

# **Securing Digital Rights for Libraries: Towards an Affirmative Policy Agenda for a Better Internet**

Lila Bailey\*  
Michael Lind Menna†

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\* Senior Policy Counsel, Internet Archive.

† Law & Policy Fellow, Internet Archive. J.D., Stanford Law School. Ph.D. Candidate, Stanford University.

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## Foreword

We want a better internet—one guided by a public interest vision we build together, reflecting shared values like providing access to trustworthy information, supporting democracy, protecting privacy, and fostering learning and opportunity for everyone. In order to get there, we are building a [movement](#).

Our organizations have spent years immersed in conversations, both private and public, about how to make the internet a better and more open place for everyone. These conversations have taken on new urgency of late, as governments and internet activists around the globe have started movements to rein in “Big Tech,” which is so often blamed for today’s societal ills: censorship, surveillance, echo chambers, deceptive privacy practices, harmful content, and more.

We believe the problems we face are bigger than just a few giant corporations. We believe that private markets have steadily eroded what have traditionally been public places. Unchecked, the market forces churning out new technologies from apps to AI have not done enough to tackle systemic inequities and ensure that *everyone* can reap the benefits of technological progress. That’s why our movement is making a deliberate effort to align with public serving institutions, nonprofit organizations, academics, and other civil-society actors to envision an internet that better aligns with the public interest.

Why start the movement for a better internet by thinking about libraries? Because libraries have long represented the public interest values we care about. They are one of the few trusted institutions we have left, and what’s more, they have a history of responsibly making information available to the public and supporting democratic engagement. Fixing the internet is not as simple as “just add libraries”—but we agree it’s a great place to start.

Brewster Kahle, Founder and Digital Librarian, Internet Archive  
Catherine Stihler, CEO, Creative Commons  
Chris Lewis, President, Public Knowledge

## Executive Summary

This paper is the result of a series of surveys, research, and two workshops facilitated by the Internet Archive. The first workshop, called *Libraries and the Digital Information Ecosystem: Towards an Affirmative Policy Agenda for a Better Internet*, was held in person on June 23, 2022 at Georgetown Law Center in Washington, D.C. The second was held virtually on July 21, 2022, and included a mix of new and previous attendees. Between the two workshops, approximately 50 leading experts from libraries, academia, and civil society discussed the various challenges facing today’s libraries, as well as what policies would be necessary to maintain their critical function of providing equitable access to trustworthy information. The discussions took place under the Chatham House Rule to encourage free and open exchange of ideas and information; to that end, specific views are not attributed to any particular person or organization throughout this report.<sup>1</sup>

The prevailing theme throughout our discussion was that an increasingly digital society needs libraries that meet people where they are—online. Many of our participants noted that digital technologies hold the promise of more robust and more convenient access for underserved communities and people. They imagined a world where digital technologies and content would allow libraries to better serve everyone—from residents in rural areas and tribal lands far away from urban or suburban library resources; to vulnerable youth seeking health information without fear of stigma; to incarcerated people educating themselves while they serve their time; to aspiring entrepreneurs researching new business ideas; to single parents in desperate need of an affordable way to entertain their kids. Unfortunately, although libraries have been able to expand their digital services and offerings to meet some communities’ needs, the digital landscape they operate in today has in many ways failed to live up to its promise.

This report is intended as a guide for meaningful policy discussions among librarians, public interest advocates, and lawmakers. It proceeds in four parts. Section I provides some necessary background on the traditional role libraries have played in society, and discusses some of the challenges libraries have faced as they work to expand access to digital materials and resources. Section II summarizes the results of our pre-workshop survey and the discussions from the workshops. It is not an exhaustive summary of every item discussed, but rather a synthesized collection of the challenges, opportunities, and policy ideas that shared some degree of consensus among participants.<sup>2</sup> Section III distills the key takeaway from our consultation process: The rights that libraries have offline must also be protected online. As such, that section proposes a set of four digital rights for libraries, based on the core library

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<sup>1</sup> An early draft of this paper was presented at the Library Leaders Forum in San Francisco on October 19, 2022. Feedback from that workshop’s participants has also been incorporated into this final report.

<sup>2</sup> Nothing in this paper necessarily reflects the individual opinions of the workshop participants or their affiliated institutions. It is important to note that the design of these workshops were influenced by previous work done at the Creative Commons Global Summit, held in September 2021. Finally, the scope of these discussions was limited to the United States—but only as a starting point. Further work will need to include global perspectives and policy strategies for different local contexts. Creative Commons has already begun some of those discussions. <https://creativecommons.org/2022/04/04/cc-publishes-policy-paper-titled-towards-better-sharing-of-cultural-heritage-an-agenda-for-copyright-reform/>.

functions of **preserving** and **providing access** to information, knowledge, and culture. Specifically, if libraries are to continue ensuring meaningful participation in society for everyone, they must have the rights to:

- **Collect digital materials**, including those made available only via streaming and other restricted means, through purchase on the open market or any other legal means, no matter the underlying file format;
- **Preserve those materials**, and where necessary repair or reformat them, to ensure their long-term existence and availability;
- **Lend digital materials**, at least in the same “one person at a time” manner as is traditional with physical materials;
- **Cooperate with other libraries**, by sharing or transferring digital collections, so as to provide more equitable access for communities in remote and less well-funded areas.

Finally, the last section concludes by providing some potential next steps for the community and for policymakers.

## I. Why We Need Libraries—and What Challenges They Face

From the Library of Alexandria to the Library of Congress, the core functions of preserving information and making it available to the broader public have been essential to nearly every aspect of our advancement as a species. Gains in science, literature, and philosophy would not have been possible without access to the historical record and existing knowledge base provided in library collections. And when it comes to the health of a polity, the ancient library evolved into the familiar and quintessentially American institution we know today for a reason: The promise of a democratic society built on civic participation will never be fully met, so long as citizens do not have reliable access to trustworthy information.<sup>3</sup> This simple truth had universal support even during the contentious Founding era, and seems all the more relevant today in our polarized politics.<sup>4</sup>

Though libraries have never been perfect, they do have a longstanding record of adapting alongside modern democracy. Like many institutions in the United States, libraries began as closed-off spaces with an exclusionary attitude toward materials as well as toward patrons.<sup>5</sup> But

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<sup>3</sup> See, for example, Nancy Kranich’s work explaining how: (A) “Democracy is a hollow concept without unfettered access to information”; (B) “Democracies need libraries” to help “disseminate information so the public can participate in the processes of governance.” <https://doi.org/10.1086/707670>.

<sup>4</sup> Ben Franklin noted the way that “libraries have improved the general conversation of the Americans” and “contributed in some degree to the stand so generally made throughout the colonies in defense of their privileges,” while James Madison observed that “popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.”

<https://archive.org/embed/benjaminfrankli00fran>;

[https://web.archive.org/web/20220907004211/https://www.loc.gov/resource/mjm.20\\_0155\\_0159/?sp=1&st=text](https://web.archive.org/web/20220907004211/https://www.loc.gov/resource/mjm.20_0155_0159/?sp=1&st=text).

<sup>5</sup> See the history of library practices and early controversies in the first chapter of *Civic Space/Cyberspace: The American Public Library in the Information Age*, by Redmond Kathleen Molz and Phyllis Dain: “From the outset of the public library movement, the formation of the collection posed a

by the turn of the twentieth century, benefactors like Andrew Carnegie gave enormous sums of money away to build thousands of public libraries across the country—open to women, children, and immigrants (like Carnegie himself).<sup>6</sup> In the second half of the twentieth century, after the establishment of federal library funding and the popularization of larger library systems, these public-library resources were eventually able to reach more rural locations. Now, whether living in Boston, Massachusetts or Boston, Indiana, more Americans than ever have a local library within driving distance—where it is possible to read up on anything from astrophysics to zoology, no matter their race, gender, or income.

As the economy developed and technologies changed, libraries also began lending other media like cassettes, CDs, and DVDs; allowing free internet access within their walls; and even letting people take mobile wifi hotspots and other electronic devices home. Because of their orientation towards public service, libraries are *always* evolving to meet community members at the point of need—whether they be single parents seeking an affordable way to entertain the family, entrepreneurs looking to start a new business, or struggling students with work schedules that keep them busy during normal daytime hours.<sup>7</sup> That, after all, is what the library's core principles of preserving and democratizing access to knowledge demand.

But as much as libraries have largely embraced the internet and its expanded reach, technology's newfound capacity to close off and censor digital distribution networks has given the music, publishing, and motion-picture industries an unprecedented opportunity to cut libraries out of the picture. Hardcover, paperbacks, and other physical formats do still get manufactured—thanks in part to libraries' guaranteed demand—but there is no denying that every day more and more content gets 'published' only impermanently, behind a paywall, and in algorithmically circumscribed echo chambers. These trends have led to unfortunate losses for society in terms of reliable access to trustworthy information, which private markets simply do not have the financial incentives to provide.

Consider how society's relationship to audiovisual content has changed with the proliferation of streaming media services. In addition to librarians and policy experts, many consumer outlets have joined together in expressing concern about the misleading allure of 'subscribe,' 'buy' and even 'purchase now' buttons. Instead of representing a discrete transfer of ownership like buying a VHS tape or DVD, these services offer only temporary access contingent on restrictive

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dilemma between two opposing camps: on the one hand, there was an appeal to popular culture, represented by the gradual inclusion of fiction and light recreational reading, and, on the other, there was the noble aim of the diffusion of knowledge, which was heavily dependent on the usefulness of reading, embodied in the standard classical works and those having practical, educative, and vocational value." <https://doi.org/10.7551/mitpress/1854.001.0001>.

<sup>6</sup> Susan Stamberg, "How Andrew Carnegie Turned His Fortune Into a Library Legacy." <https://web.archive.org/web/20130804045716/https://www.npr.org/2013/08/01/207272849/how-andrew-carnegie-turned-his-fortune-into-a-library-legacy>.

<sup>7</sup> See *ibid.* for a description of libraries' efforts to expand their services in the late twentieth century. <https://doi.org/10.7551/mitpress/1854.001.0001>. See also the research indicating that physical-only library access can result in measurable equities—i.e. Jeff Allen, "Mapping differences in access to public libraries by travel mode and time of day"; Wenting Cheng, et al., "Assessing the spatial accessibility and spatial equity of public libraries' physical locations." <https://doi.org/10.1016/j.lisr.2019.02.001>; <https://doi.org/10.1016/j.lisr.2021.101089>.

terms laid out in the fine print of a licensing agreement. Even after purchasing a title for full price on Amazon Prime Video, the terms of use remind buyers that its availability will still be subject to restrictions “imposed on us by our content suppliers,” which “may change over time as we add new features, devices, and content to our service.”<sup>8</sup>

Equally concerning, when information and entertainment loses its perceived monetary value, commercial players have no incentive to keep it around, leading to major gaps in our collective cultural record. For example, Myspace deleted an estimate of 53 million music files from its servers, erasing what remained of a once-lively hub for up-and-coming musicians in the early aughts.<sup>9</sup> More recently, HBO took down 200 episodes of the classic children’s program, *Sesame Street*, in addition to 36 other titles on its HBO Max platform.<sup>10</sup> What happened to the digital age’s promise of allowing smaller actors to increase access for everyone? In this world of licensing over ownership, the rightsholder has almost complete control over what’s available at any given moment—and, worse, forever thereafter—no matter what their customers thought when they clicked the ‘buy’ button.

But if for individual households the problem of disappearing content poses the threat only of ruining movie night, it poses an existential and potentially devastating threat to the libraries that must rely on consistent access to materials they paid for. In a recent example, the major textbook publisher Wiley removed library access to over 1,300 of the most popular and widely used digital textbooks at the beginning of the school year, wreaking havoc for faculty and hindering access to affordable options for students.<sup>11</sup> Publishers have also experimented with embargoing popular titles from library access,<sup>12</sup> while others have refused to license ebooks to libraries on any terms at all.<sup>13</sup> In many such cases, libraries have been successful in pushing back against the most egregious publisher behaviors—Wiley eventually reinstated access to the

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<sup>8</sup> See Geoffrey Morrison’s explainer about Prime Video’s fine print for *Wirecutter*, “You Don’t Really Own the Digital Movies You Buy.”  
<https://web.archive.org/web/20210805130655/https://www.nytimes.com/wirecutter/blog/you-dont-own-your-digital-movies/>.

<sup>9</sup> See Damon Krukowski’s treatment of the Myspace purge for *Pitchfork*, “History Disappeared When Myspace Lost 12 Years of Music, and It Will Happen Again.”  
<https://web.archive.org/web/20190323065838/https://pitchfork.com/thepitch/history-disappeared-when-myspace-lost-12-years-of-music-and-it-will-happen-again>.

<sup>10</sup> Warner Bros. responded to questions about the move simply by pointing to HBO Max’s pending combination with Discovery+, where they said they’d be deleting content as well. See Todd Spangler’s treatment of the ordeal in *Variety*.  
<https://web.archive.org/web/20220819155350/https://variety.com/2022/digital/news/hbo-max-removes-sesame-street-episodes-1235345685/>.

<sup>11</sup> Susan D’Agostino, “Publisher Blocks Access to Ebooks; Students and Professors Scramble.”  
<https://web.archive.org/web/20220928073226/https://www.insidehighered.com/news/2022/09/28/publisher-blocks-access-ebooks-students-faculty-scramble>.

<sup>12</sup> Andrew Albanese, “Macmillan Abandons Library E-book Embargo.”  
<https://web.archive.org/web/20200318173746/https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/82715-macmillan-abandons-library-e-book-embargo.html>.

<sup>13</sup> Nick Statt, “Amazon withholds its ebooks from libraries because it prefers you pay it instead.”  
<https://web.archive.org/web/20220103121331/https://www.theverge.com/2021/3/10/22323434/amazon-publishing-library-lending-access-refuse-overdrive-libby>.



textbooks after library groups spoke out;<sup>14</sup> Macmillan dropped its embargo after libraries boycotted;<sup>15</sup> and Amazon agreed to license titles from Amazon Publishing and Audible through the Digital Public Library of America's Palace Marketplace.<sup>16</sup> Nevertheless, these examples make clear that the transition to digital access has not yet lived up to the early promise of more robust and convenient access for underserved communities.

Sometimes, the problem comes not from the removal of content, but rather the inclusion of unwanted and potentially harmful materials in subscription bundles that local libraries have no control over. Because publishers do not license ebooks directly to libraries, libraries must choose among a handful of commercial vendors like Overdrive and Hoopla to gain access to electronic resources. A few months ago, librarians discovered that Hoopla was circulating countless low-quality titles promoting baseless conspiracy theories, COVID disinformation, LGBTQ+ conversion therapy, and Holocaust denial to its ebooks collection.<sup>17</sup> Though Hoopla did remove these materials after librarians spoke out, it left those in charge of library collections with many questions about how the service selects materials for inclusion and recommendation.<sup>18</sup> With physical materials, librarians are able to use their professional judgment to curate resources of use and interest to their local communities. The digital world has shifted much of this control to publishers and vendors, depriving communities of the library-specific curation that had been so beneficial.

For these and other reasons, librarians have begun to speak out against these licensing norms.<sup>19</sup> At least eight states have introduced bills that would require publishers to license electronic resources on "reasonable terms." Unfortunately, Maryland's version of this bill was

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<sup>14</sup> Susan D'Agostino, "Responding to Criticism, Publisher Reinstates Blocked Ebooks." <https://www.insidehighered.com/news/2022/10/06/publisher-reinstates-blocked-ebooks-librarians-unsatisfied>.

<sup>15</sup> <https://www.readersfirst.org/news/2020/3/17/macmillan-drops-embargo>.

<sup>16</sup> See Rebecca Klar's coverage in *The Hill*, as well as the DPLA announcements.

<https://web.archive.org/web/20210620012502/https://thehill.com/policy/technology/556381-amazon-takes-big-step-in-e-book-deal-with-libraries-but-activists-see-more>;

<https://web.archive.org/web/20210518140025/https://dp.la/news/dpla-signs-agreement-with-amazon-publishing-to-make-their-ebooks-available-to-u-s-libraries>;

<https://web.archive.org/web/20220624153956/https://dp.la/news/the-palace-project-launches-audible-content>.

<sup>17</sup> Claire Woodcock, "Ebook Services Are Bringing Unhinged Conspiracy Books into Public Libraries." <https://web.archive.org/web/20220420133322/https://www.vice.com/en/article/93b7je/ebook-services-are-bringing-unhinged-conspiracy-books-into-public-libraries>.

<sup>18</sup> The Library Freedom Project and Library Futures wrote a terrific open letter demanding accountability from these platform services.

<https://web.archive.org/web/20220327213714/https://libraryfreedom.medium.com/we-demand-accountability-from-hoopla-digital-and-overdrive-regarding-the-platforming-of-fascist-c47c88e62ddc/>

<https://libraryfreedom.medium.com/we-demand-accountability-from-hoopla-digital-and-overdrive-regarding-the-platforming-of-fascist-c47c88e62ddc>.

<sup>19</sup> The American Library Association wrote the following of the current status quo: "While some current publisher licensing and pricing models complicate access by library users, other issues also contribute to our ability to meet demand, including library vendor practices and the increase in content (especially streaming) to which libraries have no access."

<https://web.archive.org/web/20210630185028/https://www.ala.org/tools/sites/ala.org/tools/files/content/Th e-Need-for-Change-A-Position-Paper-on-E-Lending-by-the-Joint-Digital-Content-Working-Group.pdf>.



blocked by a lawsuit filed by the American Association of Publishers, while others seem to be on hold.<sup>20</sup> But that has not stopped libraries from thinking creatively about how to continue serving their essential role in society even under the current digital regime. Authors, artists, filmmakers, musicians, and other information and entertainment professionals have joined libraries to call out the many dangers that the current licensing-only regime poses to the accessibility and longevity of their own work.<sup>21</sup> While the corporate publishing interests that sell and distribute creative works tend to prioritize short-term profits, creators care deeply about equitable, long-term access to their work.<sup>22</sup> That is why so many stand with libraries.<sup>23</sup>

This current state of affairs poses a threat not only to libraries, but also to society as a whole. Even now, the signs are just too obvious to ignore: Democracy and humanity lose out when profit motives outweigh public-interest considerations about access to information, knowledge, and culture. In that kind of world, information appears (and disappears) according only to its effect on a company's interests—not its value to the public. That is why we need to give libraries the space to keep preserving materials and helping communities, especially in our increasingly digital and networked age.

## II. What Librarians and Policy Experts Had to Say

The workshops were shaped by a pre-workshop survey<sup>24</sup> and designed to provide a space for librarians and policy experts to come together and discuss ways to help libraries make the internet work better for everyone. Between the survey responses and more than eight hours' worth of in-person and online discussion, we learned a lot about librarians' views of the current information crisis, and what they could reasonably be expected to contribute as frontline workers. They confirmed many of the distressing stories being reported—that librarians feel thrown into the center of the culture wars;<sup>25</sup> that they fear lawsuits from the publishing industry, just for providing electronic course reserves and lending their own books online;<sup>26</sup> and that

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<sup>20</sup> Andrew Albanese, "Court Blocks Maryland's Library E-book Law."

<https://web.archive.org/web/20220217151558/https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/88550-court-blocks-maryland-s-library-e-book-law.html>.

<sup>21</sup> See, e.g., "Own Music! Own Books!," by Eve's Max Collins.

<https://web.archive.org/web/20220908093941/https://popula.com/2022/08/11/own-music-own-books/>.

<sup>22</sup> See, e.g., Authors Alliance members speaking out against the textbook publisher Wiley's removal of over 1,300 electronic textbooks from libraries: <https://www.authorsalliance.org/2022/10/14/authors-speak-out-an-update-on-the-wiley-ebook-situation/>.

<sup>23</sup> See Fight For The Future's open letter from "Authors For Libraries," which included signatures from Neil Gaiman (*The Sandman*, *American Gods*, *Coraline*), to Alyssa Milano (*Charmed*, *Who's The Boss?*), to Tom Morello (*Rage Against the Machine*, *Audioslave*, *The Nightwatchman*).

<https://web.archive.org/web/20220930164031/https://www.fightforthefuture.org/Authors-For-Libraries>.

<sup>24</sup> See Appendix.

<sup>25</sup> See, e.g., John Burnett, "Local libraries have become a major political and cultural battleground";

Madeleine Carlisle, "Public Libraries Face Threats to Funding and Collections as Book Bans Surge."

<https://web.archive.org/web/20220901013334/https://www.npr.org/2022/08/31/1119752817/local-libraries-have-become-a-major-political-and-cultural-battleground>;

<https://web.archive.org/web/20220907184716/https://time.com/6211350/public-libraries-book-bans/>.

<sup>26</sup> Coverage of the major publishers' suit against Internet Archive has recognized its greater implications for library lending and democratic access to information. See, e.g., Pranshu Varma's treatment of the subject in his "Innovations" column for the *Washington Post*.

misinformation and censorship have spread to their most frequently used ebook platforms.<sup>27</sup>

The pre-workshop survey asked participants to rate their level of agreement with fifteen statements on a scale of one to five, before identifying the most promising and/or urgent topics for workshop discussion. These policy issues—which included public domain protections, anticompetitive behavior, mandatory filtering, controlled digital lending, equitable access to knowledge and creative empowerment, mis/disinformation, digital ownership, and contractual override—formed the basis of both the individual breakout discussions as well as the in-person and online follow-up conversations with the whole group.

One important theme that arose throughout the discussion was just how interrelated and overlapping these issues are. It is difficult to talk about digital ownership without a discussion about the contract and licensing provisions by which content providers deprive libraries of the legal rights necessary to build and curate their collections. By the same token, any discussion about anticompetitive, cartel-like behavior in the publishing industry leads back to the unfair licensing terms that corporations together impose. Most important of all, the higher-level issues surrounding equity and creative empowerment could not be isolated into their own policy bucket. Because those fundamental ideals are what motivate libraries' work of preserving information and democratizing access in the first place, they must be treated as the ends and not the means of any policy proposal to maintain that work into the twenty-first century.

A second important theme pertains to the content industry's neverending push for "more copyright," and how in today's digital context, it has put libraries on the defensive in their attempts simply to maintain the status quo. Specifically, our librarian participants bristled at how "hyperplatformatized," licensing-based markets ironically make it so that *copyright* is what is keeping them from the *copies* and *rights* they always needed to do their job. As of right now, libraries not only lack control over the digital content they have acquired, but also must operate without their traditional capacity to remove unwanted, problematic titles included in bundled subscriptions.

The remainder of this section attempts to do justice to the workshops' many nuanced discussions, while recognizing the need to document higher-level agreements and problems identified by participants.

### **Protecting and Supporting the Public Domain**

Participants strongly supported a robust and freely accessible public domain, and 96.9% agreed that policymakers should enact legal protections against further enclosure of the public domain (e.g., via extension of the now life-plus-seventy-year term length).

Participants also raised a number of policy ideas to confront the obstacles making public domain materials less accessible. The first idea was to declare a National (or International)

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<https://web.archive.org/web/20220725123114/https://www.washingtonpost.com/technology/2022/07/25/internet-archive-digital-lending-lawsuit/>.

<sup>27</sup> See above, notes 17 and 18.

Public Domain Day, as a way of raising awareness and celebrating the fundamental building blocks of human knowledge that belong to everyone. Another idea proposed some form of enhanced legal protection for the public domain itself. For example, members of the public could be endowed with the right to bring a claim in support of opening public-domain works currently closed off from the public. On the flip side, participants also discussed the possibility of legally prohibiting unfair and unreasonable claims to public-domain materials. This prohibition could take the shape of a defense to copyright infringement (e.g., clarifying that copyright misuse covers claiming to own public domain resources), or could require increased enforcement of copyright's originality requirement (e.g., clarifying that no ownership right attaches to the scanned or photographed version of a public domain work). Finally, the group discussed asking the Copyright Office to maintain a record of works that have become part of the public domain.

### Competition and Antitrust Issues

There was strong consensus among participants (90.7%) that today's content industries present serious antitrust issues deserving of heightened oversight by relevant officials in the Department of Justice and the Federal Trade Commission. Participants were concerned with the rapid and extreme consolidation among both academic and trade publishers. Several oligopolies of publishers have taken over publishing markets, limiting libraries' choices of information vendors. This consolidation and lack of competition gives the consolidated publishers outsized power that they leverage against libraries. Things like embargoes,<sup>28</sup> price hikes,<sup>29</sup> and sudden removals<sup>30</sup> are only possible in a market where libraries have few choices about who supplies their digital collections. Anti-competitive behavior among publishers harms libraries, taxpayers, and consumers by giving publishers the freedom to charge whatever they want for resources, and to set the terms of access for those resources, without worrying about losing market share. If a few paywalled platforms become the only places to get critical information, society will lose intellectual freedom as well as consumer choice.

Participants also discussed how the biggest corporate publishers—especially those in academic and scientific publishing—are starting to look more like data-analytics firms, or “data cartels,” collecting information about readers and their practices.<sup>31</sup> Typically, data cartels warehouse all

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<sup>28</sup> Lynn Neary describes this problem in her article for *NPR*, “You May Have To Wait To Borrow A New E-Book From The Library.” <https://web.archive.org/web/20191102032728/https://www.npr.org/2019/11/01/775150979/you-may-have-to-wait-to-borrow-a-new-e-book-from-the-library>.

<sup>29</sup> See, e.g., the open letter from the Boston Public Library Consortium, “Ebook Pricing Hikes Amount to Price Gouging,” as well as the coverage of ebook pricing *The Daily Beast* and *Inside Higher Ed*. <https://web.archive.org/web/20150915050511/http://blogs.lib.uconn.edu/news/ebook-pricing-hikes-amount-to-price-gouging-a-letter-from-the-boston-library-consortium/#.VfenDn3P1dg>; <https://web.archive.org/web/20210418090535/https://www.thedailybeast.com/publishers-are-using-e-books-to-extort-schools-and-libraries>; <https://web.archive.org/web/20210129120315/http://www.theguardian.com/education/2021/jan/29/price-gouging-from-covid-student-ebooks-costing-up-to-500-more-than-in-print>.

<sup>30</sup> See above, note 11.

<sup>31</sup> See Sarah Lamdan's fuller discussion of these issues in *Data Cartels: The Companies that Control and Monopolize Our Information* (2022). <https://web.archive.org/web/20220819164139/https://www.sup.org/books/title/?id=33205>.

sorts of information for the sake of selling data and developing predictive/prescriptive analytics, which is adding an entirely new profit source to their business and attracting an array of new customers.<sup>32</sup> These publishing-turned-data-analytics firms sell both their raw materials (data and information), as well as predictive and prescriptive analytics created by running their data and information through analytics systems. On the trade publishing side, there is less of this data-analytics growth happening today, but some signs indicate that those companies may also try to commercialize readers' data in the future.<sup>33</sup> Participants pointed out that collecting personal data and selling it to the highest bidder stands in fundamental tension with libraries' mission of providing *private* information access—which is to say, free from observation or unwanted surveillance.

Participants were concerned that the transition to data analytics from publishing also minimizes the traditional publishing side of the business—the side that libraries depend on. Academic publishers' paper offerings are declining in breadth and quality, and their online collections are filled with titles of varying quality, because the companies are focused on building data-analytics products like academic-metrics services, instead of publishing top-quality materials.<sup>34</sup>

For these and many other reasons, participants agreed that information industries need better antitrust scrutiny, and that breaking up data cartels like those in publishing is necessary. But they also recognized that modern antitrust enforcement won't allow for this type of breakup, because today's antitrust enforcement hinges on financial harm to consumers, and does not consider anticompetitive activities that harm competitors or cause non-economic harms to consumers, such as privacy violations.<sup>35</sup> Participants suggested that this will require Congress to reform antitrust regulation for the digital age, with laws that take into consideration non-economic harms such as digital profiling and digital redlining.

### **Mandatory Filtering**

A majority of participants (78.1%) expressed some level of agreement with the sentiment that libraries should be exempt from content filtering, geo-blocking, and site-blocking regulations. During the workshops, it became clear that there was also universal consensus that mandatory content filtering is bad policy and should be rejected.

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<sup>32</sup> Stephen Buranyi, "Is the staggeringly profitable business of scientific publishing bad for science?" <https://www.theguardian.com/science/2017/jun/27/profitable-business-scientific-publishing-bad-for-science>.

<sup>33</sup> See Penguin Random House's own discussion of how it would like to harness their personal data collections to gain a competitive advantage in "Penguin Random House: Plotting a story of data maturity with Snowflake." <https://web.archive.org/web/20220409173000/https://www.snowflake.com/blog/penguin-random-house-plotting-a-story-of-data-maturity-with-snowflake/>.

<sup>34</sup> Lamdan, *Data Cartels*, 17.

<sup>35</sup> See, e.g., Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (2018) (describing the limited scope of U.S. antitrust law enforcement as a catalyst for large-scale digital media company consolidation). <https://web.archive.org/web/20181207164851/https://globalreports.columbia.edu/books/the-curse-of-bigness/>.

A mandatory filtering law would require all information providers, including libraries, to enable software preventing the distribution and access of copyrighted materials.<sup>36</sup> Participants agreed that filters can be used as an optional tool, if institutions find them helpful in performing a first-level review of content legality, but they should neither be mandated nor constitute the final say in determining which materials are shareable and accessible.<sup>37</sup> Filtering technologies are expensive, and if mandated, would impose a substantial financial burden on libraries. Even in the unlikely event that a better filtering system becomes readily available and affordable, there are still problems with mandatory filtering. For example:

- Mandatory filtering does not respect limitations and exceptions like fair use.
- Mandatory filtering cultivates a *de facto* regime in which a purchaser's usage rights become subject to someone else's permissions.
- Mandatory filtering forces libraries and other institutions that prioritize users' speech and privacy rights to monitor and enforce barriers denying access to necessary information and the secure conditions wherein people feel safe accessing it.

For these and many other reasons, participants strongly agreed that libraries must not be forced to bear the costs of any mandatory filtering policy, when it only serves the interests of rights holders who want to restrict access to information.

### **Controlled Digital Lending**

Another strong majority (78.2%) expressed support for enacting a law that would explicitly codify libraries' ability to engage in the process of controlled digital lending (CDL), wherein they distribute digital materials in a "lend like print" fashion.<sup>38</sup> This topic is relevant to both digital ownership and contract preemption, discussed later in this section, because CDL is one way that libraries can leverage the collections they already own. At the same time, though, it does not solve the problems of born-digital materials distributed over streaming platforms and other licensing-only distribution platforms.

Controlled digital lending is a topic that has been discussed at length in other publications, and

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<sup>36</sup> For example, under the proposed SMART Copyright Act of 2022, internet services will have to implement any "designated technical measures" chosen by the Copyright Office. <https://web.archive.org/web/20220327071734/https://www.tillis.senate.gov/services/files/465759C0-DBFA-4348-9565-CBA4FE6FB45F>. Such filtering is also already required in the EU. [https://web.archive.org/web/20220000000000\\*/https://www.eff.org/deeplinks/2022/05/eus-copyright-directive-still-about-filters-eus-top-court-limits-its-use](https://web.archive.org/web/20220000000000*/https://www.eff.org/deeplinks/2022/05/eus-copyright-directive-still-about-filters-eus-top-court-limits-its-use).

<sup>37</sup> One of the most sophisticated filtering systems is YouTube's Content ID. Youtube Content ID is known to give many false positives, including people playing public domain music mistakenly flagged as major label recordings of those pieces, and an hour long loop of a cat purring being misidentified as a song. See Katharine Trendacosta, "Unfiltered: How YouTube's Content ID Discourages Fair Use and Dictates What We See online." <https://web.archive.org/web/20201210195021/https://www.eff.org/wp/unfiltered-how-youtubes-content-id-discourages-fair-use-and-dictates-what-we-see-online>.

<sup>38</sup> There is a simple explainer of CDL available for free here: <https://web.archive.org/web/20221011142309/https://controlddigitallending.org/>.



a CDL literature review is beyond the scope of this report.<sup>39</sup> Here, it is worth noting that support for CDL shared strong agreement among participants because of the way it allows libraries to provide more democratic access to information in the digital age. Still, many participants expressed a belief that CDL is actually *too narrow* a policy, insofar as it does not harness the full power of networked digital technologies to share and preserve knowledge for everyone. That is why many librarian participants were quick to add that CDL must extend to interlibrary lending and resource-sharing arrangements, so as to permit people in remote or underserved areas to browse collections from around the world. Cooperation between libraries, they told us, was a simple-but-essential function in the digital world.

Legal clarity over CDL could come about in a few different ways. Currently, the libraries that engage in controlled digital lending rely on fair use, and there is ongoing litigation over CDL working its way through the courts right now.<sup>40</sup> If the Internet Archive prevails in its defense against the major publishers' lawsuit, then precedent could become clearer for other institutions. Another possible path, though, would be to codify the practice of CDL in the Copyright Act, much as the practice of interlibrary loan was codified in the 1976 Act.<sup>41</sup> Either way, participants noted that librarians and others who support CDL should be encouraging institutions to adopt the practice and promoting policies that permit and incentivize them to do that, such as increasing funding to support CDL and incorporating CDL into collection-development guidelines.

A note about clarifying other library practices, such as text and data mining: Weaker majorities (56.9% and 53.1%) supported legally clarifying the extent to which libraries could digitize analog media and mine texts to make them searchable for researchers. Further discussion revealed that many who voiced uncertainty and disagreement were worried that attempts at gaining legal clarification would only put new limitations on libraries, in part due to the lobbying strength of the music, motion-picture, and publishing industries. There was even fear that legislative intervention might compromise existing exceptions like fair use, which applies to many of these activities already.<sup>42</sup> These same concerns are relevant when thinking about legislative attempts to codify CDL.

### **Mis/disinformation**

81.3% of survey respondents agreed that libraries' role in combating mis- and disinformation should be to ensure free and equitable access to trustworthy information online—not just within the walls of the library. Beyond that, participants did not reach a strong consensus on other possible roles. A strong plurality of respondents (46.9%) were unsure about whether libraries

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<sup>39</sup> See, e.g. Michelle Wu, “Revisiting controlled digital lending post-*ReDig!*”; “Shared Collection Development, Digitization, and Owned Digital Collections.” <https://doi.org/10.5210/fm.v24i5.9644>; <http://dx.doi.org/10.2139/ssrn.3328624>.

<sup>40</sup> The Electronic Frontier Foundation, “Hachette v. Internet Archive.” <https://web.archive.org/web/20221013215636/https://www.eff.org/cases/hachette-v-internet-archive>.

<sup>41</sup> 17. U.S.C. § 108 – Limitations on exclusive rights: Reproduction by libraries and archives.

<sup>42</sup> In *Authors Guild, Inc. v. HathiTrust* (2014), the Second Circuit Court of Appeals held that the lending of books scanned by Google did not infringe authors' and publishers' copyright, because it was a fair use. <https://web.archive.org/web/20220907105230/https://law.justia.com/cases/federal/appellate-courts/ca2/12-4547/12-4547-2014-06-10.html>.

should be encouraged to build healthier social media alternatives and add-ons. What's more, even though a majority (59.4%) agreed that libraries should have a role in assessment and auditing systems for regulating content moderation, our discussions revealed that the shape of that role remains far from clear.

Participants discussed several different policy directions, including: Joan Donovan's proposal that social-media platforms "hire 10,000 librarians to get in there and to look at what's on the shelves, to sort, to document and to cull what is not viable, what is not useful, what is not serving the public's interest";<sup>43</sup> Ethan Zuckerman's vision of public-service entities creating "user-tunable filtering systems for social media";<sup>44</sup> and Ben Tarnoff's provocative suggestion that citizens could congregate in "a social-media site run by your local library," instead of Facebook or Twitter.<sup>45</sup> The biggest divide on this topic was between participants who came from libraries and those who came from academia and civil society. While academic and civil society participants viewed these as creative solutions to a difficult problem, library participants expressed skepticism that they should be charged with fixing problems caused by the world's largest media and technology companies. They raised concerns that working to advance the interests of for-profit corporations would not be an appropriate role for libraries—and especially public libraries. Many remained wary of having librarians play any role in content moderation or fact-checking for social media sites.

All told, the one thing participants *did* agree on was that libraries could help with online misinformation by continuing to help people in search of high-quality information. Libraries' traditional functions of preserving and democratizing access to knowledge would help counteract some (though never all) of the toxicity online, by ensuring equitable access to trustworthy information and presenting it without profit-motivated censorship or bias. Participants noted that the partnership between Internet Archive and Wikimedia, which has begun linking references in Wikipedia articles to digitized books in the Archive's collection, was one already successful example.<sup>46</sup> Participants also discussed the possibility of developing other technical solutions, like browser plug-ins, which could help people find library resources more easily. Needless to say, these proposals would be more difficult to implement in a licensing-based regime where libraries lack ownership and control over their digital collections.

### **Equitable Access to Knowledge and Creative Empowerment**

This breakout group was created spontaneously on the day of the first workshop. Participants agreed that equity and empowerment are at the core of the library mission, and therefore

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<sup>43</sup> Brandy Zadrozny, "These disinformation researchers saw the coronavirus 'infodemic' coming." <https://web.archive.org/web/20201124163306/https://www.nbcnews.com/tech/social-media/these-disinformation-researchers-saw-coronavirus-infodemic-coming-n1206911>.

<sup>44</sup> Ethan Zuckerman, "The Case for Digital Public Infrastructure." <https://web.archive.org/web/20200222065431/https://knightcolumbia.org/content/the-case-for-digital-public-infrastructure>.

<sup>45</sup> Ben Tarnoff, "What Would an Egalitarian Internet Actually Look Like?" <https://web.archive.org/web/20220528005705/https://www.nytimes.com/2022/05/27/opinion/technology/what-would-an-egalitarian-internet-actually-look-like.html>.

<sup>46</sup> Brewster Kahle, "Weaving Books into the Web—Starting with Wikipedia." <https://blog.archive.org/2019/10/29/weaving-books-into-the-web-starting-with-wikipedia/>.



needed to be discussed explicitly rather than implicitly in each breakout group. There was widespread agreement that our community needs to emphasize the centrality of these issues, and not let it get lost in the weeds.

Participants pointed out that a lot of problems in equitable access and creative empowerment overlap with digital divide problems. Thus, any discussions surrounding the disparity in access to online resources implicate equitable access to knowledge and creative empowerment. But problems related to equitable access will persist even after society manages to close the digital divide: How, for example, do we make sure people can find creative communities and self-empowering information? Libraries often don't have the resources to do that in as granular a fashion that people need or want. So how do we incentivize the construction of discovery platforms that aren't Facebook and aren't libraries?

One specific need the participants identified was for the community to come together to do some asset mapping, to better understand the landscape of what resources and organizations already exist that are trying to meet these needs. Another specific policy idea participants discussed was to create a program whereby a copyright holder could opt into requiring the government to distribute their works after the five-year period in which most published works garner the bulk of their profits. In this kind of regime, the government would bear the costs of distributing works to public libraries (presumably in a digital fashion). This sort of program would create broader access to more information, while also turning public libraries into more valuable resources. What's more, it would be entirely optional: Many copyright holders actually *want* their information to get out there.

### **Contract Preemption and Digital Ownership**

This final subsection combines the two issues participants identified as most important to discuss as a group. 56.6% of participants selected “digital media ownership” from a list of 14 options, while 53.1% chose “contract/license preemption.” What began as two separate breakout group topics—contract preemption and digital ownership—ended up merging into one “supergroup” by the second part of the initial workshop, because it became clear that it was not possible to talk about one topic without the other. Survey results also demonstrated participants’ strong consensus surrounding these subjects. 90.6% of survey respondents agreed that policymakers should enact explicit legal protections for libraries to *access, preserve, and give public access* to digital materials—including user-generated content, streaming content, and AI-generated content. Not a single respondent voiced any disagreement with this statement, and we see this consensus bear out in the other responses. 93.8% of survey respondents supported the idea that the bundle of rights that comes with owning media in digital formats should include all that “ownership” means in physical formats (e.g. rights to repair, to read on any device, to lend, to donate, and even to resell).

Participants expressed deep concern that libraries’ lack of ownership and control over digital collections is a significant problem, with electronic resources costing more and effectively stripping them of the rights they have in law. This happens because publishers license rather than sell digital content, and they often include terms that prohibit uses that would otherwise be

lawful under the Copyright Act.<sup>47</sup> For instance, these licenses often prohibit activities such as making preservation copies, interlibrary loans, or text and data mining, all the while requiring libraries to pay exorbitant fees on top of the cost of the content itself. Further, libraries must renegotiate these licenses every few years, and therefore do not have reliable, stable access to digital content over time.

Participants discussed the many problems with “licensing culture” and ways in which it has been used to cabin both library and consumer rights. As a general observation, participants agreed that most people have an intuitive understanding of what rights come with the ownership of a physical object. That is to say, the difference between renting and owning a car needs no explanation to the average consumer, but the same cannot be said about the relationship between an individual or a library and the digital content stored in ebooks, multimedia files, and video games.

Participants suggested that license terms that prohibit otherwise lawful library functions could and should be preempted by certain rights granted in law. Some potential avenues explored were impact litigation challenging the enforceability of library licenses and state or federal legislation clarifying that certain library rights override restrictive license terms to the contrary.<sup>48</sup>

The following section defines which specific library functions must be guaranteed.

### **III. Digital Library Rights Are Essential to a Healthy Information Ecosystem**

This section articulates a core set of digital library rights that workshop participants identified as absolutely necessary for libraries to perform their essential function in today’s increasingly networked, digital world. Distilling these rights from traditional library functions, rather than proposing specific tweaks to current law, can ground future policy discussions and leave many paths open for how best to guarantee digital library rights in law.<sup>49</sup>

As a starting point, it became clear during discussion that any effort to help libraries shore up our information ecosystem should begin with a simple premise: *Let libraries be libraries, and permit them to handle digital materials the same way they’ve always handled physical materials.* That requires: (A) recognizing those everyday activities by which libraries have made books and other media freely available to so many people; and (B) guaranteeing libraries’ affirmative rights to continue doing that same work in the digital sphere.

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<sup>47</sup> See Kyle Courtney’s blog post about the so-called “fallacy of permission culture.” <https://web.archive.org/web/20200522041021/https://kylecourtney.com/2020/05/18/libraries-do-not-need-permission-fair-use-first-sale-and-the-fallacy-of-permission-culture/>.

<sup>48</sup> Though it is beyond the scope of this report to set forth a specific strategy, the Association of Research Libraries put out a paper, “Copyright and Contracts: Issues & Strategies,” which lays out many of the options discussed. <https://web.archive.org/web/20220816230744/https://www.arl.org/wp-content/uploads/2022/07/Copyright-and-Contracts-Paper.pdf>.

<sup>49</sup> See *ibid.*

Historically, libraries were able to preserve and provide public access to resources because they could rely on the rights and privileges that came with ownership of the physical media in their collections. Libraries are allowed to collect, repair, lend, and even resell copies of Harper Lee's *To Kill a Mockingbird*, thanks to a provision of law known as the "first-sale doctrine."<sup>50</sup> Congress codified the first-sale doctrine in the 1909 Copyright Act, but has yet to extend it to the digital sphere, despite having held it under legislative consideration for decades.<sup>51</sup> One oft-cited reason for the proposal's lack of progress is a prevailing fear among rightsholders that reselling 'used' digital copies in a commercial context could threaten demand for new products in a way that 'used' books, CDs, DVDs cannot.

This speculative fear does not, however, mean that acquisition of a digital copy should come with *no* rights and thereby be eternally subject to change by the content owner—a model we have seen take hold on platforms where the 'buy' button signifies only a contingent licensing arrangement.<sup>52</sup> Equally important, it does not justify letting libraries' statutory rights evaporate to accommodate poor business decisions made by private actors. Good policy actually recommends *guaranteeing* libraries' ability to perform their essential functions of preserving and providing access to information, regardless of corporations' incentives to change or remove content at will. That is why, to maintain their traditional functions in the digital world, libraries must have the affirmative rights to:

- **Collect digital materials**, including those made available only via streaming and other restricted means, through purchase on the open market or any other legal means, no matter the underlying file format;
- **Preserve those materials**, and where necessary repair or reformat them, to ensure their long-term existence and availability;
- **Lend digital materials**, at least in the same "one person at a time" manner as is traditional with physical materials;

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<sup>50</sup> In the Supreme Court case, *Bobbs-Merrill Co. v. Straus* (1908), Justice Day held that "the copyright statutes, while protecting the owner of the copyright in his right to multiply and sell his production, do not create the right to impose, by notice, such as is disclosed in this case, a limitation at which the book shall be sold at retail by future purchasers, with whom there is no privity of contract."

<https://web.archive.org/web/20220807062159/https://tile.loc.gov/storage-services/service/ll/usrep/usrep210/usrep210339/usrep210339.pdf>.

<sup>51</sup> See the Department of Commerce's "White Paper on Remixes, First Sale, and Statutory Damages," and particularly the discussion on page 61 about library lending and the evolution of that ecosystem, as well as the discussion of library issues related to the first-sale doctrine on page 102 of the Copyright Office's "Section 104 Report."

<https://web.archive.org/web/20220901051840/https://www.uspto.gov/sites/default/files/documents/copyrihtwhitepaper.pdf>;

<https://web.archive.org/web/20220920143248/https://www.copyright.gov/reports/studies/dmca/sec-104-report-vol-1.pdf>.

It is also worth noting that some scholars have argued that the statute is not limited to physical exhaustion or the evolution of the common-law doctrine upon which it was based. See, e.g., Aaron Perzanowski and Jason Schultz, "Digital Exhaustion."

<https://web.archive.org/web/20220901043930/https://www.uclalawreview.org/digital-exhaustion-2/>.

<sup>52</sup> See our discussion above in Section I, as well as Mark Lemley's article, "Disappearing Content."

<https://web.archive.org/web/20211002220534/https://www.bu.edu/bulawreview/files/2021/10/LEMLEY.pdf>.

- **Cooperate with other libraries**, by sharing or transferring digital collections, so as to provide more equitable access for communities in remote and less well-funded areas.

These digital library rights, in addition to serving as a baseline necessary for libraries to continue their most essential functions online, should also be treated as additive to libraries' existing rights in law (such as making preservation copies and repairing damaged materials).<sup>53</sup> Importantly, participants were clear that these rights must be protected against rightsholders' unilaterally imposed licensing restrictions and otherwise from being locked by digital rights management software. As such, consensus reflected that these rights should override contractual or licensing provisions to the contrary. These rights should also supersede anti-circumvention regulations that would prohibit libraries from working around access restrictions to digital materials in their collections.

For clarity, we are not recommending a blanket policy of digital ownership (which some might call a full "digital first sale" right) insofar as we are focused narrowly on the specific needs of libraries. Nor have we included the resale right, despite the fact that a majority of our survey respondents (93.8%) agreed to a definition of "digital ownership" inclusive of that right. Discussion among our participants revealed that libraries' ability to resell books hasn't been *absolutely essential* to their successes in preserving affordable access to knowledge this past half century. That is why the resale right has been left out of this baseline of digital library rights: It was important to convey the conviction that these included rights are non-negotiable and fundamental to the survival of libraries, in addition to providing a key safety valve in our democratic discourse.<sup>54</sup> It felt like a pragmatic compromise weighing the breadth of opinions within the group.

Generally, we have tasked ourselves here only with articulating a broad policy orientation, and deliberately left open the question of strategies for enshrining core library rights in law.<sup>55</sup> That said, there was overwhelming agreement among our participants (90.6%) that libraries' digital ownership must consist of *affirmative* rights in law, preempting all the ways that licensing arrangements rob libraries of discretion over their collections (and making them pay a premium for the privilege).<sup>56</sup> Even the world's most well-funded libraries have been subjected by publishers to unfair market practices and tactics, limiting libraries' legal rights by forcing those in charge of acquisitions into increasingly exorbitant vendor contracts for contingent, temporary

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<sup>53</sup> See, e.g., 17 U.S.C. 107, 108, 110, and 121.

<sup>54</sup> More than a few of our library participants did speak up about the benefits that the resale right has offered them in the material world, as it related to extracting much-needed funds from the deaccessioning of their collections. We make note of their comments here not only because they represent a difference of opinion between participants, but also because it may be worth addressing and remediating any losses to library funds that would occur as a result of their not being able to resell digital collections. Crucially, we do think it essential that libraries be allowed to donate and share their digital collections amongst one another, and thus have included those operations in our articulation of digital rights for libraries.

<sup>55</sup> See above, note 48, for a discussion of potential avenues from the Association of Research Libraries.

<sup>56</sup> See above, in our report about conversations surrounding "Digital Ownership and Contract Preemption."

access.<sup>57</sup> That cannot and will not happen to any library if we can secure them the digital rights they need to survive—and even thrive—in a more digital and more connected future.

## Next Steps

The issues presented in this report are complex and multifaceted. The library community is not a monolith, and even among this relatively small group, participants did not agree on everything. But there was clear alignment on the need for certain guaranteed rights for libraries to continue their mission of preserving and providing access to knowledge, information, and culture. This basic principle is clear: The rights that libraries enjoy offline must be protected online.

It is important to acknowledge, as our participants did, that there is a long road ahead for securing these digital rights for libraries. More discussion is needed on the appropriate strategies and tactics to achieve them. Throughout the workshop discussions, the tension between the need for a pragmatic, incremental approach and the desire for an aspirational vision for major structural change came up many times. One starting point is to raise awareness of the challenges libraries face and the opportunities presented by coming together to solve them—the primary goal of this report.

Another important next step is coalition building. The library community working alone is less likely to be successful in pushing back against well-resourced content industries that regularly work together to influence markets and policies alike. By joining forces with other organizations, institutions, and individuals that share library values (equitable access to trustworthy information, privacy protections for online activity, etc.), libraries and the communities they serve can increase their power base and better defend those values. The Movement for a Better Internet mentioned in the Foreword is one attempt at building a values-driven coalition that can help push this work forward.

Where there was less consensus (i.e. around the tricky matter of counteracting online misinformation), more work is needed to identify those experts who can help articulate and refine a policy agenda for the public—*not* for corporate interests. A broader coalition is more likely not only to better understand the appropriate role for libraries in the digital information ecosystem, but also to answer the many open questions that remain:

- How can we communicate the library community's needs to a broader set of likeminded organizations? Who else should be a part of the conversation?
- What current opportunities are there to engage policymakers on these issues? Which longer-term investments are still worthwhile to pursue as a coalition?
- How might this library-oriented policy agenda fit within a broader policy agenda for other kinds of public interest organizations?
- How can we identify and engage with library communities in other countries?

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<sup>57</sup> See Joel B. Thornton and Curtis Brundy, "Elsevier Title Level Pricing: Dissecting the Bowl of Spaghetti," for just one account of how publishers lock academic libraries into increasingly exorbitant and opaquely priced subscriptions. <https://doi.org/10.7710/2162-3309.2410>.

# Appendix: The Pre-Workshop Survey

The screenshot shows a web browser window displaying a Google Forms survey. The browser's address bar shows the URL: <https://docs.google.com/forms/d/1ncZAJFdCCcDGfWrAx8kc5Y9Al8>. The survey title is "Pre-workshop Survey".

The survey text reads: "The goal of the Libraries and the Digital Information Ecosystem workshop is to identify and agree on an affirmative policy agenda to shape a better internet and improve digital information in the context of libraries and librarianship. This survey is designed to help us determine which topics will be the most promising to explore together. Through these questions we hope to discover which topics already have some level of general agreement or disagreement, and which areas people are most interested in discussing with the group. Answering these questions candidly will help to save time and organize our discussion to be as effective as possible. We are only collecting this information in order to organize our discussion for the day, and will not be attributing the information to specific individuals or releasing it publicly."

The survey is marked as "\* Required".

Question 1: "Name & Affiliation \*". There is a single text input field below the question.

Question 2: "What do you hope to gain from participating in this workshop?". There are four text input fields below the question.

A "Skip to question 3" link is present.

A purple box labeled "Rate Your Agreement" contains the text: "For the following questions, rate your agreement with the policy statement on a scale of 1 to 5. 1 = strong disagree, 2 = somewhat disagree, 3 = neither agree nor disagree, 4 = somewhat agree, 5 = strongly agree".

Question 3: "Library rights in law, including fair use and other library exceptions, should preempt contractual or license terms to the contrary. \*". Below the question is the instruction "Mark only one oval." and a horizontal scale with five radio buttons labeled 1, 2, 3, 4, and 5. The scale is bounded by "Strongly disagree" on the left and "Strongly agree" on the right.

Question 4: "Policymakers should enact legal protections to clearly allow a library's ability to access, preserve, and give public access to all cultural material, regardless of format. This is including but not limited to user generated content, social media, streaming content, and AI generated materials. \*". Below the question is the instruction "Mark only one oval." and a horizontal scale with five radio buttons labeled 1, 2, 3, 4, and 5. The scale is bounded by "Strongly disagree" on the left and "Strongly agree" on the right.

Pre-workshop Survey

https://docs.google.com/forms/d/1ncZAJFdCCcDGfWrAx8kc5Y9Al8 90%

5. Policymakers should enact legal protections against new enclosures of the Public Domain, including but not limited to term extensions, the addition of new exclusive rights, and/or encroachments by private claims to ownership over Public Domain material. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

6. The bundle of rights that comes with owning media in digital formats should include all that "ownership" means in physical formats, including e.g., right to repair, right to read on the device of your choice, right to lend, right to donate or give away, right to leave to your heirs, and right to resell. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

7. The Copyright Act should be amended to clarify that controlled digital lending by libraries is explicitly permitted. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

8. Libraries should be exempt from any mandatory content filtering, geo-blocking or site blocking regulations. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

9. Libraries should have a role in assessment and auditing systems for regulating content moderation. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree



Pre-workshop Survey

https://docs.google.com/forms/d/1ncZAJFdCCcDGfWrAx8kc5Y9Al8

90%

10. Libraries' role in combating mis and disinformation should be to ensure free and equitable access to high quality information online, outside the walls of the library. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

11. The DOJ and FTC should apply stronger scrutiny to media and publishing mergers and acquisitions. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

12. Policymakers should enact protections against unfair market abuse and vendor lock-in. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

13. Policymakers should support libraries and other public institutions to create public interest oriented social media platforms that interoperate with major platforms. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

14. Policymakers should not create liability for hyperlinking, including through link taxes or other ancillary copyright measures. \*

Mark only one oval.

1 2 3 4 5

Strongly disagree      Strongly agree

Pre-workshop Survey

https://docs.google.com/forms/d/1ncZAJFdCCcDGfWrAx8kc5Y9AI8

15. The scope of permissible library digitization should be legally clarified. \*

*Mark only one oval.*

1 2 3 4 5

Strongly disagree      Strongly agree

16. The scope of permissible text & data mining should be legally clarified. \*

*Mark only one oval.*

1 2 3 4 5

Strongly disagree      Strongly agree

17. The same reader data privacy protections that apply to libraries should also apply to publishers, aggregators \* and other library vendors.

*Mark only one oval.*

1 2 3 4 5

Strongly disagree      Strongly agree

18. Please identify the top 3 issues you believe are the most promising policy issues for us to discuss together. \*

*Check all that apply.*

- Protecting the Public Domain
- Contract/license preemption
- Media ecosystem antitrust/competition/unfair market practices
- Reader privacy
- Mis/disinformation
- Digital media ownership
- Controlled Digital Lending
- TPMs, content filters, site blocking, link taxes
- Clarifying scope of existing rights (digitization, text & data mining)
- Platform Interoperability
- Web3/NFT Jamboree
- Other: \_\_\_\_\_

19. Is there anything that you think is important for us to discuss in this workshop that has not been listed above, or any feedback or comments for organizers to consider as we shape this agenda?

\_\_\_\_\_