

review



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John Lanchester on the future of the book



Many of us take it for granted that we can download films or music without paying. Now, new projects such as Google Book Search will make millions of books available too. What will this mean for authors and the publishing industry? **John Lanchester** asks who owns what in the digital age

It's a steal

The words "intellectual property" have a fairly predictable effect. Use them in conversation, and nine out of 10 people immediately fall into a deep sleep, only to wake eight hours later demanding coffee and Weetabix. The 10th person, who is likely to have some engagement with the creative industries, will immediately launch into a long, articulate, autobiographical complaint.

The broad story of copyright is one of creative individuals feeling they are being stifled, and that the public interest is losing out as a result. Everyone has a beef about it. This is mine. Between Christmas 1941 and the dropping of the atomic bombs in August 1945, my grandparents were in a Japanese internment camp in Stanley, at the far edge of Hong Kong island. Many internees died of malnutrition and illness, only three Red Cross parcels arrived during the entire war, and some of their closest friends were tortured and executed by the Kempetai, the Japanese military police and equivalent of the Gestapo.

Personal possessions were scarce. By the end of the war, my grandmother owned only two things: a one cent coin with the middle drilled out, which she wore as a wedding ring, since she had traded her ring away for food in early 1945; and a small pocket diary for 1942, which she must have bought before the fall of Hong Kong. She used that diary for the next three years, writing in pencil, and commenting almost exclusively on food – basically, every time they had something other than rice, she made a note of it.

At the end of the war, the internees were given a typed newsletter that filled them in on what had happened while they were in the camp. (Almost the first thing on it was a remark about the influence of women in all areas of civilian life during the war: "driving buses and working in factories".) At about the time she was given that newsletter, Lannie, my grandmother, must have found a typewriter, because along with the other scraps of paper from this period I found a poem that she, or someone else, had typed out. It was called "A Farewell to Stanley":

A farewell to Stanley – it's over
Of internees there's not a sign
They've left for Newhaven and
Dover
For Hull and Newcastle on Tyne.

The poem must have meant a lot to Lannie, or she wouldn't have kept it for the rest of her life; it is, it seems to me, a rather good poem. But you won't find it in the American edition of my book *Family Romance*, because my American publisher was reluctant to let me quote

it. The fact that I couldn't find anything about the poem's author made them too nervous. If I couldn't find him or her – didn't even know whether he or she existed and wasn't a pseudonym – then the poem was probably in copyright and as such couldn't be published.

There might have been a way around it, if I was prepared to indemnify the publisher from potential costs arising. That didn't seem fair to me. "I don't feel I can indemnify you for the legal risk, for obvious reasons to do with the relative balance of resources between us," I wrote to the corporate lawyer. "Pearson is a £6bn global corporation, I'm a writer with two small children and a mortgage... One of the complaints of the people in the camp was that they were forgotten and silenced. It does seem sad that this person's voice won't be heard precisely because no one knows who he or she was."

No dice. The poem isn't included in the US edition of my book. It was cheeky of me even to ask, since, as my American editor told me, "copyright over here is like libel over there" – in other words, it is immune from common sense, with no room for flexibility or negotiation or the self-evidently right thing. It is almost impossible to exaggerate the ferocity of the copyright laws in America, which are in effect written by the large entertainment conglomerates. The most famous example of this is the Mickey Mouse effect, whereby every time the Mouse is about to come out of copyright, the term of copyright is extended. This has happened 11 times in the past 40 years. If the same laws had applied retrospectively, the US government would never have been allowed to use the name or the image of Uncle Sam.

The corporations have the power, and they are not afraid to use it. The Digital Millennium Copyright Act in the US considerably extended the range of both criminal and civil offences that could be committed over copyright issues. There is a clause in US film contracts which awards the producers rights "in perpetuity and throughout the universe and for any and all forms of expression whether now existing or hereafter devised". As far as I can tell, the only loophole in that is if you fell through a crack in the space-time fabric of the universe into a parallel one. (In case you're wondering how that bizarre clause came about, it was as a result of a lawsuit between Disney and the singer Peggy Lee over the video-cassette edition of *Lady and the Tramp*. Her contract was drawn up before the existence of VCRs and she sued on the basis that Disney did not automatically have the right to sell videos without her permission. She won \$3.8m, and the "throughout the universe" clause was born, to make sure the studios

never went through anything like that again.)

There is an irony here. Twenty years ago, the US studios announced that the end of civilisation as we know it was at hand; the destructive force was the video-cassette recorder. Jack Valenti, president of the Motion Picture Association of America, went before Congress and said that "the growing and dangerous intrusion of this new technology is to the American film producer and the American public as the Boston Strangler is to the woman alone." Today, revenue from video rentals accounts for 46.6% of all the money earned by the major studios. Without the technology they fought to the last ditch, the studios would have gone out of business.

The entertainment industry feared new technology, and didn't understand it. And then came the internet and file-sharing. First they adopted the ostrich position, then they counter-attacked by issuing semi-broken "copy-protected" CDs, and by suing alleged file-sharers, and in general did everything they could to try to make their customers hate them. Thanks to these draconian legal tactics – which have involved mishaps such as suing dead people, children and grannies who don't own computers – the industry is slowly managing to convince people that file-sharing is illegal. But that is not the same thing as persuading them it is wrong.

We in the UK are not as far down the line as the US, but we are headed in the same direction – or we will be, if we continue to allow the question of intellectual property to be determined by corporate interests in America. That would be a pity, both for the inherent harm that the restrictions cause to creative life and because Britain was the birthplace of modern intellectual property law – the first place where systematic thought was given to what copyright should be.

Not that it began like that. Copyright was born in the 16th century and, for the first couple of centuries of its existence, was a form of censorship. With the creation of the Stationers' Company in 1556, printers had to register their books, in order to make it easier for the monarchy to censor their "heresy, sedition and treason... whereby not only God is dishonoured, but also an encouragement is given to disobey lawful princes and governors". It was a straightforward means of control: print something we don't like and you'll be punished, often by means such as having your nose slit or ears cut off. (Somewhere, a record company executive is reading those words and thinking, if only...) These laws had nothing to do with the needs of writers or the public, and everything to do with state control.



The idea of copyright began as an argument over books; and it is over books that contention now looms



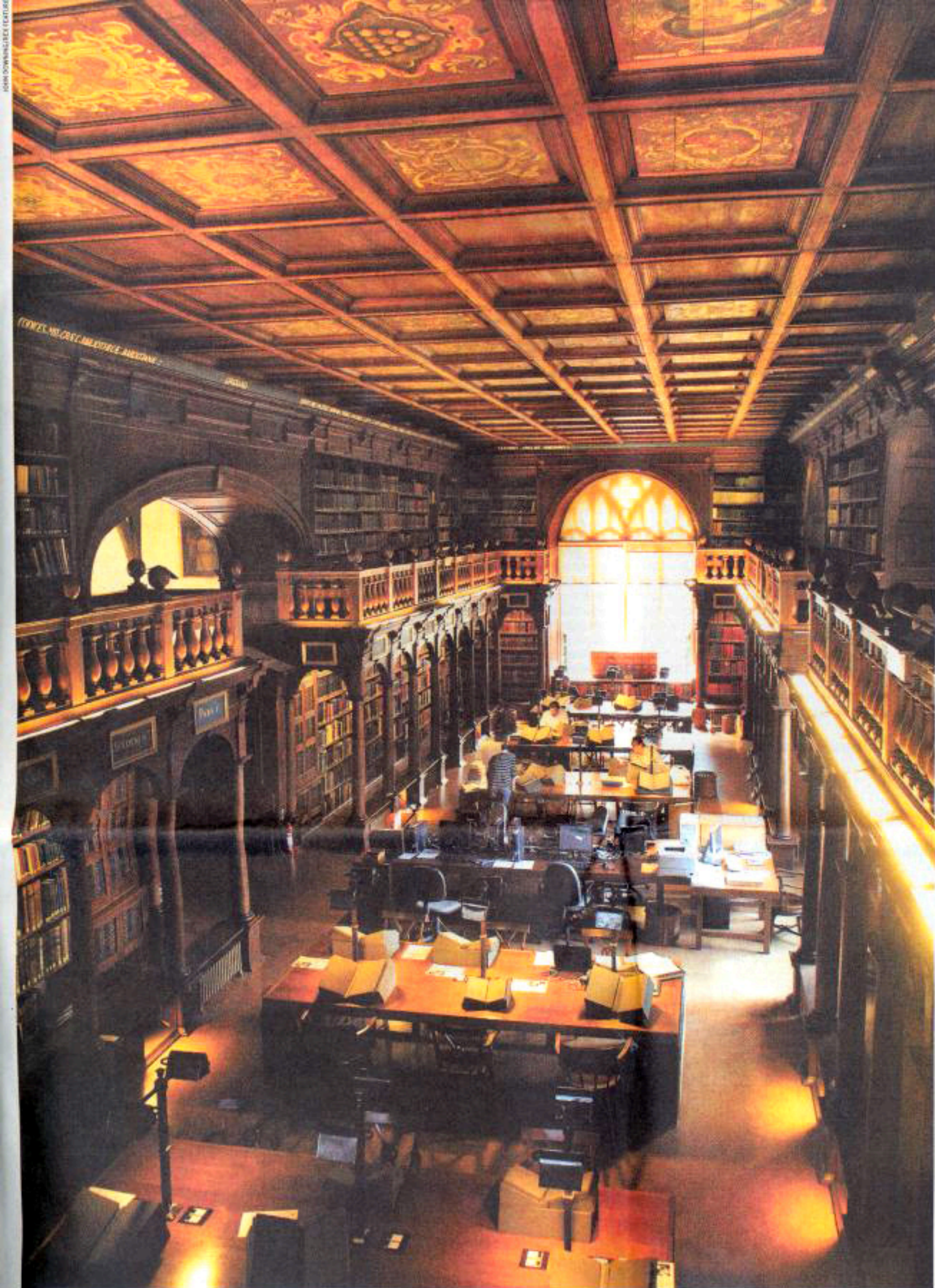
When the first real copyright law came, it was by accident. The laws controlling printing lapsed in 1694, and for the next 16 years a form of anarchy reigned: anyone could print anything. The effect for publishers was disastrous: they came to realise how important their monopoly was, and in turn how important it was to have a means of not just censoring the press, but controlling who owned what – in short, an idea of copyright. Out of that was born the copyright act of 1710, or, as it was significantly called, "An Act for the Encouragement of Learning". The act said that:

Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families: for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books...

It created a copyright term of 21 years, after which the rights would revert to the author. And there you have it: the world's first system of copyright. As those words make clear, the act was explicitly based on one idea: that it was in the public interest to create an intellectually fruitful culture, and that the way to do that was to make it possible for writers to earn money from their work.

The idea that copyright should have a public interest component is central to the Gowers report, commissioned by Gordon Brown in 2005 and published last December. Andrew Gowers used to edit the *Financial Times*, which perhaps helped to give his report a certain breadth of perspective. His "report into the intellectual property framework" talks about the need for a "balance" in copyright law, one that recognises the interest of consumers and the public as well as the creators of intellectual property and the big companies that increasingly dominate the public spaces of the intellectual and entertainment worlds. It is an attempt to rethink the larger issues in the question of intellectual property, in a sense for the first time since the copyright act of 1710 created the framework for all modern intellectual property law.

The idea of copyright began as an argument over books; and it is over books, both as intellectual property and as physical entities, that change and contention now looms. The revolutionary impact of the internet on the music and film business is plain



Depository of change... the Bodleian Library, above, is one of Google's partners in making books searchable online

to see. Now it's the turn of the printed word. The question is simple, and far-reaching: what's going to happen to books and to the people who write them? And if it was books that first caused the whole idea of intellectual property to be raised, might it not be through books that we can see some promising ways through the murk, towards a future that is not dominated by corporate interests?

The Bodleian in Oxford is one of the world's great libraries. It is a copyright library, meaning that every book published in the UK has by law to give a copy to the Bodleian. This is both a very modern phenomenon, with very modern consequences – such as the onslaught of newly published books that a mind-wrenching 5.2 kilometres of new shelf space are needed every year – and a very old one: it began with the Stationers' Company depositing copies of its books to avoid arguments between its members about piracy. I thought I knew the Bodleian pretty well – I was a student at Oxford and did two years of a postgraduate degree there – but it

took a tour in the company of the head of western manuscripts, Chris Fletcher, to make me realise how little I had actually thought about it.

The buildings of the Bodleian are so old, and in their golden Cotswold stone so beautiful, that it is easy not to see how insistently modern an institution

the library has tended to be. The very beginnings of the collection, in Duke Humfrey's Library above the divinity school, showed how Thomas Bodley's own bibliographic vision had to react to a technological shift. The new collection was built to accommodate the transition from the long-established, tried-and-tested technology of unique handwritten texts to the hot new mass-produced technology of the printed codex: in other words, the book. Duke Humfrey's Library has high stacks of shelves, which the reader can't directly access: the world's first

closed stacks. These were designed to accommodate the increasing number of books too small to chain securely to open shelves, and were an important repository of copies from the Stationers' Company. Issues of copyright and of access to information were thus built into the institutional DNA from the start. The very layout of the buildings, with teaching "schools" tucked in the corners of the quadrangle, reflected new ideas about the connection between the library as a repository of information and the university as a place of instruction. And this great library is also a work in progress, with nowhere near enough space to display its magnificent holdings of manuscripts and rare books. The Bodleian is energetically raising money to expand its exhibition space (as well as doing everything else to meet the demands of new technologies, new expectations and new stock) and to redevelop the New Bodleian building across the road.

If you are lucky enough to be taken underneath the Bodleian, through the underground passageway that links

the beautiful old libraries with the New Bodleian, the connection between the idea of new technology and the purpose of the building becomes even more evident. Above your head are the Lamson tubes in which request slips from the reading rooms were once sent zooming along, powered by compressed air. (Equivalent tubes ran through 19th-century Paris: Proust makes a big deal out of them.) To one side is the library's paternoster, a sort of horizontally rolling conveyor belt which runs all day, carrying books from the stacks to the library. It is hard to imagine anything that more glamorously incarnates the idea of Victorian steampunk. Beyond it are the stacks, 11 storeys of books, three of them underground, all the shelves on rolling casters, and so warren-like and compressed with books that there is something genuinely scary about it. A sign warns workers not to go down into the stacks in the 30 minutes before closing without telling someone else where they are going; it also warns that, in an emergency, you should follow the

yellow line on the floor, which will always take you to an exit. It's easy to imagine getting lost in the stacks; it's easy to imagine it as a setting for Inspector Morse, or even Lara Croft. In the company of a guide as knowledgeable and engaging as Chris Fletcher, it is impossible not to miss the point: a library is a machine for storing and retrieving information.

This is where Google comes in. Google is setting out to make the texts of books – all books – as easily searchable as websites. The Bodleian is one of Google's partner libraries in the project; other participating institutions include Harvard, the New York Public Library, the University of Michigan, the Bavarian State Library, the Catalan National Library and the University Complutense of Madrid. At the Bodleian, under the charge of Richard Ovenden, the keeper of special collections, Google is digitising as much of the out-of-copyright sections of the collection as it can manage. That, in practice, means the 19th century: older books are often too fragile to be safely handled, and 20th-century books tend to still be in copyright. I asked Ovenden what proportion of the collection that represented, and he said significantly more than 300,000 books, perhaps between 3% and 5% of the collection. That seems a surprisingly small proportion, but it reflects the huge increase in book publishing through the 20th century and beyond.

Google never gives out figures about anything, but I was told that the Book Search programme already includes more than a million books; and the number is growing daily. Only the world's very biggest libraries are bigger than that. Ovenden said: "I think in the 21st century Google Book Search will be regarded as one of the great historical enterprises. It's not the only one, but it's up there."

No one could think this is anything other than a good thing. To make the resources of the world's literatures available to anyone who wants to look at them and has access to a computer: who could possibly disagree with that? The controversial aspect of Google's project comes not with the titles that are out of copyright, but with the ones still in it: and that, surprisingly, is the vast majority of books – 80% of everything that has ever been published is still in copyright; 10% of that is still in print. For those books, if the publisher is part of Google's partner programme, up to 20% of the book is available to be searched online. The rest is blanked out, but the page contains links from which you can buy the book, shops that sell the book, and in some cases libraries that have a copy in stock. Publishers who aren't part of the programme have their books available for searching, but you can't read anything other than a very short snippet of text, along with bibliographical information about the book. One of the subjects of the lawsuits rumbling between Google and the American publishers is whether this should be on an opt-in basis (Google can't include a book unless the publisher says so) or an opt-out (Google can include anything unless someone explicitly asks not to be included).

So: 20% of all books are out of copyright, and Google can have them with everyone's blessing; 10% are in print, and the lines of argument are fairly clear. The other 70% of books are either in copyright but out of print or in a status about which nobody is certain – "orphan works", as they are known. (Nobody even knows how many books there are. The best guess seems to be about 32m.) It is over these titles that the big argument between Google and the publishers is taking place. Google wants them to be available online, together with links and places to buy the books. It seems to me this would mean that, in some crucial sense, Google was actually the publisher of the book – and this makes some publishers and writers nervous.

The crucial issue is one of trust. Everyone in the book world can see what has happened to music and is happening to film, and it worries them; the prospect of free digital copies of books is not automatically joyful. Ovenden says "I can't see how they'll sell more books by not being in Google" – which has a certain force. There is something horrifying about the idea that 70% of all the books ever

» Isn't giving information in books away free encouraging readers to think that books should be free too?

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published are in the limbo of being out of print. Anything that gives those works a new life and new readers, even if only a few years, has to be welcome.

But what about the information in those books being given away free? Isn't this a dangerous way of encouraging readers to think that books should be free too, so that when digital forms of reading come along, as they surely will, people feel as sanguine about stealing books as they do about stealing music or movies? How secure will the electronic texts be? Hackers have had no trouble cracking the encryption of CDs and DVDs; is there a reason to believe they will have more trouble in making it possible to steal electronic copies of books? There are already websites that invite people to download e-texts by clicking on a button saying "Steal This Book". And sceptics point to a contrast between Google's attitude to everyone else's information, which it wants to make available free, and its attitude to its own proprietary information – the company is famous for its close-mouthedness; it won't even say anything about how or where it scans the books.

This lack of trust hampers the current usefulness of Google Book Search, since the "snippets" are too short to be useful or readable. One way of describing what is happening is to say that publishers are trying to learn from the experience of the music business. (The technology that underlies the ripping of music files, the MP3 player, has recently become an intellectual property issue in itself. The French company Alcatel was last month awarded \$1.52bn from Microsoft, on the grounds that its patent in MP3 technology had been infringed – the odd thing about

this being that everyone thought the technology was owned by someone else and had already been paid for.) Was there a way in which the battle for customers' minds could have played out differently? Was it inevitable that file-sharing became endemic? Was there a way in which the music business could have persuaded people that file-sharing was a form of theft? What should publishers do to avoid something similar happening to them?

There are people who foresee a disaster for publishers and writers. Personally, I think that books are going to be OK, for one main reason: books are not only, or not primarily, the information they contain. A book is also an object, and a piece of technology; in fact, a book is an extraordinarily effective piece of technology, portable, durable, expensive to pirate but easy to use, not prone to losing all its data in crashes, and capable of taking an amazing variety of beautiful forms. Google Book Search is going to be a superb tool for accessing the information in books; but how much of *Middlemarch* or *White Teeth* or *Tintin in Tibet* is information? You can see in the Bodleian's rich holdings of manuscripts and old books just how much of the cultural history of books, and their cultural importance, lies in their bookness. This will, I think, dilute the impact of digitisation for writers and publishers: even if you could rip an MP3 of *Moby-Dick*, who on earth would prefer it to a bound copy? Ovenden, a great fan of digitisation and a man in a perfect position to observe its effects, at the same time stresses



Scrooge McDuck... just as Mickey Mouse's copyright expires, its term is extended

the virtue of the book. "The codex was a technological leap. It works very well, has done so for 2,000 years, and still does so – people still find it very easy to use. What digitisation does is to highlight that."

I think the argument between Google and the publishers will be resolved by the evidence. Google is quick to brandish case studies of the ways in which Book Search has helped small publishers; if the evidence mounts to the point of being irrefutable, it will have its effect. Conversely, if there is evidence that too much book content is being given away, and books are starting to slip into the mental category of a product for which people don't expect to pay, then publishers will pull out of the partner programme.

As for intellectual property in general – the famous Gowers "framework" – I have two suggestions, both derived from my own experiences in the world of books. One is that the period of copyright control does not need to be

the same as the period during which an artist can earn royalties. I worked for a short while at Penguin in the early 1990s, during which Joyce and Woolf both briefly came out of copyright (on January 1 1992) and sales in their work zoomed upwards, as publishers came out with competing editions – in the case of the one book for which Penguin already had a licence, *Ulysses*, sales went up (and there were five other editions on the market). As a result of having seen that at first hand, I think that, 50 years after an author's death, anyone should be able to publish a book or record a piece of music or put on a play, as long as they pay a royalty. This would increase general levels of cultural creativity and still allow revenue, but not control, to artists' descendants. We could even have some fun with Mickey Mouse...

The other suggestion is that artists should be guaranteed, by law, a percentage of the revenue from the sale of their work. At the moment, the big retailers

squeeze the publishers, who in turn squeeze the talent, so that it is common for as little as 5% of the purchase price of a book, say – though it's not just books – to reach the writer. That's 95% of the money going to someone other than the creator: does that seem right? My experience of asking people about this suggests, very unscientifically, that most people aren't aware that three-for-twos and dramatically reduced prices mean that the writer is earning a smaller royalty per copy.

Surely, in the interests of a lively creative culture, we can at least ensure that 10% of the paid price of a book goes to the writer? This might create some upward pressure on price, but it might not. It might just mean that the supermarkets' margins took some of the pressure, instead of everyone else's. Indeed, a law like that might become a model for other areas, not just of intellectual property, but of work. If it caught on we might see a world in which farmers or factory-labourers were by law guaranteed a minimum share of the proceeds of their labour. A law like that could be as important a new framework, and as much a force for good, as the 1710 copyright act. It is as true now as it was three centuries ago that a creative culture is a culture in which creativity has a chance of being rewarded. Given the pressure being exerted by technological and economic processes, this could well be the last chance for the idea of the public good to push back against the corporate interests who want intellectual property laws to be written by, and for, themselves. We'd best make the most of it.

Family Romance, by John Lanchester, is published by Faber (£16.99). To order a copy for £14.99 with free UK p&hp call Guardian book service on 0870 836 0875 or go to guardian.co.uk/bookshop