# 23-1260-cv

### United States Court of Appeals

for the

### Second Circuit

HACHETTE BOOK GROUP, INC., HARPERCOLLINS PUBLISHERS L.L.C., JOHN WILEY & SONS, INC., PENGUIN RANDOM HOUSE LLC,

Plaintiffs-Appellees,

- v. -

INTERNET ARCHIVE,

Defendant-Appellant,

DOES 1-5, inclusive,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

## BRIEF FOR *AMICUS CURIAE*AUTHORS ALLIANCE, INC. IN SUPPORT OF APPELLANT

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### CORPORATE DISCLOSURE STATEMENT

Authors Alliance, Inc., a 501(c)(3) nonprofit organization, has no parent corporation
There is no publicly held corporation that owns 10% or more of Authors Alliance's
stock.

Dated: December 21, 2023 s/Rachel Brooke Leswing



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<b>Cases</b> <i>Am. Geophysical Union v. Texaco Inc.</i> , 60 F.3d 913 (2d Cir. 1995)28
Am. Soc'y Testing & Materials v. Pub.Resource.Org, 82 F.4th 1262 (D.C. Cir. 2023)10, 17, 26
Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 11 F.4th 26 (2d Cir. 2021)
Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith, 143 S. Ct. 1258 (2023)
Authors Guild, Inc. v. Google, Inc., 804 F.3d 202 (2d Cir. 2015)
Authors Guild, Inc. v. HathiTrust, 755 F.3d 87 (2d Cir. 2014)3, 7, 16
Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)
Capitol Records LLC v. ReDigi, 910 F.3d 649 (2d Cir. 2018)11
Fox Film Corp. v. Doyal, 286 U.S. 123 (1932)
Fox News Network v. TVEyes, Inc., 883 F.3d 169 (2d Cir. 2018)11, 25, 28
Harper & Row Publishers v. Nation Enters., 471 U.S. 539 (1985)3
Random House, Inc. v. Rosetta Books LLC, 150 F. Supp. 2d 613 (S.D.N.Y. 2011)23
Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417 (1984)3, 6, 7, 16
Sundeman v. Seajay Soc'y, Inc., 142 F.3d 194 (4th Cir. 1998)28
Twentieth Century Music Corp. v. Aiken, 422 U. S. 151 (1975)
U.S. v. Bertelsmann SE & Co. KGAA, 1:21-cv-02886 (D.D.C. Nov. 15, 2022)4
<b>Statutes</b> 17 U.S.C. § 107



Other Authorities
Andrew Albanese, <i>Survey Says Library Users Are Your Best Customers</i> , PUBLISHERS WEEKLY, Oct. 28, 2011, https://www.publishersweekly.com/pw/by-topic/industry-news/publishing-and-marketing/article/49316-survey-says-library-users-are-your-best-customers.html
Authors Guild Model Trade Book Contract, AUTHORS GUILD, https://go.authorsguild.org/contract_sections/4
AUTHORS GUILD, http://www.authorsguild.org, last accessed Dec. 18, 202317
Authors Speak Out: An Update on the Wiley eBook Situation, AUTHORS ALL., Oct. 14, 2022, https://www.authorsalliance.org/2022/10/14/authors-speak-out-an-update-on-the-wiley-ebook-situation/
Blake Brittan, <i>Authors Group Blast Publishers in Legal Fight with Internet Archive</i> , REUTERS, Sept. 29, 2022, https://www.reuters.com/legal/litigation/author-coalition-blasts-publishers-legal-fight-with-internet-archive-2022-09-29/
Brief for Library Futures as Amicus Curiae Supporting Defendants, <i>Hachette Book Group, Inc. v. Internet Archive</i> , No. 20-cv-4160 (S.D.N.Y. Mar. 24, 2023)8, 27
Caity Weaver, <i>Does 'The Da Vinci Code' Writer Have a Secret?</i> , N.Y. TIMES, July 29, 2021, https://www.nytimes.com/2021/07/29/style/dan-brown-advice-book.html
CORNELL UNIVERSITY LIBRARY, REPORT OF THE COLLECTION DEVELOPMENT EXECUTIVE COMMITTEE TASK FORCE ON PRINT COLLECTION USAGE (2010), https://ecommons.cornell.edu/handle/1813/45424
Craig Joyce, <i>The Statute of Anne: Yesterday and Today</i> , 47 HOUSTON L. R. 779 (2010)
Dept. Com. Internet Policy Task Force, White Paper on Remixes, First Sale, and Statutory Damages: Copyright Policy, Creativity, and Innovation in the Digital Economy (2016)
Geoffrey A. Fowler, <i>Want to Borrow that E-book from the Library? Sorry, Amazon Won't Let You.</i> , WASH. POST, Mar. 10, 2021, https://www.washingtonpost.com/technology/2021/03/10/amazon-library-ebook-monopoly/



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