to all government works. This would promote better access to government information for the public and for authors who would like to incorporate government works into their research and writing. At the very least, edicts of government, such as laws, judicial opinions, regulations, and the like, should be outside the bounds of copyright.

#### **Exempt incidental and personal use copies from legal regulation.**

Current law has several exemptions for specific types of incidental copies. In the digital environment, we along with members of the public at large make incidental copies of protected works constantly. A general exemption of incidental copies made to facilitate non-infringing uses from the scope of copyright protection would better serve the interests of authors than the hodgepodge in today's statute.

Similarly, virtually all authors make personal use copies of many works in the course of preparing our new works (for example, we might photocopy an article or chapter on which we are preparing a commentary) or for other legitimate purposes (for example, making copies of our work for our portfolios). We need recognition of a reasonable personal use exemption that expressly provides for these



necessary everyday uses.

**Empower libraries, archives, and other cultural heritage institutions to preserve works for future generations.**

Digital reproduction and storage allow for the unprecedented preservation and archiving of countless works. We now have the technological ability to safeguard our cultural heritage for generations to come. The law should provide that such acts of preservation are not in violation of, and indeed are in alignment with the purpose of, the exclusive rights of copyright.

**Encourage the development of new techniques and technologies of reproduction, dissemination, and discovery.**

The law should recognize that authors have an interest in seeing our works widely disseminated. Technological innovation that allows works to be reproduced, shared, and discovered by readers enables the unprecedented spread of knowledge and culture by radically increasing and enabling authors' potential audiences. While technological innovators should be held accountable for infringements they induce, the law must be careful not to use copyright to halt or penalize technological development at a single rights holder's say-so.

**Recognize the interests of both authors and the public in the public domain.**

The public domain—the realm of works not subject to copyright restrictions—is critical to the scholarly and creative activities of authors. For too long, the law has ignored the importance of works in the public domain as essential building blocks for new creations. Copyright law should expressly recognize the public domain and the interests of authors and the public in its continued existence. Moreover, the law should recognize the public domain as inviolable: once made free to all, works and ideas should not again be subject to restrictions imposed by copyright law, by contracts, or by technology.

**Free orphans from copyright restrictions.**

Millions of in-copyright works are now orphans, that is, works whose owners cannot reasonably be identified and located. Orphans benefit no one: not the authors whose works languish unread, not the authors who would like to build on works from the past, and not the public that would rather see such works digitized, archived, explored, and repurposed. The reuse of orphans should either be exempt from copyright control or the law should limit remedies for reuses as long as the re-user had a good faith belief that the work was an orphan.

**No more copyright term extensions.**

Congress added an extra 20 years to existing copyrights in 1998. Term extensions do not promote the progress of science, as the Constitution directs, and often actively constrain it. Copyright terms are already very long, lasting 70 years past an author's death or 95 years from first publication in the case of corporate-authored works. Only a very few works continue to provide economic benefit to authors for the full duration of our current terms. For the vast majority of new works, a longer term would provide no new reward at all, while it would instead starve the public domain and orphan our cultural and intellectual heritage. Without a demonstrated need or definite public benefit, we oppose any attempt to lengthen the copyright terms yet again.



#### **4. Ensure that copyright's remedies and enforcement mechanisms protect our interests.**

Copyright law should provide reasonable remedies for infringement of authors' rights, but the law should calibrate these remedies so they do not discourage or silence the kinds of creativity the law was designed to incentivize.

Here are our proposals that would implement this principle:

##### **Fix statutory damage rules to make them more reasonable.**

Current law allows copyright owners to ask for monetary compensation for infringement unmoored from the harm infringement causes. Copyright owners can demand awards of up to \$150,000 per work infringed. The specter of such crippling liability can chill even non-infringing and socially beneficial acts of authorship, dissemination, archiving, and curation. Damage awards should be reformed to ensure that authors, publishers, libraries, and others that act in good faith reliance on copyright's limits can make works available without fear.

##### **Ensure that copyright owners cannot use copyright remedies to censor works that the public has an interest in seeing or hearing.**

Courts have the power to halt infringing uses of copyrighted works using injunctions. While this power is essential to copyright's effectiveness, it can also silence works the public has an interest in seeing disseminated. When a court decides whether to issue such an injunction—especially a preliminary injunction granted before a copyright owner has proven infringement—the law should require the court to consider the public interest in disseminating the work.

##### **Establish a small claims process so that authors can vindicate our rights without expensive litigation.**

Many authors are unable to enforce their copyrights because of the very considerable expense of litigation today. In addition, many accused of infringement—among them, authors, libraries, and innovators—are unable to vindicate their rights to create and disseminate works out of the fear of financial ruin. Where alleged infringements are small in scale, all parties would benefit from a simplified and specialized legal process that can handle a greater volume of cases at a lower cost.

*For more information on the Authors Alliance and these principles and proposals, or to join us as a member, visit <http://authorsalliance.org>.*