AUTHORS ALLIANCE

ANNUAL REPORT 2024

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AUTHORSALLIANCE.ORG

YEAR IN REVIEW

This year marked a major milestone for Authors Alliance: our 10th anniversary! We celebrated with an event in May, hosted at the Internet Archive in San Francisco. The event featured a keynote by Cory Doctorow—author, activist and long-time Authors Alliance Advisory Board member, as well as a fantastic set of speakers addressing what is real and what is hype across a wide spectrum of legal and policy issues affecting authors today.

Our work on supporting authors to engage with new technology continued in full force. In October we got great news from the US Copyright Office and Librarian of Congress, which substantially approved of our petition to renew of and expand a DMCA exemption for text and data mining researchers. We also saw the first (that we are aware of) peer reviewed article published relying on the exemption we helped secure three years ago, and are already hearing from researchers about how the newly expanded exemption will help their work. We also closed out a project generously supported by the Mellon Foundation to help TDM researchers better understand their legal rights, and we began several big new projects related to how AI can support research, learning, and the advancement of knowledge.

We also launched a new collaboration with SPARC to clarify legal pathways to open access, and before the courts, before the year is out we will have contributed amicus briefs in two important fair use cases—*Whyte Monkee v. Netflix* and *Sedlik v. Drachenberg*—that have the potential to affect how authors can quote and reuse works for historical reference or illustrative purposes.

We've continued our work to help authors understand the law, drawing over 20,000 viewers through our online book talk series co-hosted with the Internet Archive, as well our in-person and online workshops.

We had a productive year in advancing the cause of authors who want to see their work benefit the public, and we couldn't have done it without your support. Thank you!

David Hansen
Executive Director

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. With over 2,800 members, 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 author's perspective to bear on issues of information policy. We provide an alternative to the protectionist positions of entertainment and big media lobbyists that represent only a limited perspective on the interests of authors.

This mission sometimes leads us to pay attention to areas of that law that may seem arcane to many, and largely escape public attention. Yet entities with a vested interest in maximizing their control over creative works, 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 countervailing 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.

AUTHORS ALLIANCE PARTNER PROGRAM

The Authors Alliance Partner Program helps us support academic authors by fostering close collaboration with their universities—most often through their libraries—to develop quality resources, advocacy, and tools that support a more open and equitable information ecosystem. For many academic authors, their library is the first place they turn to for advice on publishing, copyright, and scholarly communications.

Through the Partner Program, universities are able to draw on Authors Alliance's deep legal and publishing expertise to expand support for their authors. Universities that are part of our Partner Program support Authors Alliance in publishing authoritative, open access guides to legal issues facing authors; offering workshops, book talks, and other programs that give authors an opportunity to better understand why information law matters for their work and how they can take action to support good information policy; and by supporting our direct intervention with and on behalf of academic authors in support of fair use, the public domain, and access to knowledge.

We view this program as an opportunity for true collaboration. We have, in many instances, been able to work with partners to bolster local outreach and training, give feedback on proposed policies or initiatives affecting authors, and, in some cases, offer consultations with individual authors where additional expertise is needed. For 2024, we have been proud to include among our partner program members the following institutions, and we thank them for their support:

MIT Libraries · EMORY LIBRARIES · Harvard Library · UCLA Library

UNIVERSITY of GUELPH · McLAUGHLIN LIBRARY · CORNELL UNIVERSITY Library · UC Berkeley Library

University Libraries UNIVERSITY OF GEORGIA · ISU Library · Princeton University LIBRARY

We are welcoming new partner members for 2025 and would be pleased to hear from institutional representatives with interest. You can learn more about the Partner Program on our website.

AUTHORS ALLIANCE

AUTHORSHIP
in an Age of
MONOPOLY & MORAL PANICS

MAY 17, 2024

A SPECIAL 10TH
ANNIVERSARY EVENT

In May Authors Alliance celebrated its 10th Anniversary with a special event hosted at the Internet Archive in San Francisco. Keynoted by science fiction author, activist, and journalist **Cory Doctorow**, the event examined what is real and what is hyperbole in public debates about a broad range of legal and policy issues affecting authors, from copyright and fair use to AI and antitrust. You can find a full recording of the event online here.

The event featured two panels, the first on "Technology, the Law, and Authorship" largely discussing the role of AI and the future of creativity. Moderated by **Marta Belcher**, President and Chair of the Filecoin Foundation and the Filecoin Foundation for the Decentralized Web, the panel included **Pamela Samuelson**, Richard M. Sherman Distinguished Professor of Law and Information at UC Berkeley, **David Bamman**, Associate Professor, School of Information, UC Berkeley, and **Sasha Stiles**, award-winning poet, language artist, and AI researcher.

The second panel, "Platforms, the Publishing Industry, and the Public Interest" addressed challenges ranging from industry consolidation to efforts to regulate speech on online platforms. Moderated by **Corynne McSherry**, Legal Director, EFF, the panel featured **Daphne Keller**, Director of the Program on Platform Regulation at Stanford's Cyber Policy Center, **Alison Mudditt**, CEO of PLOS, and **Brewster Kahle**, Digital Librarian and founder of the Internet Archive.

OPEN ACCESS

Open access to scholarship has remained a major focus for 2024. As numerous Federal research funders published draft public access plans laying out their plans for making research openly available, we've worked to help ensure agencies' policies minimize barriers to authors while ensuring that their work are widely available.

Although we've been tracking and responding to developments in Congress, most of the important developments are happening in the regulatory arena since it is agency polices and government-wide grant making rules that will determine the important details of how federally sponsored research is made available. These proposed changes to regulatory and administrative text are not always easy to find, much less understand, but will have big implications for authors.

So, we've prioritized responding to these inquiries to help agencies better understand how Federal public access policies can best serve the interests of authors who want to see their works widely disseminated. Some examples are our responses to the Office of Management and Budget's new proposed grant guidance, and NIH's public access policy text.

Our attention to the regulatory environment for open access also caused us to work closely with the University of California to host an event in April focused on an existing legal tool available to Federal agencies—the "Federal purpose license"—as a means of providing a clear and firm basis for their coming public access policies. The event drew some 700+
 registrations and focused on the deposit rights environment authors currently face and the role institutions can play supporting these rights, create deeper national awareness of rights issues related to the Federal purpose license, and discuss benefits of invoking the Federal purpose license.

The event was co-sponsored by a significant number of academic and library consortia, and ultimately led to a public-facing statement outlining the needs of the academic community for clear and consistent guidance from Federal agencies for open access. That statement has now been signed on to by universities and consortia representing hundreds of institutions and a significant proportion of Federal research funding.

In August, we were excited to announce a new collaboration with SPARC titled "Legal Pathways to Open Access." The project aims to address critical legal issues surrounding open access to scholarly publications.

One of our goals with this project is to clarify legal pathways to open access in support of Federal agencies working to comply with the Memorandum on "Ensuring Free, Immediate, and Equitable Access to Federally Funded Research," (the "Nelson Memo") which was issued by the White House's Office of Science and Technology Policy in 2022. The Nelson Memo raises important legal questions for agencies, universities, and individual researchers to consider. To help ensure smooth implementation of the Nelson Memo, we project will produce a series of white papers addressing these questions. The first of these papers, published in November, has already been downloaded over 500 times and has been widely discussed. It addresses the legal basis for use of the Federal purpose license in support of public access policies. Subsequent papers will address legal objections to public access policies, how public access may affect university IP and copyright policies, and questions about how article versioning (pre-print, post-print, etc.) can work under public access policies.

In addition to the white paper series, the project has two other goals: the first is to update and publish a new SPARC Author Addendum, which since 2007 has been a valuable tool in educating authors on how to retain their rights. Our revision will bring the addendum up to date with recent changes in law and policy to help authors to better achieve their open access scholarship goals. The final piece of the project is to develop a framework for universities looking to recover rights for faculty in their works, particularly backlist and out-of-print books that are unavailable in electronic form.

The project is spearheaded by Authors Alliance's newest staff member, **Eric Harbeson**, Scholarly Publications Legal Fellow. Eric is a graduate of the University of Oregon School of Law. Prior to law school, Eric had a dual career as a librarian/archivist and a musicologist. Eric's publications include a well-regarded report on the Music Modernization Act, as well as two scholarly music editions. Eric can be reached at eric@authorsalliance.org.

TEXT AND DATA MINING
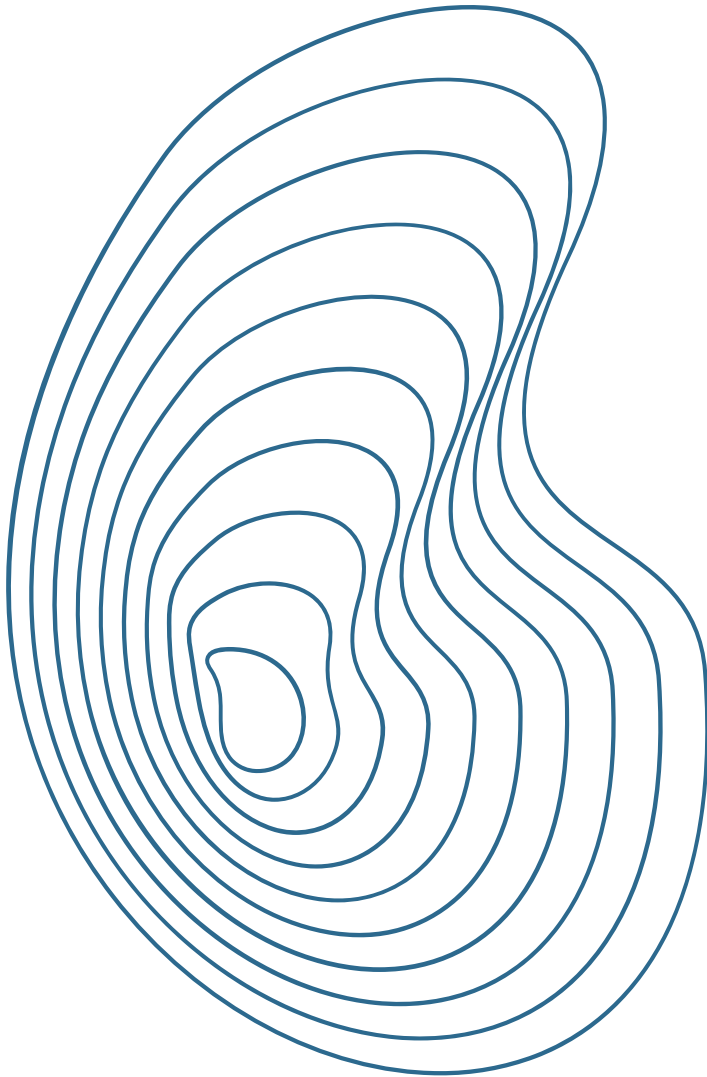
Authors Alliance was founded with the support of creators who understand the role that technology can play in supporting new research, new forms of creative expression, and ensuring long-term access to their own intellectual legacy. Because of this, we've focused on areas of law and policy that are at risk of hindering technological innovation.

Text and data mining in particular has been a major focus over the last several years. Though today it is clear that fair use supports copying in support of TDM research, just a few years ago its legality was uncertain. Authors Alliance and many of our founding members played an important role as amici in convincing the courts in Authors Guild v. Google and Authors Guild v. HathiTrust of the transformative nature of these uses.

In 2024, we concluded our "Text and Data Mining: Demonstrating Fair Use" project, which was generously supported by the Mellon Foundation. The project had the goal of educating and supporting researchers engaged in text and data mining research. As part of that project we hosted in-person, hybrid and online events with over 1700 participants. In 2024 we hosted four additional workshops and events at the University of Chicago, Princeton, Emory, and the University of Georgia. We also launched a new TDM legal resource page, which includes slides and recordings from these workshops, as well as a 29 page report highlighting key takeaways from research conducted via interviews with 40+ TDM researchers.

TDM RESEARCH EXEMPTION

The Rulemaking Process for Temporary Exemptions
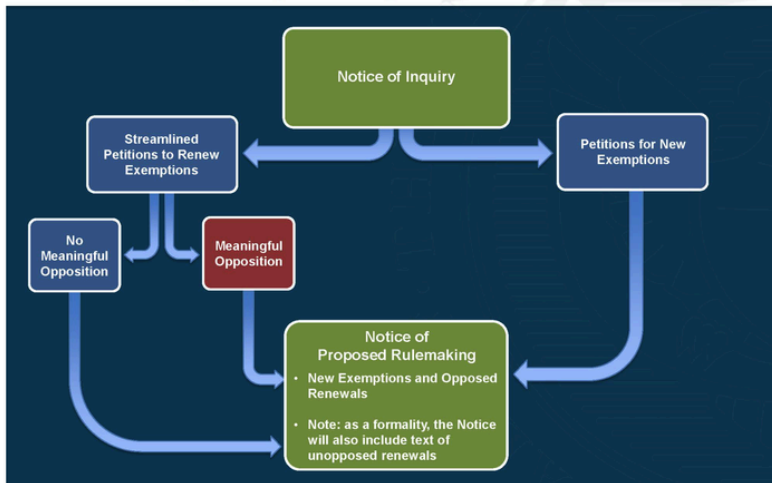
U.S. Copyright Office 1201 Rulemaking Process, taken from https://www.copyright.gov/1201/

In October the Library of Congress, following recommendations from the U.S. Copyright Office, released its final rule adopting exemptions to the Digital Millenium Copyright Act's prohibition on circumvention of technological protection measures (e.g., DRM). As many of you know, we've been working closely with members of the text and data-mining community as well as our co-petitioners, the Library Copyright Alliance (LCA) and the American Association of University Professors (AAUP), to petition for renewal and expansion of the current TDM exemption. The process began over a year ago and followed an in-depth review process by the U.S. Copyright Office. We're incredibly grateful for the expert legal representation before the Office over this past year by UC Berkeley Law's Samuelson Law, Technology & Public Policy Clinic, and in particular clinic faculty **Erik Stallman**, **Jennifer Urban** and Berkeley Law students **Christian Howard-Sukhil**, **Zhudi Huang**, and **Matthew Cha**. These are the main takeaways from the new rule:

- The exemption has been expanded to allow access to corpora by researchers at other institutions solely for purposes of text and data mining research or teaching.
- The issue of whether a researcher can engage in "close viewing" of a copyrighted work has been resolved—as the explanation for the revised rule puts it, researchers can "view the contents of copyrighted works as part of their research, provided that any viewing that takes place is in furtherance of research objectives (e.g., processing or annotating works to prepare them for analysis) and not for the works' expressive value."
- The new rule also modified the existing security requirements, which provide that researchers must put in place adequate security protocols to protect TDM corpora from unauthorized reuse and must share information about those security protocols with rightsholders upon request.

ARTIFICIAL INTELLIGENCE

Slide from a case update webinar offered with the Open Copyright Education Advisory Network

This year, we continued to closely monitor the development of AI copyright litigation. Although courts have yet to give us clear answers on substantive copyright infringement questions regarding the legitimacy of training AI with copyrighted works, we were able to glean some important insights from courts' rulings on motions to dismiss thus far.

We have summarized the claims that did not hold up in court, and especially focused on DMCA Section 1202(b) claims about the removal of copyright management information. We also explored who is representing authors and creators in these AI lawsuits, and what an expanded right of publicity might mean in the context of AI.

One of our goals was to help authors better understand the implications of claims in these AI suits on the future of their research and writing. So, we've published in-depth analyses on why fair use allows for AI training, how authors can address AI bias, and how universities can contribute to better AI. We also continued to monitor official reports issued by U.S. Copyright Office and U.S. Patent and Trademark Office, along with proposed AI-related legislation that could impact scholars and creators.

We place special emphasis on the intersection of research, academic publishing, and AI. We're increasingly concerned about large for-profit publishers selling and profiting off of works that academic authors submit for publication for free. We discussed the status quo and explored what authors could do in such situations. This new arrangement of publishers making licensing deals with AI companies is especially concerning when viewed in the context of publishers also restricting AI usage among academic researchers. US scholars are disproportionally impacted because the US allows for private contracts to override any statutory rights—such as the fair use right—that authors may have. So while many European and Asian authors are able to engage in AI and TDM enabled research, US authors do not always have the legal rights to do so.

DEVELOPING A PUBLIC INTEREST TRAINING CORPUS OF BOOKS

In November, we were pleased to announce a new project, supported by the Mellon Foundation, to develop an actionable plan for a public-interest book training commons for artificial intelligence. Northeastern University Library will be supporting this project and helping to coordinate its progress.

Access to books will play an essential role in how artificial intelligence develops. AI's Large

Photo by Josh Appel on Unsplash

Language Models (LLMs) have a voracious appetite for text, and there are good reasons to think that these data sets should include books and lots of them.Their high editorial quality, breadth, and diversity of content, as well as the unique way they employ long-form narratives to communicate sophisticated and nuanced arguments and ideas make them ideal training data sources for AI.

Currently, AI development is dominated by a handful of companies that, in their rush to beat other competitors, have paid insufficient attention to the diversity of their inputs, questions of truth and bias in their outputs, and questions about social good and access. Authors Alliance, Northeastern University Library, and our partners seek to correct this tilt through the swift development of a counterbalancing project that will focus on AI development that builds upon the wealth of knowledge in nonprofit libraries and that will be structured to consider the views of all stakeholders, including authors, publishers, researchers, technologists, and stewards of collections.

This project will run through 2025 and into 2026 and we aim to have numerous opportunities for engagement with authors, librarians, technologists, AI researchers and industry. Contact us at info@authorsalliance.org to learn more.

LITIGATION AND ADVOCACY

Over the past few years, Authors Alliance has been more active than ever before advocating for the interests of authors before courts and administrative agencies. Our involvement has ranged from advocacy in high-profile cases such as Warhol Foundation v. Goldsmith and Hachette Books v. Internet Archive to less visible but important regulatory filings. This year, several circuit courts were interpreting fair use for the first time since the Supreme Court's recent *Warhol* decision, and we paid especially close attention to these cases because of their potential to shape the future of fair use. This has included:

Filing an amicus brief in Whyte Monkee v. Netflix. We joined EFF, ARL, ALA, and Public Knowledge in an amicus brief addressing the problematic nature of the 10th Circuit's narrow interpretation of *Warhol.* The 10th Circuit is now reconsidering its decision and has vacated its initial determination.

We will also be filing an amicus brief in *Sedlik v. Drachenberg* in December 2024. *Sedlik* is on appeal to the 9th Circuit Court of Appeals, with the plaintiff seeking to overturn a fair use jury verdict for use of Sedlik's photographs in a social media post and as reference material for a tattoo. The case is particularly important because it

will be the first case in which the 9th Circuit will interpret the Supreme Court's *Warhol* decision. We are advocating that the court interpret *Warhol* flexibly to allow for the kinds of historical and documentary uses that authors have often relied on fair use for in the past, and we also argued that social media posts which so many creators rely on to reach audiences are not by default commercial in nature. We are grateful to the Harvard Cyber Law Clinic for their excellent representation of Authors Alliance on this brief.

We also covered the 5th Circuit's first post-*Warhol* fair use decision in Keck v. Mix Creative Learning Center, where the court reached the correct decision that educational use has a distinct purpose from decorative use of visual art.

BOOK TALKS

We're at a critical moment for the future of research and creative expression, with new laws proposed that would address a range of issues such as free expression and "big tech," to generative AI and neural networks, to open access and open data. The voices of authors and researchers are important for the public debate about the future of technology law and policy.

In 2022 Authors Alliance began a partnership with the Internet Archive to co-host an online book talk series aimed at addressing some of these major questions by highlighting the work of world-renowned authors, many of whom have spent their careers thinking about how technology can best support new scientific discoveries, new artistic creativity, free inquiry, and long-term public access. Since the beginning of this series we've drawn over 42,000 viewers who attend live or watched recordings of these book talks, with lively Q&As and discussions among authors and moderators.

We have more to come for our book talk series in 2025! Keep a lookout on the Authors Alliance website for announcements about upcoming events, here. If you have a book or author you'd like to suggest we feature, please get in touch. You can reach us at info@authorsalliance.org. For our past book talks, you find recordings online from the Internet Archive.

BOARD OF DIRECTORS AND STAFF

BOARD OF DIRECTORS

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Eric Harbseon is Scholarly Publishing Legal Fellow for Authors Alliance.
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NEW STAFF MEMBERS

Yuanxiao
Xu

 Yuanxiao Xu joined Authors Alliance in July 2024 as Staff Attorney. Yuanxiao graduated from the University of Michigan Law School in 2016, and has since then served as Counsel at Creative Commons, Staff Attorney at the Dramatists Guild of America, and Copyright Specialist at the University of Michigan Library. She has substantial experience advising academic authors and other creators on issues related to plagiarism, copyright infringement, fair use, licensing, contract negotiation and music copyright.

Yuanxiao is licensed to practice law in the State of New York. She now lives in San Diego with her husband and a cat who grew up on the streets of Tijuana.

Yuanxiao can be reached at xu@authorsalliance.org

Eric
Harbeson

Eric Harbeson joined Authors Alliance in August 2024 as our Scholarly Publications Legal Fellow. Eric is a recent graduate of the University of Oregon School of Law. Prior to law school, Eric had a dual career as a librarian/archivist and a musicologist. Eric did extensive work advocating for libraries' and archives' copyright interests, especially with respect to preservation of music and sound recordings.

Eric's publications include a well-regarded report on the Music Modernization Act, as well as two scholarly music editions.

Eric can be reached at eric@authorsalliance.org.

Authors Alliance has demonstrated that it can have a big impact with a small footprint. We rely heavily on individual donors like you to provide support for our core operations. While we have had successes in securing grant funding, those funds cover only a small portion of our operations, and can be difficult to use to support the kind of quick-response policy work that is sometimes needed, such as filing briefs or responding to regulatory Notices of Inquiry. We also believe in lowering barriers to participation, and so Authors Alliance membership has always been free. Even so, a large number of our members give, but mostly through small gifts of $100 or less.

To give, you can donate online at https://www.authorsalliance.org/donate or mail your check to our NEW mailing address at:

Authors Alliance
2108 N ST # 8898
Sacramento, CA 95816

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.